

D & F PATCHOGUE A.L., LLC

and

CARLISLE PATCHOGUE OPERATOR, INC.

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Town of Brookhaven Industrial Development Agency  
(D & F Patchogue A.L., LLC/Carlisle Patchogue Operator, Inc. 2015 Facility)

Dated as of May 1, 2015

Town of Brookhaven, Village of Patchogue, Patchogue-Medford School District, Suffolk  
County

Section: 9

Block: 07.00

Lots: 016.000, 025.005 & 026.007

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of May 1, 2015 (this “**PILOT Agreement**”), is by and among D & F PATCHOGUE A.L., LLC, a limited liability company, duly organized and existing under the laws of the State of New York, having an address of 100 Schoolhouse Road, Levittown, New York 11756 (the “**Company**”), CARLISLE PATCHOGUE OPERATOR, INC., a business corporation, organized and existing under the laws of the State of New York, having an address of 100 Schoolhouse Road, Levittown, New York 11756 (the “**Sublessee**”), and 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**”).

### WITNESSETH:

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 (a) the acquisition of 3 parcels of land totaling approximately 1.33 acres located at 131 East Main Street, 18 Maple Avenue and 22 Maple Avenue, all in the Village of Patchogue, Town of Brookhaven, Suffolk County, New York (also identified as SCTM#’s 0204-09.00-07.00-016.000, 025.005, 026.007) (collectively, the “**Land**”) and the construction and equipping thereon of an approximately 87,000 square foot 5-story building containing approximately 128 units comprised of approximately 146 beds of which approximately 100 will be assisted living beds and approximately 46 will be memory care beds, together with the acquisition and installation of improvements, structures and other related facilities attached to the Land (the “**Improvements**”) and the acquisition and installation therein of certain equipment not part of the Equipment (as such term is defined herein) (the “**Facility Equipment**”; and, together with the Land and the Improvements, the “**Company Facility**”), which Company Facility will be leased by the Agency to the Company and subleased by the Company to the Sublessee, and (b) the acquisition and installation of certain equipment and personal property (the “**Equipment**”), which Equipment is to be leased by the Agency to the Sublessee (the Company Facility and the Equipment are collectively referred to herein as the “**Facility**”), which Facility shall be used by the Sublessee as an affordable senior housing facility with an emphasis on special needs, such as frail elderly and those with mobility impairments; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to construct and equip the Company 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 May 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 Company Facility to the Company pursuant to the Lease Agreement, dated as of May 1, 2015 (the “**Lease Agreement**”), between the Agency, as lessor, and the Company, as lessee, such that a leasehold interest or title to the Company Facility will remain with the Agency throughout the Lease Term (as such term is defined in the Lease Agreement); and

WHEREAS, the Company has agreed to sub-sublease the Company Facility to the Sublessee pursuant to a Sublease Agreement, dated June 10, 2014, as amended on April 27, 2015 (the “**Sublease Agreement**”), by and between the Company, as sublessor, and the Sublessee, as sublessee; and

WHEREAS, the Equipment will be leased by the Agency to the Sublessee pursuant to the terms of the Equipment Lease Agreement, dated as of May 1, 2015 (the “**Equipment Lease Agreement**”), by and between the Agency, as lessor, and the Sublessee, as lessee; and

WHEREAS, the Agency, the Company and the Sublessee have agreed to enter into a Recapture Agreement, dated as of May 1, 2015 (the “**Recapture Agreement**”), pursuant to which the Agency has the right to recapture certain economic benefits and assistance granted to the Company and the Sublessee 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 Village of Patchogue, 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; and

WHEREAS, the Agency, the Company and the Sublessee deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company and the Sublessee to the Town of Brookhaven, the Village of Patchogue, 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, Patchogue-Medford 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 and the Sublessee, jointly and severally, agree 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 Town of

Brookhaven, the Village of Patchogue (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 and the Sublessee, jointly and severally, 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 2017/2018 tax year, the Company and the Sublessee 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 and the Sublessee, jointly and severally, 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 or the Sublessee of their respective obligations to make all payments provided for hereunder. If, for any reason, the Company and/or the Sublessee do not receive an appropriate tax bill, the Company and the Sublessee 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 and the Sublessee 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 and the Sublessee 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 and the Sublessee agree 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 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, the Village of Patchogue, Patchogue-Medford 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 and the Sublessee, jointly and severally, hereby agree 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 and the Sublessee 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 or the Sublessee 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 and the Sublessee hereunder shall, to such extent, be null and void.

4. In the event the Company and the Sublessee 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 and the Sublessee 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, the Company and the Sublessee agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities, if any, 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, at the request of the company, 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 and/or the Sublessee 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 and the Sublessee, in recognition of the benefits provided under the terms of this PILOT Agreement, including, but not limited to, the amounts of 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 and the Sublessee, however, reserve 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, 3<sup>rd</sup> Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Brookhaven Town Attorney's Office  
1 Independence Hill, 2<sup>nd</sup> Floor  
Farmingville, New York 11738  
Attention: Town Attorney

To the Company and Sublessee:

D & F Patchogue A.L., LLC  
Carlisle Patchogue Operator, Inc.  
100 Schoolhouse Road  
Levittown, New York 11756  
Attention: Bruce Peterson, Chief Financial Officer

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: Daniel P. Deegan, 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 and/or the Sublessee 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 and/or the Sublessee'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 and/or the Sublessee'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 and/or the Sublessee 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 and the Sublessee when due. Upon termination of the Lease Agreement, this PILOT Agreement shall terminate.

11. Whenever the Company and/or the Sublessee 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 and the Sublessee under this PILOT Agreement. The Agency agrees to notify the Company and the Sublessee in writing of any failure by the Company and/or the Sublessee to comply with any provision of this PILOT Agreement and shall

provide the Company and/or the Sublessee with the opportunity to cure such failure within thirty (30) days after receipt by the Company and/or the Sublessee 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 and the Sublessee agree to hold the Agency harmless from and against any liability arising from any default by the Company and/or the Sublessee 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 except for those contained in paragraph 1, 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 failure or breach by the Company and the Sublessee 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 terminate the Lease Agreement pursuant to Section 10.2(a)(ii) thereof and subject to the provisions of the Recapture Agreement.

18. The Company, the Sublessee and the Agency hereby agree that the obligations and liabilities of the Company and the Sublessee hereunder are the absolute and unconditional obligations and liabilities of the Company and the Sublessee and not the obligations and liabilities of any officer, director, shareholder or employee of the Company or the Sublessee, and that no officer, director, shareholder or employee of the Company and the Sublessee 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 and the Sublessee.

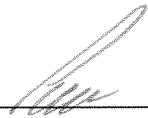
19. All capitalized terms used in this PILOT Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions

attached to the Lease Agreement, which definitions are incorporated herein and made a part hereof.

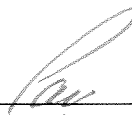
(Remainder of Page Intentionally Left Blank – Signature Page Follows)]

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

**D & F PATCHOGUE A.L., LLC**

By:   
Name: Peter Florey  
Title: Manager

**CARLISLE PATCHOGUE OPERATOR,  
INC.**

By:   
Name: Peter Florey  
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

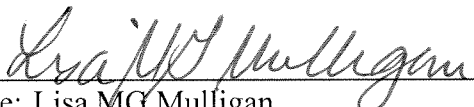
By:   
Name: Lisa MG Mulligan  
Title: Chief Executive Officer

EXHIBIT A

Payments In-Lieu-of-Taxes: Town of Brookhaven, Village of Patchogue, Patchogue-Medford School District, Suffolk County and Appropriate Special Districts.

