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TRANSCRIPT OF PROCEEDINGS

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MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
LEASE/LEASEBACK TRANSACTION  
RAMA REAL PROPERTIES LLC

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CLOSING DATE: JUNE 20, 2016

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APPROVING OPINION:

HODGSON RUSS LLP

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MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
LEASE/LEASEBACK TRANSACTION  
RAMA REAL PROPERTIES LLC

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## CLOSING MEMORANDUM

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### LEASE/LEASEBACK TRANSACTION MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY RAMA REAL PROPERTIES LLC

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Date of Closing: June 20, 2016

Place of Closing: Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

#### I. DESCRIPTION OF THE TRANSACTION:

In November, 2015, Rama Real Properties LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to Montgomery County Industrial Development Agency (the "Agency"), a public benefit corporation duly established under Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law of the State of New York (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

Pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 11, 2015 (the "Public Hearing Resolution"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board located at the Old County Courthouse, Fonda, New

York, (C) caused notice of the Public Hearing to be published in a newspaper of general circulation available to the residents of the Village of Hagaman, Montgomery County, New York, (D) conducted the Public Hearing on the 7th day of December, 2015 at 9:00 o'clock a.m., local time, at the Village Office of Hagaman, Pawling Hall, located at 86 Pawling Street, Village of Hagaman, Montgomery County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency.

Pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on February 11, 2016 (the "SEQR Resolution"), the Agency determined that the Project constitutes a "Type II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA.

By further resolution adopted by the members of the Agency on February 11, 2016 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2016 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency.

Simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2016 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2028; and (2) a bill of sale dated as of June 1, 2016 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report").

In order to finance a portion of the costs of the Project, the Company will obtain the following loans: (1) a loan in the principal sum of \$178,600.00 (the "First Loan") from Keybank National Association (the "First Lender"), which First Loan will be secured by a mortgage, assignment of rents, security agreement and fixture filing (the "First Mortgage") dated as of June 21, 2016, (2) a loan in the

principal sum of \$284,600.00 (the "Second Loan") from the First Lender, which Second Loan will be secured by a second mortgage, assignment of rents, security agreement and fixture filing (the "Second Mortgage") dated as of June 21, 2016, and (3) a loan in the principal sum of \$106,000.00 (the "Third Loan") from the County of Montgomery (the "Second Lender"), which Third Loan will be secured by (a) a mortgage (the "Third Mortgage," and together with the First Mortgage and the Second Mortgage, the "Mortgages") dated as of June 21, 2016, and (b) an assignment of rents (the "Assignment of Rents") dated as of June 21, 2016 from the Agency and the Company to the Second Lender.

Among the actions taken by the Agency with respect to the Project prior to the Closing Date were the following:

September 2, 2015	The Company filed an application (the "Application") relating to the Project with the Agency.
September 10, 2015	The Agency adopted the Public Hearing Resolution.
October 2, 2015	The Agency conducted the Public Hearing
October 8, 2015	The Agency adopted the SEQR Resolution.
October 8, 2015	The Agency adopted the Approving Resolution.

## II. PARTIES REPRESENTED AT THE CLOSING:

### AGENCY:

Robert Hoefs, Chairman  
Carol Shinemen, Secretary  
Kenneth Rose, Chief Executive Officer  
Montgomery County Industrial Development Agency

(A)

### AGENCY COUNSEL:

A. Joseph Scott, III, Esq.  
Christopher M. Martell, Esq.  
Hodgson Russ LLP

(HR)

### COMPANY:

Ramon Rodriguez  
Rama Real Properties LLC

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### COMPANY'S COUNSEL:

Charles R. Schwartz, Esq.  
Schwartz Law Firm

(CC)

### III. ACTION TO BE TAKEN AT THE CLOSING:

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency, Agency's Counsel, the Company and the Company's Counsel as follows:

	<u>Production Respons.</u>	<u>Execution Respons.</u>
A. <u>Basic Documents:</u>		
1. Underlying Lease.	HR	C,A
2. Memorandum of Underlying Lease.	HR	C,A
3. Bill of Sale to Agency.	HR	C
4. Lease Agreement.	HR	C,A
5. Memorandum of the Lease Agreement.	HR	C,A
	CC	C,A
6. Mortgages.		
7. Payment in Lieu of Tax Agreement.	HR	C,A
8. Certificates (and policies, if available) of casualty, liability, workers' compensation and other insurance required pursuant to the Lease Agreement.	CC	--
9. Project Benefits Agreement.	HR	C,A
10. Closing Receipt.	HR	C,A
B. <u>Items to be delivered by the Agency:</u>		
1. General Certificate of the Agency regarding incumbency and signatures of officers, execution of the Basic Documents and the other documents to be executed by the Agency in connection therewith (the "Agency Documents"), no litigation and continued existence, with the following items included as exhibits:	HR	A
Exhibit A - Chapter 666 of the Laws of 1970;	HR	--
Exhibit B - Certificate of Establishment and Certificates of Appointment of the current members of the Agency, certified by the New York State Department of State, Miscellaneous Records Unit;	HR	--
Exhibit C - By-Laws of the Agency;	HR	--
Exhibit D - Public Hearing Resolution;	HR	A