| <u>Year</u> | <u>Tax Year</u> | <u>Payment</u> |
|-------------|-----------------|----------------|
| 1.          | 2017/2018       | \$ 22,755.40   |
| 2.          | 2018/2019       | \$ 23,202.30   |
| 3.          | 2019/2020       | \$ 23,672.55   |
| 4.          | 2020/2021       | \$ 24,146.20   |
| 5.          | 2021/2022       | \$ 24,623.32   |
| 6.          | 2022/2023       | \$ 25,113.99   |
| 7.          | 2023/2024       | \$ 25,618.27   |
| 8.          | 2024/2025       | \$ 26,136.24   |
| 9.          | 2025/2026       | \$ 26,657.96   |
| 10.         | 2026/2027       | \$ 27,193.52   |
| 11.         | 2027/2028       | \$ 26,392.99   |
| 12.         | 2028/2029       | \$ 26,926.45   |
| 13.         | 2029/2030       | \$ 27,463.98   |
| 14.         | 2030/2031       | \$ 28,015.66   |
| 15.         | 2031/2032       | \$ 257,041.57  |

and thereafter 100% of full taxes and assessments on the Facility

EXHIBIT B

Legal Description of Real Property

# **ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

## **SCHEDULE A**

### **PARCEL 1**

ALL that certain plot, piece or parcel of land situate, lying and being in the Incorporated Village of Patchogue, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly line of East Main Street 166.03 feet west of the intersection of the northerly line of East Main Street with the westerly line of Maple Avenue (aka Maple Street);

RUNNING thence along other land now or formerly of the Estate of Effie J. Roe, North 02 degrees 53' 06" West 135.74 feet to a concrete monument and land now or formerly of Bankers Trust of Suffolk, N.A. (formerly The People's National Bank of Long Island);

RUNNING thence along said last mentioned land, North 01 degrees 01' 20" West 85.07 feet to a concrete monument and other land of said Bankers Trust of Suffolk, N.A.;

RUNNING thence still along said last mentioned land, North 88 degrees 58' 40" East 94.47 feet to a concrete monument;

RUNNING thence still along land of said Bankers Trust of Suffolk, N.A., North 00 degrees 58' 45" West 114.73 feet to a point;

RUNNING thence still along land of said Bankers Trust of Suffolk, N.A., North 86 degrees 03' 30" East 75.99 feet to a point in the westerly line of Maple Avenue (aka Maple Street);

RUNNING thence along the westerly line of Maple Avenue (aka Maple Street) South 01 degree 20' 14" East 10.01 feet to a locust and land now or formerly of William L. Underwood;

RUNNING thence along said last mentioned land, South 86 degrees 03' 30" West 56.03 feet to a point;

RUNNING thence along lands now or formerly of William L. Underwood, formerly M. Fuoco and of Albert Paniccia, South 00 degrees 58' 45" East 321.56 feet to a concrete

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

**SCHEDULE A (continued)**

monument in the northerly line of East Main Street, line passing through a concrete monument 0.1 foot from its beginning;

RUNNING thence along the northerly line of East Main Street, South 86 degrees 24' 56" West 110.00 feet to the point or place of BEGINNING.

**PARCEL 2**

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

BEGINNING at a concrete monument on the westerly line of Maple Street distant 345.83 feet southerly from the corner formed by the intersection of the southerly line of Oak Street with the westerly line of Maple Avenue, also known as Maple Street, and from said point of beginning;

THENCE South 01 degree 20' 14" East along the westerly line of Maple Avenue, aka Maple Street, 50.46 feet to land now or formerly of Effie J. Roe;

THENCE South 86 degrees 03' 30" West along said last mentioned land, 75.99 feet;

THENCE South 00 degrees 58' 45" East, still along last mentioned land, 114.73 feet to a concrete monument;

THENCE South 88 degrees 58' 40" West, still along said last mentioned land, 94.47 feet to a concrete monument;

THENCE South 01 degree 01' 20" East, still along said last mentioned land, 85.07 feet to a concrete monument;

THENCE South 88 degrees 58' 40" West, still along said last mentioned land, 44 feet to a locust stake;

THENCE North 01 degree 01' 20" West 158 feet;

THENCE North 53 degrees 02' 10" East 45.57 feet;

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

**SCHEDULE A (continued)**

THENCE North 01 degree 02' 50" West 61.04 feet;

THENCE North 86 degrees 17' 10" East 177.50 feet to the point or place of BEGINNING.

**PARCEL 3**

ALL that tract, piece or parcel of land situate, lying and being in the Town of Brookhaven, Village of Patchogue, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Maple Avenue distant 264.44 feet (264.66 feet-Deed) northerly from the corner formed by the intersection of the westerly side of Maple Avenue with the northerly side of East Main Street;

RUNNING thence South 88 degrees 06' 25" West along land now or formerly of Fuoco 55.98 feet to land now or formerly of Losee;

THENCE North 0 degrees 58' 45" West along said land now or formerly of Losee 55.33 feet;

THENCE North 86 degrees 03' 30" East 56.03 feet to the westerly side of Maple Avenue;

THENCE South 0 degrees 58' 45" East along the westerly side of Maple Avenue 57.33 feet to 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

James L. Smith  
*Paralegal*

T 585-263-1146

jlsmith@nixonpeabody.com

Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14603

May 7, 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  
(D & F Patchogue A.L., LLC/Carlisle Patchogue Operator, Inc. 2015 Facility)

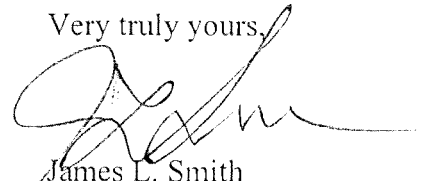
Dear Mr. Ryan:

Enclosed please find a completed Form RP-412-a Application for Real Property Tax Exemption, together with a copy of a Payment-in-Lieu-of-Tax Agreement (the "**PILOT Agreement**"), all with respect to the above-referenced straight-lease transaction which closed on May 5, 2015.

Also enclosed are copies of the Recapture Agreement and the Company Lease each dated as of May 1, 2015. A Memorandum of the Company Lease has been presented for recording in the Suffolk County Clerk's office.

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

Very truly yours,



James L. Smith  
Paralegal

Enclosures

cc: Distribution List (w/encls.)

**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

Michael J. Hynes, Ed. D.  
Superintendent  
Patchogue-Medford Schools  
241 South Ocean Avenue  
Patchogue, New York 11772

**FIRST CLASS MAIL**

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

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



# 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 Brookhaven Industrial Development Agency  
Street 1 Independence Hill, 2nd Floor  
City Farmingville  
Telephone no. Day (631 ) 451-6563  
Evening ( ) \_\_\_\_\_  
Contact Lisa MG Mulligan  
Title Chief Executive Officer

### 2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name D & F Patchogue A.L., LLC  
Name Carlisle Patchogue Operator, Inc.  
Street 100 Schoolhouse Road  
City Levittown  
Telephone no. Day (516 ) 437-0900  
Evening ( ) \_\_\_\_\_  
Contact Peter G. Florey  
Title Manager

### 3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year)  
9.00-07.00-016.000, 025.005 & 026.007  
131 East Main Street, 18 Maple Avenue & 22 Maple  
b. Street address Avenue  
c. City, Town or Village Patchogue/Brookhaven  
d. School District Patchogue-Medford  
e. County Suffolk  
f. Current assessment unavailable  
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)  
construction and equipping of an approximately 87,000 square foot building to be used as an affordable senior housing facility.  
b. Type of construction unavailable  
c. Square footage app 87,000 sq ft  
d. Total cost \$31,000,000  
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)  
December 31, 2032

### 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 December 31, 2032

e. Municipal corporations to which payments will be made

|                                          | Yes                                 | No                       |
|------------------------------------------|-------------------------------------|--------------------------|
| County <u>Suffolk</u>                    | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Town/City <u>Brookhaven</u>              | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Village <u>Patchogue</u>                 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| School District <u>Patchogue-Medford</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

d. Person or entity responsible for payment

Name Peter G. Florey  
 Title Manager  
 Address 100 Schoolhouse Road  
Levittown, NY 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.

Telephone (516) 437-0900

The IDA has a leasehold interest in the property pursuant to a Company Lease Agreement, dated as of May 1, 2015, a memo of Co Lease has been submitted for recording, Liber & Page unavailable.

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 05/07/15 (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.

May 5, 2015  
 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 ad valorem levies for which the parcel is liable:  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Assessor's signature

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                       |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee<br>B. Received by (Printed Name) <u>[Signature]</u> C. Date of Delivery<br>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If YES, enter delivery address below:                            |  |
| 1. Article Addressed to:<br><br>Hon. Edward R. Romaine<br>Town Supervisor<br>Town of Brookhaven<br>One Independence Hill<br>Farmingville, New York 11738                                                                                                                                                                   |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.<br>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes |  |
| 2. Article Number<br>(Transfer from service label) 7012 3460 0003 4068 4291                                                                                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                         |  |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-11

| U.S. Postal Service<br>CERTIFIED MAIL™ RECEIPT<br>(Domestic Mail Only; No Insurance Coverage Provided)                                                                                    |               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>                                                                                              |               |
| OFFICIAL USE                                                                                                                                                                              |               |
| 4944 Postage \$ 2.66<br>TOBIDA Certified Fee 3.30<br>644 Return Receipt Fee (Endorsement Required) 2.70<br>Restricted Delivery Fee (Endorsement Required)<br>Total Postage & Fees \$ 8.66 | Postmark Here |
| Sent To Hon. Edward R. Romaine<br>Town Supervisor<br>Town of Brookhaven<br>One Independence Hill<br>Farmingville, New York 11738                                                          |               |
| PS Form 3800, August 2006 See Reverse for Instructions                                                                                                                                    |               |

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                       |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee<br>B. Received by (Printed Name) <u>[Signature]</u> C. Date of Delivery<br>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If YES, enter delivery address below:                            |  |
| 1. Article Addressed to:<br><br>Michael J. Hynes, Ed. D.<br>Superintendent<br>Patchogue-Medford Schools<br>241 South Ocean Avenue<br>Patchogue, New York 11772                                                                                                                                                             |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.<br>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes |  |
| 2. Article Number<br>(Transfer from service label) 7012 3460 0003 4068 4277                                                                                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                         |  |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

| U.S. Postal Service<br>CERTIFIED MAIL™ RECEIPT<br>(Domestic Mail Only; No Insurance Coverage Provided)                                                                                    |               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>                                                                                              |               |
| OFFICIAL USE                                                                                                                                                                              |               |
| 4944 Postage \$ 2.66<br>TOBIDA Certified Fee 3.30<br>644 Return Receipt Fee (Endorsement Required) 2.70<br>Restricted Delivery Fee (Endorsement Required)<br>Total Postage & Fees \$ 8.66 | Postmark Here |
| Sent To Michael J. Hynes, Ed. D.<br>Superintendent<br>Patchogue-Medford Schools<br>241 South Ocean Avenue<br>Patchogue, New York 11772                                                    |               |
| PS Form 3800, August 2006 See Reverse for Instructions                                                                                                                                    |               |

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                       |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee<br>B. Received by (Printed Name) <u>[Signature]</u> C. Date of Delivery<br>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If YES, enter delivery address below:                            |  |
| 1. Article Addressed to:<br><br>James Ryan<br>Sole Assessor<br>Town of Brookhaven<br>One Independence Hill<br>Farmingville, New York 11738                                                                                                                                                                                 |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.<br>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes |  |
| 2. Article Number<br>(Transfer from service label) 7008 1830 0001 7087 4679                                                                                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                         |  |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

| U.S. Postal Service<br>CERTIFIED MAIL™ RECEIPT<br>(Domestic Mail Only; No Insurance Coverage Provided)                                                                                    |               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>                                                                                              |               |
| OFFICIAL USE                                                                                                                                                                              |               |
| 4944 Postage \$ 2.66<br>TOBIDA Certified Fee 3.30<br>644 Return Receipt Fee (Endorsement Required) 2.70<br>Restricted Delivery Fee (Endorsement Required)<br>Total Postage & Fees \$ 8.66 | Postmark Here |
| Sent To James Ryan<br>Sole Assessor<br>Town of Brookhaven<br>One Independence Hill<br>Farmingville, New York 11738                                                                        |               |
| PS Form 3800, August 2006 See Reverse for Instructions                                                                                                                                    |               |

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                       |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee<br>B. Received by (Printed Name) <u>[Signature]</u> C. Date of Delivery<br>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If YES, enter delivery address below:                            |  |
| 1. Article Addressed to:<br><br>Hon. Steven Bellone<br>Suffolk County Executive<br>H. Lee Dennison Building<br>100 Veterans Memorial Highway<br>P.O. Box 6100<br>Hauppauge, New York 11788-0099                                                                                                                            |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.<br>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes |  |
| 2. Article Number<br>(Transfer from service label) 7012 3460 0003 4068 4284                                                                                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                         |  |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

| U.S. Postal Service<br>CERTIFIED MAIL™ RECEIPT<br>(Domestic Mail Only; No Insurance Coverage Provided)                                                                                    |               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>                                                                                              |               |
| OFFICIAL USE                                                                                                                                                                              |               |
| 4944 Postage \$ 2.66<br>TOBIDA Certified Fee 3.30<br>644 Return Receipt Fee (Endorsement Required) 2.70<br>Restricted Delivery Fee (Endorsement Required)<br>Total Postage & Fees \$ 8.66 | Postmark Here |
| Sent To Hon. Steven Bellone<br>Suffolk County Executive<br>H. Lee Dennison Building<br>100 Veterans Memorial Highway<br>P.O. Box 6100<br>Hauppauge, New York 11788-0099                   |               |
| PS Form 3800, August 2006 See Reverse for Instructions                                                                                                                                    |               |

D & F PATCHOGUE A.L., LLC

and

CARLISLE PATCHOGUE OPERATOR, INC.

to

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

---

RECAPTURE AGREEMENT

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Dated as of May 1, 2015

Town of Brookhaven Industrial Development Agency  
(D & F Patchogue A.L., LLC/Carlisle Patchogue Operator, Inc. 2015 Facility)

Property Address: 131 East Main Street, 18 Maple Avenue and 22 Maple Avenue, all in  
the Village of Patchogue, Town of Brookhaven, Suffolk County, New  
York

Section: 9

Block: 07.00

Lots: 016.000, 025.005 & 026.007

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 May 1, 2015 (this “**Recapture Agreement**”), is from D & F PATCHOGUE A.L., LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 100 Schoolhouse Road, Levittown, New York 11756 (the “**Company**”), and CARLISLE PATCHOGUE OPERATOR, INC., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 100 Schoolhouse Road, Levittown, New York 11756 (the “**Sublessee**”), to the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “**Agency**”).

### W I T N E S S E T H :

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, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act 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 (a) the acquisition of 3 parcels of land totaling approximately 1.33 acres located at 131 East Main Street, 18 Maple Avenue and 22 Maple Avenue, all in the Village of Patchogue, Town of Brookhaven, Suffolk County, New York (also identified as SCTM#’s 0204-09.00-07.00-016.000, 025.005, 026.007) (collectively, the “**Land**”) and the construction and equipping thereon of an approximately 87,000 square foot 5-story building containing approximately 128 units comprised of approximately 146 beds of which approximately 100 will be assisted living beds and approximately 46 will be memory care beds, together with the acquisition and installation of improvements, structures and other related facilities attached to the Land (the “**Improvements**”) and the acquisition and installation therein of certain equipment not part of the Equipment (as such term is defined

herein) (the “**Facility Equipment**”; and, together with the Land and the Improvements, the “**Company Facility**”), which Company Facility will be leased by the Agency to the Company and subleased by the Company to the Sublessee, and (b) the acquisition and installation of certain equipment and personal property (the “**Equipment**”), which Equipment is to be leased by the Agency to the Sublessee (the Company Facility and the Equipment are collectively referred to herein as the “**Facility**”), which Facility shall be used by the Sublessee as an affordable senior housing facility with an emphasis on special needs, such as frail elderly and those with mobility impairments; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to construct and equip the Company 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 May 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 Company Facility to the Company pursuant to a certain Lease Agreement, dated May 1, 2015 (the “**Lease Agreement**”), by and between the Agency, as lessor, and the Company, as lessee, and a Memorandum of said Lease Agreement, dated May 5, 2015 (the “**Memo of Lease Agreement**”), will be recorded in the Suffolk County Clerk’s office simultaneously herewith; and

WHEREAS, the Company has agreed to sub-sublease the Company Facility to the Sublessee pursuant to a certain Sublease Agreement, dated June 10, 2014, as amended on April 27, 2015 (the “**Sublease Agreement**”), by and between the Company, as sublessor, and the Sublessee, as sublessee, and a Memorandum of said Sublease Agreement, dated May 5, 2015 (the “**Memo of Sublease Agreement**”), will be recorded in the Suffolk County Clerk’s office simultaneously herewith; and

WHEREAS, the Equipment will be leased by the Agency to the Sublessee pursuant to the terms of a certain Equipment Lease Agreement, dated as of May 1, 2015 (the “**Equipment Lease Agreement**”), by and between the Agency and the Sublessee; and

WHEREAS, in order to define the Company’s and Sublessee’s obligations regarding payments-in-lieu-of-taxes with respect to the Facility, the Agency, the Company and the Sublessee have agreed to enter into a Payment-in-Lieu-of-Tax Agreement, dated as of May 1, 2015 (the “**PILOT Agreement**”), by and among the Agency, the Company and the Sublessee; and

WHEREAS, the Agency has conferred on the Company and the Sublessee in connection with the acquisition, construction, equipping, financing and leasing of the Facility certain benefits, tax exemptions and other financial assistance more particularly described in

Section 1(b) hereof, consisting of, among other things, sales and use tax exemptions on the acquisition, construction and equipping 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, the Lease Agreement and the Equipment Lease Agreement, that the Company provide assurances with respect to the recapture of certain benefits granted under the PILOT Agreement, the Lease Agreement, the Equipment 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, the Equipment Lease Agreement and the PILOT Agreement in order to provide financial assistance to the Company and the Sublessee for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company and the Sublessee hereby agrees as follows:

- (i) If there shall occur a Recapture Event after May 5, 2015, but on or before December 31, 2018 the Company and/or the Sublessee 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, 2022, the Company and/or the Sublessee 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, 2023 but on or before December 31, 2026, the Company and/or the Sublessee 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, 2027 but on or before December 31, 2029, the Company and/or the Sublessee 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 after December 31, 2029, the Company and/or the Sublessee 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, the Lease Agreement and the Equipment 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) (a) 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 Company Facility (the “**Company Sales Tax Savings**”); and

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

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

(iv) any unpaid amounts then due and owing under the PILOT Agreement; and

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 and Sublessee 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 default by the Company and/or the Sublessee 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 or the Equipment Lease 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

(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 and/or the Sublessee; or

(4) The sale of the Facility (excluding any sale provided for in Section 9.3 of the Lease Agreement) or closure of the Facility and/or departure of the Company and/or the

Sublessee from the Town of Brookhaven, except as due to casualty, condemnation or force majeure as provided below; or

(5) Failure of the Company or the Sublessee 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 and Section 8.13 of the Equipment Lease Agreement, which failure is not reflective of the business conditions of the Company or the Sublessee 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. It is further provided that the Company may not actually provide the FTE jobs at the Facility, but rather shall sublease the Facility to the Sublessee, and that the Company’s obligation with regard to creating or causing to be maintained FTE jobs includes (a) using all reasonable efforts to lease up the Facility, and (b) including provisions in all subleases requiring any tenants to comply with the provisions of the Lease Agreement applicable to them; or

(6) Any significant deviations from the 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, construction and equipping of the Facility in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to the Company Sales Tax Savings in excess of the Maximum Company Sales Tax Savings Amount only; provided further, that failure to repay the Company Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits; or

(8) The Sublessee receives Sales Tax Savings in connection with the acquisition, construction and equipping of the Facility in excess of the Maximum Sublessee Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to the Sublessee Sales Tax Savings in excess of the Maximum Sublessee Sales Tax Savings Amount only; provided further, that failure to repay the Sublessee 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 Sublessee and/or 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 Sublessee and/or 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 Sublessee and/or the Company has complied with the required number of FTEs pursuant to Section 8.13 of the Lease Agreement.

(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 and/or the Sublessee 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 and/or the Sublessee or any of their respective affiliates so long as the Company and/or the Sublessee or any of their respective affiliates have diligently and in good faith using commercially reasonable efforts 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 and/or the Sublessee covenant and agree to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year of 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 and the Sublessee 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 and the Sublessee 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 and/or the Sublessee 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 in connection 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 and the Sublessee 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 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 or the Sublessee.

(b) It is hereby expressly agreed that the Company’s and the Sublessee’s respective obligations under this Recapture Agreement are not limited in any manner, and the Company

and the Sublessee shall be liable for the payment of all recapture amounts with respect to the entire Facility.

(c) Reserved.

(d) The Company, the Sublessee and the Agency hereby agree that the obligations and liabilities of the Company and the Sublessee hereunder are the absolute and unconditional obligations and liabilities of the Company and the Sublessee.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Agency shall have no obligation to surrender its leasehold interest in the Company Facility to the Company pursuant to the Lease Agreement until all payments to the Agency and the Town of Brookhaven 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 Company 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 and the Sublessee 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, 3<sup>rd</sup> Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Brookhaven Town Attorney's Office  
1 Independence Hill, 2<sup>nd</sup> Floor  
Farmingville, New York 11738  
Attention: Town Attorney

To the Company and Sublessee:

D & F Patchogue A.L., LLC  
Carlisle Patchogue Operator, Inc.  
100 Schoolhouse Road  
Levittown, New York 11756  
Attention: Bruce Peterson, Chief Financial Officer

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: Daniel P. Deegan, 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, the Sublessee 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, or 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 and the Sublessee have caused this Recapture Agreement to be duly executed and delivered as of the day and year first above written.

**D & F PATCHOGUE A.L., LLC**

By:   
Name: Peter Florey  
Title: Manager

**CARLISLE PATCHOGUE OPERATOR,  
INC.**

By:   
Name: Peter Florey  
Title: President

ACCEPTED:

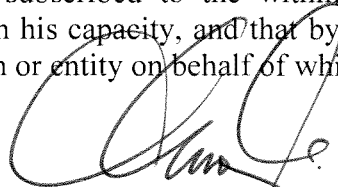
**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

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

Recapture Agreement  
Signature Page 1 of 2

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

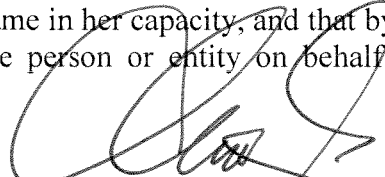
On the 5<sup>th</sup> day of May in the year 2015, before me, the undersigned, personally appeared **Peter Florey**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed 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

CHRISTOPHER DEVOE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01DE6165951  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES MAY 14, 2017

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

On the 5<sup>th</sup> day of May 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

CHRISTOPHER DEVOE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01DE6165951  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES MAY 14, 2017

Recapture Agreement  
Signature Page 2 of 2

EXHIBIT A

REAL PROPERTY DESCRIPTION

# **ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

## **SCHEDULE A**

### **PARCEL 1**

ALL that certain plot, piece or parcel of land situate, lying and being in the Incorporated Village of Patchogue, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly line of East Main Street 166.03 feet west of the intersection of the northerly line of East Main Street with the westerly line of Maple Avenue (aka Maple Street);

RUNNING thence along other land now or formerly of the Estate of Effie J. Roe, North 02 degrees 53' 06" West 135.74 feet to a concrete monument and land now or formerly of Bankers Trust of Suffolk, N.A. (formerly The People's National Bank of Long Island);

RUNNING thence along said last mentioned land, North 01 degrees 01' 20" West 85.07 feet to a concrete monument and other land of said Bankers Trust of Suffolk, N.A.;

RUNNING thence still along said last mentioned land, North 88 degrees 58' 40" East 94.47 feet to a concrete monument;

RUNNING thence still along land of said Bankers Trust of Suffolk, N.A., North 00 degrees 58' 45" West 114.73 feet to a point;

RUNNING thence still along land of said Bankers Trust of Suffolk, N.A., North 86 degrees 03' 30" East 75.99 feet to a point in the westerly line of Maple Avenue (aka Maple Street);

RUNNING thence along the westerly line of Maple Avenue (aka Maple Street) South 01 degree 20' 14" East 10.01 feet to a locust and land now or formerly of William L. Underwood;

RUNNING thence along said last mentioned land, South 86 degrees 03' 30" West 56.03 feet to a point;

RUNNING thence along lands now or formerly of William L. Underwood, formerly M. Fuoco and of Albert Paniccia, South 00 degrees 58' 45" East 321.56 feet to a concrete

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

**SCHEDULE A (continued)**

monument in the northerly line of East Main Street, line passing through a concrete monument 0.1 foot from its beginning;

RUNNING thence along the northerly line of East Main Street, South 86 degrees 24' 56" West 110.00 feet to the point or place of BEGINNING.

**PARCEL 2**

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

BEGINNING at a concrete monument on the westerly line of Maple Street distant 345.83 feet southerly from the corner formed by the intersection of the southerly line of Oak Street with the westerly line of Maple Avenue, also known as Maple Street, and from said point of beginning;

THENCE South 01 degree 20' 14" East along the westerly line of Maple Avenue, aka Maple Street, 50.46 feet to land now or formerly of Effie J. Roe;

THENCE South 86 degrees 03' 30" West along said last mentioned land, 75.99 feet;

THENCE South 00 degrees 58' 45" East, still along last mentioned land, 114.73 feet to a concrete monument;

THENCE South 88 degrees 58' 40" West, still along said last mentioned land, 94.47 feet to a concrete monument;

THENCE South 01 degree 01' 20" East, still along said last mentioned land, 85.07 feet to a concrete monument;

THENCE South 88 degrees 58' 40" West, still along said last mentioned land, 44 feet to a locust stake;

THENCE North 01 degree 01' 20" West 158 feet;

THENCE North 53 degrees 02' 10" East 45.57 feet;

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

**SCHEDULE A (continued)**

THENCE North 01 degree 02' 50" West 61.04 feet;

THENCE North 86 degrees 17' 10" East 177.50 feet to the point or place of BEGINNING.

**PARCEL 3**

ALL that tract, piece or parcel of land situate, lying and being in the Town of Brookhaven, Village of Patchogue, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Maple Avenue distant 264.44 feet (264.66 feet-Deed) northerly from the corner formed by the intersection of the westerly side of Maple Avenue with the northerly side of East Main Street;

RUNNING thence South 88 degrees 06' 25" West along land now or formerly of Fuoco 55.98 feet to land now or formerly of Losee;

THENCE North 0 degrees 58' 45" West along said land now or formerly of Losee 55.33 feet;

THENCE North 86 degrees 03' 30" East 56.03 feet to the westerly side of Maple Avenue;

THENCE South 0 degrees 58' 45" East along the westerly side of Maple Avenue 57.33 feet to 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.**

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

and

D & F PATCHOGUE A.L., LLC

and

CARLISLE PATCHOGUE OPERATOR, INC.

---

ENVIRONMENTAL COMPLIANCE  
AND INDEMNIFICATION  
AGREEMENT

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Dated as of May 1, 2015

Town of Brookhaven Industrial Development Agency  
(D & F Patchogue A.L., LLC/Carlisle Patchogue Operator, Inc. 2015 Facility)

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## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, dated as of May 1, 2015 (this “**Environmental Compliance and Indemnification Agreement**”), is by and among 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**”), D & F PATCHOGUE A.L., LLC, a limited liability company organized and existing under the laws of the State of New York, having an address at 100 Schoolhouse Road, Levittown, New York 11756 (the “**Company**”), and CARLISLE PATCHOGUE OPERATOR, INC., a business corporation organized and existing under the laws of the State of New York, having an address at 100 Schoolhouse Road, Levittown, New York 11756 (the “**Sublessee**”).

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 358 of the Laws of 1970 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**”);

WHEREAS, the Agency has agreed to assist in (a) the acquisition of 3 parcels of land totaling approximately 1.33 acres located at 131 East Main Street, 18 Maple Avenue and 22 Maple Avenue, all in the Village of Patchogue, Town of Brookhaven, Suffolk County, New York (also identified as SCTM#’s 0204-09.00-07.00-016.000, 025.005, 026.007) (collectively, the “**Land**”) and the construction and equipping thereon of an approximately 87,000 square foot 5-story building containing approximately 128 units comprised of approximately 146 beds of which approximately 100 will be assisted living beds and approximately 46 will be memory care beds, together with the acquisition and installation of improvements, structures and other related facilities attached to the Land (the “**Improvements**”) and the acquisition and installation therein of certain equipment not part of the Equipment (as such term is defined herein) (the “**Facility Equipment**”; and, together with the Land and the Improvements, the “**Company Facility**”), which Company Facility will be leased by the Agency to the Company and subleased by the Company to the Sublessee, and (b) the acquisition and installation of certain equipment and personal property (the “**Equipment**”), which Equipment is to be leased by the Agency to the Sublessee (the Company Facility and the Equipment are collectively referred to herein as the “**Facility**”), which Facility shall be used by the Sublessee as an affordable senior housing facility with an emphasis on special needs such as frail elderly and those with mobility impairments; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to construct and equip the Company 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 May 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 Company Facility to the Company pursuant to a certain Lease Agreement, dated as of May 1, 2015 (the “**Lease Agreement**”), by and between the Agency, as lessor and sublessor, and the Company, as lessee and sublessee; and

WHEREAS, the Company has agreed to sublease the Company Facility pursuant to a certain Sublease Agreement, dated June 10, 2014, as amended on April 27, 2015 (the “**Sublease Agreement**”), by and between the Company, as sublessor, and the Sublessee, as sublessee; and

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

WHEREAS, the Equipment will be leased by the Agency to the Sublessee pursuant to the terms of a certain Equipment Lease Agreement, dated as of May 1, 2015 (the “**Equipment Lease Agreement**”), by and between the Agency and the Sublessee; and

WHEREAS, as a condition for it to enter into and perform the transactions contemplated by the Lease Agreement, the Agency has required the Company and the Sublessee to enter into a Payment-in-Lieu-of-Tax Agreement, dated as of May 1, 2015 (the “**PILOT Agreement**”), whereby the Company and the Sublessee agree to make certain payments in lieu of taxes to the Taxing Authorities (as defined therein); and

WHEREAS, for purposes of this Environmental Compliance and Indemnification Agreement, the Facility shall consist of the Land, the Facility Equipment, the Improvements and the Equipment, defined in and more particularly described in the Lease Agreement and the Equipment Lease Agreement, together with all additions to and replacements and substitutions of the Facility; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into and perform the transactions contemplated by the Lease Agreement, the Equipment Lease Agreement and the PILOT Agreement that the Company and the Sublessee enter into, execute, deliver and perform this Environmental Compliance and Indemnification Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. Definitions. All capitalized terms used herein and not hereafter defined shall have the meanings set forth below or in the Schedule of Definitions attached to the Lease Agreement.

(a) “Disposal” has the same meaning as given to that term in the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 et seq.)

(b) “Environment” means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

(c) “Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(d) “Environmental Permits” means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, construction, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility.

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

(f) “Indemnitee” means the Agency and its successors and assigns.

(g) “Indemnitors” means the Company, the Sublessee and their respective successors and assigns.

(h) “Release” has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

Section 2. Representations and Warranties. Except as otherwise set forth in those reports listed on Exhibit B attached hereto, the Indemnitors hereby represent and warrant to the Indemnitee that, to the best of their knowledge:

(a) Neither the Facility nor any property adjacent to or within the immediate vicinity of the Facility is being or has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Facility.

(c) The soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, other than any such substances that occur naturally.

(d) There has been no Release or threat of a Release of any Hazardous Substance in violation of any applicable law on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Facility, and the Indemnitors have not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Facility or any property adjacent to or within the immediate vicinity of the Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility in violation of any applicable law.

(e) All Environmental Permits necessary for the acquisition, renovation, construction, equipping, ownership, use or operation of the Facility have been obtained and are in full force and effect.

(f) No event has occurred with respect to the Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future construction, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the present condition of the Facility or any work, repairs, construction, containment, clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, with respect to the Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any

Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the acquisition, renovation, construction, equipping, ownership, use, operation, sale, transfer or conveyance thereof.

Section 3. Covenants of Indemnitors. The Indemnitors hereby covenant and agree with the Indemnatee as follows:

(a) The Indemnitors shall construct, equip, use, operate and manage the Facility in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to construct, equip, use, operate and manage the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

(b) The Indemnitors shall obtain and comply with, and shall cause all contractors, subcontractors, operators, tenants, subtenants, licensees and occupants of the Facility to obtain and comply with, all Environmental Permits.

(c) The Indemnitors shall not cause or permit any change to be made in the present or intended construction, renovation, equipping, use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the construction, renovation, equipping, use or operation of the Facility as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Indemnitors shall promptly provide the Indemnatee with a copy of all notifications which the Indemnitors give or receive with respect to conditions of the Environment at or in the vicinity of the Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. If the Indemnitors receive or become aware of any such notification which is not in writing or otherwise capable of being copied, the Indemnitors shall promptly advise the Indemnatee of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Indemnitors' discovery thereof, the Indemnitors shall promptly advise the Indemnatee in writing of: (i) the presence of any Hazardous Substance on, under or about the Facility of which the Indemnatee has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Indemnitors in response to any Hazardous Substance on, under or about the Facility or to any environmental proceedings of which the Indemnitors have not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity

of the Facility that could reasonably be expected to cause the Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Facility under any Environmental Law. The Indemnitors have also provided the Indemnatee with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in their respective possession or control relating to the condition of the Environment at the Facility or real property or bodies of water adjoining or in the vicinity of the Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

(e) The Indemnitors shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. All remedial work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the remedial work approved by any public or private agencies or persons with a legal or contractual right to such approval, (iii) with such insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. In addition, the Indemnitors shall submit, or cause to be submitted, to the Indemnatee, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by or on behalf of the Indemnitors in connection with any remedial work, or Hazardous Substances relating to the Facility. All costs and expenses of such remedial work shall be paid by or on behalf of the Indemnitors, including, without limitation, the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the remedial work and the Indemnatee's out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Indemnatee shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

(f) The Indemnitors shall allow the Indemnatee and its officers, members, employees, agents, representatives, contractors and subcontractors reasonable access to the Facility during regular business hours of the Sublessee, upon reasonable advanced notice, for the purposes of ascertaining the conditions of the Environment at, on or in the vicinity of the Facility, including, but not limited to, subsurface conditions. The Indemnatee shall be liable for any injury to any person, or any damage to any property or the Facility, resulting from any grossly negligent or intentional action of any such officer, employee, agent, representative, contractor, or subcontractor sent by the Indemnatee. All costs associated with such inspection shall be at the Indemnitors' expense.

(g) If at any time the Indemnatee obtains any notice or information that the Indemnitors or the Facility or the construction, equipping, use or operation of the Facility may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Indemnatee may require that a full or supplemental environmental

inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Indemnitee be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Indemnitee, at the Indemnitors' sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Facility, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Facility, in violation of any applicable law, the Indemnitors shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, cleanup and other remedial actions required by any Environmental Law, using methods recommended by the professional engineer or other environmental scientist who prepared said audit report and acceptable to the appropriate federal, state and local agencies or authorities. The Indemnitors hereby consent to the Indemnitee notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Indemnitors further agree that the Indemnitee may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Indemnitee proposing to provide such information shall give the Indemnitors at least forty-eight (48) hours prior written notice before so doing. The Indemnitors acknowledge that the Indemnitee cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Indemnitors agree that the Indemnitee shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Indemnitors hereby release and forever discharge the Indemnitee from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

#### Section 4. Indemnification Provisions.

(a) The Indemnitors hereby covenant and agree at their sole cost and expense, jointly and severally, to indemnify, protect, defend, save and hold harmless the Indemnitee, its officers, directors, members, employees, agents and representatives acting in their official capacity, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Environmental Compliance and Indemnification Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Indemnitee relating to, resulting from or arising out of (i) the conditions of the Environment at, on or in the vicinity

of the Facility, (ii) the construction, renovation, equipping, operation or use of the Facility by the Indemnitors, any prior owner or operator of the Facility or any Person on or about the Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable laws (iii) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility, (iv) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, cleanup and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (v) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the construction, renovation, equipping, ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (vi) a violation of any applicable Environmental Law, (vii) non-compliance with any Environmental Permit, (viii) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Indemnitors in this Environmental Compliance and Indemnification Agreement, or (ix) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility and the preparation of any closure or other required plans, except to the extent such costs were caused by the gross negligence or intentional acts of the Indemnitee (collectively, the “**Indemnified Matters**”).

(b) The liability of the Indemnitors to the Indemnitee hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Transaction Documents by or for the benefit of the Indemnitee, the Indemnitors or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of either Indemnitor or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Indemnitee’s voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Indemnitee’s recourse to any other security or limiting the Indemnitee’s rights to a deficiency judgment against the Indemnitors, (vi) any applicable statute of limitations, (vii) any investigation or inquiry conducted by or on the behalf of the Indemnitee or any information which the Indemnitee may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Facility, (viii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, but only with respect to a Release that has occurred prior to any such event, (ix) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility or the Indemnitors’ interests and rights in, to, and under the Lease Agreement or the termination of the Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (x) the death or legal incapacity of either Indemnitor, (xi) the release or discharge, in whole or in part, of either Indemnitor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition,

liquidation or similar proceeding, or (xii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of either Indemnitor under the Lease Agreement, or any other Transaction Document, or of either Indemnitor under this Environmental Compliance and Indemnification Agreement.

(c) The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement heretofore given to the Indemnitee as part of the application process, and/or contained in any of the Transaction Documents.

Section 5. Survival. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Indemnitors contained in this Environmental Compliance and Indemnification Agreement shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Indemnitee in and to the Facility or in, to or under the Lease Agreement but only with respect to matters or events occurring prior to such termination, conveyance, assignment, subleasing or defeasance.

Section 6. Governing Law. This Environmental Compliance and Indemnification Agreement shall be governed by, construed in accordance with, and enforceable under the laws of the State of New York, without regard or reference to its conflict of laws principles.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally with a receipt obtained, or sent by first class or certified mail, postage prepaid, return receipt requested, or by a reputable overnight carrier (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, 3<sup>rd</sup> Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Brookhaven Town Attorney's Office  
1 Independence Hill, 2<sup>nd</sup> Floor  
Farmingville, New York 11738  
Attention: Town Attorney

To the Company and Sublessee:

D & F Patchogue A.L., LLC  
Carlisle Patchogue Operator, Inc.  
100 Schoolhouse Road  
Levittown, New York 11756  
Attention: Bruce Peterson, Chief Financial Officer

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: Daniel P. Deegan, Esq.

A duplicate copy of each notice, certificate and other written communication given hereunder by any party hereto to any other party hereto shall also be given to every other party hereto, at the addresses herein set forth or provided for. Such notice shall be deemed to have been given upon receipt or upon refusal of the party being notified to accept delivery of such notice.

Section 8. Binding Effect. This Environmental Compliance and Indemnification Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 9. Severability. In the event any provision of this Environmental Compliance and Indemnification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10. Amendments, Changes and Modifications. This Environmental Compliance and Indemnification Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of all of the parties hereto.

Section 11. Execution of Counterparts. This Environmental Compliance and Indemnification Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12. Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Environmental Compliance and Indemnification Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Environmental Compliance and Indemnification Agreement.

Section 13. This Agreement Controlling. The Indemnitee and the Indemnitors hereby agree that in the event there is a conflict between the terms of this Environmental Compliance and Indemnification Agreement and Section 8.8 of the Lease Agreement, Section 3.10 of the Agency Compliance Agreement or Section 8.8 of the Equipment Lease Agreement, the terms of this Environmental Compliance and Indemnification Agreement shall be controlling.

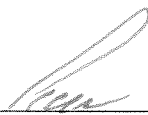
(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this Environmental Compliance and Indemnification Agreement to be duly executed as of the day and year first above written.

**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**D & F PATCHOGUE A.L., LLC**

By:   
Name: Peter Florey  
Title: Manager

**CARLISLE PATCHOGUE OPERATOR,  
INC.**

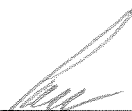
By:   
Name: Peter Florey  
Title: President

EXHIBIT A

Legal Description of Real Property

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

**SCHEDULE A**

**PARCEL 1**

ALL that certain plot, piece or parcel of land situate, lying and being in the Incorporated Village of Patchogue, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly line of East Main Street 166.03 feet west of the intersection of the northerly line of East Main Street with the westerly line of Maple Avenue (aka Maple Street);

RUNNING thence along other land now or formerly of the Estate of Effie J. Roe, North 02 degrees 53' 06" West 135.74 feet to a concrete monument and land now or formerly of Bankers Trust of Suffolk, N.A. (formerly The People's National Bank of Long Island);

RUNNING thence along said last mentioned land, North 01 degrees 01' 20" West 85.07 feet to a concrete monument and other land of said Bankers Trust of Suffolk, N.A.;

RUNNING thence still along said last mentioned land, North 88 degrees 58' 40" East 94.47 feet to a concrete monument;

RUNNING thence still along land of said Bankers Trust of Suffolk, N.A., North 00 degrees 58' 45" West 114.73 feet to a point;

RUNNING thence still along land of said Bankers Trust of Suffolk, N.A., North 86 degrees 03' 30" East 75.99 feet to a point in the westerly line of Maple Avenue (aka Maple Street);

RUNNING thence along the westerly line of Maple Avenue (aka Maple Street) South 01 degree 20' 14" East 10.01 feet to a locust and land now or formerly of William L. Underwood;

RUNNING thence along said last mentioned land, South 86 degrees 03' 30" West 56.03 feet to a point;

RUNNING thence along lands now or formerly of William L. Underwood, formerly M. Fuoco and of Albert Paniccia, South 00 degrees 58' 45" East 321.56 feet to a concrete

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

**SCHEDULE A (continued)**

monument in the northerly line of East Main Street, line passing through a concrete monument 0.1 foot from its beginning;

RUNNING thence along the northerly line of East Main Street, South 86 degrees 24' 56" West 110.00 feet to the point or place of BEGINNING.

**PARCEL 2**

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

BEGINNING at a concrete monument on the westerly line of Maple Street distant 345.83 feet southerly from the corner formed by the intersection of the southerly line of Oak Street with the westerly line of Maple Avenue, also known as Maple Street, and from said point of beginning;

THENCE South 01 degree 20' 14" East along the westerly line of Maple Avenue, aka Maple Street, 50.46 feet to land now or formerly of Effie J. Roe;

THENCE South 86 degrees 03' 30" West along said last mentioned land, 75.99 feet;

THENCE South 00 degrees 58' 45" East, still along last mentioned land, 114.73 feet to a concrete monument;

THENCE South 88 degrees 58' 40" West, still along said last mentioned land, 94.47 feet to a concrete monument;

THENCE South 01 degree 01' 20" East, still along said last mentioned land, 85.07 feet to a concrete monument;

THENCE South 88 degrees 58' 40" West, still along said last mentioned land, 44 feet to a locust stake;

THENCE North 01 degree 01' 20" West 158 feet;

THENCE North 53 degrees 02' 10" East 45.57 feet;

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9924C**

**SCHEDULE A (continued)**

THENCE North 01 degree 02' 50" West 61.04 feet;

THENCE North 86 degrees 17' 10" East 177.50 feet to the point or place of BEGINNING.

**PARCEL 3**

ALL that tract, piece or parcel of land situate, lying and being in the Town of Brookhaven, Village of Patchogue, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Maple Avenue distant 264.44 feet (264.66 feet-Deed) northerly from the corner formed by the intersection of the westerly side of Maple Avenue with the northerly side of East Main Street;

RUNNING thence South 88 degrees 06' 25" West along land now or formerly of Fuoco 55.98 feet to land now or formerly of Losee;

THENCE North 0 degrees 58' 45" West along said land now or formerly of Losee 55.33 feet;

THENCE North 86 degrees 03' 30" East 56.03 feet to the westerly side of Maple Avenue;

THENCE South 0 degrees 58' 45" East along the westerly side of Maple Avenue 57.33 feet to the point or place of BEGINNING.

**FOR  
CONVEYANCING  
ONLY**

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

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

## EXHIBIT B

### Exceptions to Representations and Warranties of Indemnitors

1. Phase I Environmental Site Assessment, dated January 2011, prepared by Long Island Analytical Laboratories, Inc.; and
2. Limited Sub-Surface Investigation Report, dated January 6, 2015, prepared by Long Island Analytical Laboratories, Inc.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

and

CARLISLE PATCHOGUE OPERATOR, INC.

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AGENCY COMPLIANCE AGREEMENT

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Dated as of May 1, 2015

Town of Brookhaven Industrial Development Agency  
(D & F Patchogue A.L., LLC/Carlisle Patchogue Operator, Inc. 2015 Facility)

THIS AGENCY COMPLIANCE AGREEMENT, dated as of May 1, 2015 (this “**Agency Compliance Agreement**”), is by and between 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**”), and CARLISLE PATCHOGUE OPERATOR, INC., a business corporation organized and existing under the laws of the State New York, having an office at 100 Schoolhouse Road, Levittown, New York 11756 (the “**Sublessee**”).

WITNESSETH

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**”);

WHEREAS, the Agency has agreed to assist in (a) the acquisition of 3 parcels of land totaling approximately 1.33 acres located at 131 East Main Street, 18 Maple Avenue and 22 Maple Avenue, all in the Village of Patchogue, Town of Brookhaven, Suffolk County, New York (also identified as SCTM#’s 0204-09.00-07.00-016.000, 025.005, 026.007) (collectively, the “**Land**”) and the construction and equipping thereon of an approximately 87,000 square foot 5-story building containing approximately 128 units comprised of approximately 146 beds of which approximately 100 will be assisted living beds and approximately 46 will be memory care beds, together with the acquisition and installation of improvements, structures and other related facilities attached to the Land (the “**Improvements**”) and the acquisition and installation therein of certain equipment not part of the Equipment (as such term is defined herein) (the “**Facility Equipment**”; and, together with the Land and the Improvements, the “**Company Facility**”), which Company Facility will be leased by the Agency to D & F Patchogue A.L., LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at 100 Schoolhouse Road, Levittown, New York 11756 (the “**Company**”) and subleased by the Company to the Sublessee, and (b) the acquisition and installation of certain equipment and personal property (the “**Equipment**”), which Equipment is to be leased by the Agency to the Sublessee (the Company Facility and the Equipment are collectively referred to herein as the “**Facility**”), which Facility shall be used by the Sublessee as an affordable senior housing facility with an emphasis on special needs, such as frail elderly and those with mobility impairments; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to construct and equip the Company 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 May 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 sublease and lease the Company Facility to the Company, pursuant to a certain Lease Agreement, dated as of May 1, 2015 (the “**Lease Agreement**”), by and between the Agency, as sublessor and lessor, and the Company, as sublessee and lessee; and

WHEREAS, the Company has agreed to sub-sublease the Company Facility pursuant to a certain Sublease Agreement, dated June 10, 2014, as amended on April 27, 2015 (the “**Sublease Agreement**”), by and between the Company, as sublessor, and the Sublessee, as sublessee; and

NOW, THEREFORE, the parties hereto hereby agree as follows:

## ARTICLE I

### REPRESENTATIONS AND COVENANTS OF SUBLESSEE

Section 1.1 Representations and Covenants of Sublessee. The Sublessee makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Sublessee is a business corporation organized and existing under the laws of the State of New York, is in good standing under the laws of the State of New York and has full legal right, power and authority to execute, deliver and perform this Agency Compliance Agreement. This Agency Compliance Agreement has been duly authorized, executed and delivered by the Sublessee.

(b) Neither the execution and delivery of this Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Sublessee’s organizational documents, as amended, or any restriction or any agreement or instrument to which the Sublessee is a party or by which it is bound.

(c) Any and all leasehold and subleasehold improvements undertaken by the Sublessee with respect to the Company Facility and the design, development, renovation, equipping and operation thereof by the Sublessee will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Sublessee shall defend, indemnify and hold the Agency harmless from any liability or expenses, including reasonable attorneys’ fees, resulting from any failure by the Sublessee to comply with the provisions of this subsection.

(d) This Agency Compliance Agreement constitutes a legal, valid and binding obligation of the Sublessee enforceable against the Sublessee in accordance with its terms.

(e) The Sublessee will complete the renovation of any and all leasehold improvements undertaken by the Sublessee in accordance with the terms and provisions of

the Sublease Agreement and the Lease Agreement. In the event there is a conflict between the Lease Agreement and the Sublease Agreement, the terms of the Lease Agreement shall prevail.

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

## ARTICLE II

### INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, including, when indicated herein during the Construction Period, the Sublessee shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to (but without duplications of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Sublessee. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Sublessee against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Sublessee under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency and the Company against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent,

protecting the Agency and the Sublessee against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

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

(ii) Comprehensive general liability providing coverage for:

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

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

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

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

(e) A policy or policies of flood insurance (in full force and effect) in an amount not less than the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

## Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Agency Compliance Agreement hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required

to procure the same. The insurance companies issuing the policies required by Section 2.1(a) and (e) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 2.1 hereof shall provide for at least thirty (30) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as additional insured. All policies evidencing the insurance required by Section 2.1(d)(ii), (iii) and (iv) shall name the Agency and the Sublessee as additional insureds. The policies under Section 2.1(a) shall contain appropriate waivers of subrogation.

(b) The policies (or certificates or binders) of insurance required by Sections 2.1(a), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the policies (or certificates or binders) of insurance required by Section 2.1(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Sublessee shall deliver or cause to be delivered to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Sublessee shall furnish or cause to be furnished to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Agency Compliance Agreement. The Sublessee shall provide such further information with respect to the insurance coverage required by this Agency Compliance Agreement as the Agency may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 2.1(a) and (e) hereof shall be applied as provided in Section 7.1 of the Lease Agreement, and (ii) the Net Proceeds of the insurance required by Section 2.1(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 2.4 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Sublessee fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, or payments in lieu of taxes pursuant to the PILOT Agreement, or assessment or other governmental charge required to be paid, (ii) to maintain any insurance required to be maintained by Section 2.1 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Company Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's lien which is recorded or filed against the Company Facility or any part thereof (unless contested in accordance with the provisions of Section 3.9 hereof), or (v) to

pay any other amount or perform any act hereunder required to be paid or performed by the Sublessee hereunder, the Agency may pay or cause to be paid such tax, payments in lieu of taxes pursuant to the PILOT Agreement, assessment or other governmental charge, or the premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since written notice shall have been given by the Agency to the Company, with a copy of such notice being given to the Sublessee (or by the Agency to the Sublessee), and in the case of any tax, assessment or governmental charge, or the amounts specified in clauses (iii) and (iv) of this Section, no such payment shall be made in any event if the Sublessee is contesting the same in good faith to the extent and as permitted by this Agency Compliance Agreement, unless an Event of Default under the Lease Agreement shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Sublessee. The Sublessee shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency at two percent (2%) in excess of the Prime Rate, and such amount, together with interest shall become additional indebtedness.

### ARTICLE III

#### SPECIAL COVENANTS

Section 3.1 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE SUBLESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE SUBLESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

### Section 3.2 Hold Harmless Provisions.

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

(b) Notwithstanding any other provisions of this Agency Compliance Agreement, the obligations of the Sublessee pursuant to this Section 3.2 shall remain in full force and effect after the termination of this Agency Compliance Agreement until the expiration of the period stated in any applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency, or its members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

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

Section 3.3 Right to Inspect Facility. The Agency and its duly authorized agents shall have the right at all reasonable times to inspect the Facility, upon reasonable prior notice to the Sublessee.

Section 3.4 Covenants and Conditions of the Sublease Agreement. Notwithstanding anything to the contrary contained in the Sublease Agreement, the Sublessee covenants and agrees that the Agency shall not be held liable for any of the covenants or conditions, express or implied, contained in the Sublease Agreement. The Sublessee further agrees that it will look solely to the Company for the satisfaction of any covenants or conditions contained therein.

Section 3.5 Sublessee to Maintain Its Existence. The Sublessee agrees that during the Lease Term it will maintain its existence, will not dissolve, liquidate or otherwise dispose of substantially all of its assets, and will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it.

Section 3.6 Qualification in State. The Sublessee throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 3.7 Qualification as Project.

(a) The Sublessee will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a “project” as such quoted term is defined in the Act. Without limited the generality of the foregoing, the Sublessee will in no event use the Facility in such a way as to cause or permit the Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Facility has not and will not result in the removal of a facility or plant of the Sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Sublessee located within the State.

Section 3.8 Agreement to File Annual Statements and Provide Information. The Sublessee shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed by the Sublessee, if any, in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law (the “GML”). The Sublessee shall submit a copy of any such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Sublessee shall also provide the Agency with any information necessary for the Agency to comply with Section 874(9) of the GML. The Sublessee further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency any information concerning the Sublessee, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any of the Agency Documents or Sublessee Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.9 Books of Record and Account; Financial Statements. The Sublessee agrees to maintain at all times proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Sublessee.

Section 3.10 Compliance with Orders, Ordinances, Etc.

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

(b) The Sublessee shall keep or cause the Facility to be kept free of Hazardous Substances except in compliance with all applicable federal and state laws and local laws and regulations. Without limiting the foregoing, the Sublessee shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Sublessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Sublessee or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Facility or onto any other property. The Sublessee shall comply with, and ensure compliance by all contractors, subcontractors, tenants and subtenants with, all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Sublessee shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances on, from or affecting the Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Substances, and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or

requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. In the event the Company tenders a termination of lease, the Sublessee shall deliver the Facility free of any and all Hazardous Substances so that the condition of the Facility shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Sublessee may have to the Agency at common law and shall survive the transactions contemplated herein.

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

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

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Sublessee.

### Section 3.11 Discharge of Liens and Encumbrances.

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

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

Section 3.12 Identification of Facility Equipment. All Facility Equipment which is or may become the Property of the Agency pursuant to the provisions of this Agency Compliance Agreement shall be properly identified by the Sublessee by such appropriate records, including computerized records, as may be approved by the Agency. All Facility Equipment and other Property of whatever nature affixed or attached to the Land or used or to be used by the Sublessee in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Sublessee, unless the same were utilized for purposes of construction of the Facility or were installed by the Sublessee and title thereto was retained by the Sublessee in the manner provided in Section 6.2 of the Lease Agreement and such Facility Equipment and other Property were properly identified by such appropriate records as were approved by the Agency.

Section 3.13 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Sublessee shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

Section 3.14 Employment Opportunities; Notice of Jobs. The Sublessee covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division, and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300, as amended) in which the Facility is located (collectively, the "**Referral Agencies**"). The Sublessee also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 3.15 Employment at the Facility. The Sublessee covenants at all times to create and maintain at the Facility fifty (50) full time equivalent ("**FTE**") jobs at the Facility based upon a 35 hour work week as of December 31, 2017 and continuing thereafter until the end of the Lease Term who are employees of the Sublessee or any subsidiary or affiliate of the Sublessee, or any consultants or subcontractors of the Sublessee, or any subsidiary or

affiliates of the Sublessee, whose place of employment or workplace is located at the Facility.

Section 3.16 Compliance with the Act. The Sublessee hereby agrees to comply with NY General Municipal Law Section 875. The Sublessee further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Sublessee as agent of the Agency is subject to termination and recapture of benefits pursuant to Section 875 and the Recapture Agreement, dated as of May 1, 2015 among the Company, the Sublessee and the Agency.

Section 3.17 Subleasing. The Sublessee may not assign the Sublease Agreement or sub-sublease the Facility in whole or in part without the express written consent of the Agency, which consent shall not be unreasonably withheld or delayed, but subject to the dates of the Agency's board meetings. Any assignment or sub-subleasing of the Facility shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

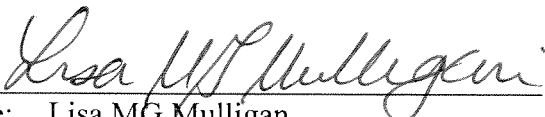
Section 3.18 Definitions. All capitalized terms used in this Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

Section 3.19 Execution of Counterparts. This Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

IN WITNESS WHEREOF, the Agency and the Sublessee have caused this Agency Compliance Agreement to be executed in their respective names by their duly authorized officers, all as of May 1, 2015.

**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**CARLISLE PATCHOGUE OPERATOR,  
INC.**

By:   
Name: Peter Florey  
Title: President