		<u>Production Respons.</u>	<u>Execution Respons.</u>
Exhibit E -	Proof of the mailing of notice of the Public Hearing to the chief executive officers of the affected tax jurisdictions;	A	A
Exhibit F -	Proof of the posting of notice of the Public Hearing;	A	A
Exhibit G -	Proof of publication of notice of the Public Hearing;	HR	A
Exhibit H -	Report of the Public Hearing;	A	--
Exhibit I -	SEQR Resolution; and	HR	A
Exhibit J -	Approving Resolution.	HR	A
2.	Certificate Regarding No Conflicts of Interest.	HR	A
3.	Sales Tax Exemption Letter.	HR	A
4.	Real Property Tax Exemption Form.	HR	A
5.	Proof of (A) Mailing and (B) filing of Real Property Tax Exemption Form to the chief executive officer of the tax assessor of the affected tax jurisdiction.	HR	--
6.	Thirty-Day Sales Tax Report.	HR,CC	A
7.	Proof of Mailing of Thirty-Day Sales Tax Report to the New York State Department of Taxation and Finance.	HR,CC	A
8.	Special Counsel Disclosure Certificate.	HR	HR
9.	Mortgage Tax Exemption Certificate.	HR	A
<b>C. <u>Items to be delivered by the Company:</u></b>			
1.	General Certificate of the Company regarding incumbency and signatures of officers, execution of the Lease Agreement and other Basic Documents to which the Company is a party (the "Company Documents"), no litigation and continued existence, with the following items included as exhibits:	HR,CC	C,CC
Exhibit A -	Articles of Organization, certified by the New York State Department of State, Corporations Unit;	CC	--
Exhibit B -	Operating Agreement of the Company;	CC	--
Exhibit C -	Certificate of Good Standing relating to the Company, certified by the New York State Department of State, Corporations Unit;	CC	--

	<u>Production Respons.</u>	<u>Execution Respons.</u>
Exhibit D - Resolution of the Members of the Company approving and authorizing the execution and delivery by the Company of the Company Documents; and	CC	--
Exhibit E - Pending Litigation.	CC	--
2. Affidavit of the Company.	HR	C
3. GML Section 875 Recapture Agreement.	HR	C,A
D. <u>Opinions of Counsel:</u>		
1. Opinion of Hodgson Russ LLP, counsel to the Agency, addressed to the Agency and the Company.	HR	HR
2. Opinion of the Schwartz Law Firm, counsel to the Company, addressed to the Agency and the Company.	HR	CC

#### IV. ACTION TO BE TAKEN CONCURRENTLY WITH OR AFTER THE CLOSING:

1. The Underlying Lease (or a memorandum thereof), the Lease Agreement (or a memorandum thereof), and the Mortgages are to be recorded by the Title Company or the Company in the office of the County Clerk of Montgomery County, New York.
2. The Real Property Tax Exemption Form, with a copy of the Payment in Lieu of Tax Agreement attached thereto is to be mailed to the assessor and the chief executive officers of each affected tax jurisdiction.
3. The Thirty-Day Sales Tax Report is to be mailed to the New York State Department of Taxation and Finance.

CLOSING ITEM NO.: A-1

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RAMA REAL PROPERTIES LLC,  
AS LANDLORD

AND

MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY,  
AS TENANT

---

LEASE TO AGENCY

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DATED AS OF JUNE 1, 2016

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RELATING TO A CERTAIN PARCEL OF LAND HAVING AN  
ADDRESS OF 46 PAWLING STREET IN THE VILLAGE OF  
HAGAMAN, MONTGOMERY COUNTY, NEW YORK.

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## LEASE TO AGENCY

THIS LEASE TO AGENCY dated as of June, 1, 2016 (the "Underlying Lease") by and between RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (the "Company"), as landlord, and MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Agency"), as tenant;

### WITNESSETH:

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 666 of the Laws of 1970 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2015, the Company presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 11, 2015 (the "Public Hearing Resolution"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board located at the Old County Courthouse, Fonda, New York, (C) caused notice of the Public Hearing to be published in a newspaper of general circulation available to the residents of the Village of Hagaman, Montgomery County, New York, (D) conducted the Public Hearing on the 7th day of December, 2015 at 9:00 o'clock a.m., local time, at the Village Office of Hagaman, Pawling Hall, located at 86 Pawling Street, Village of Hagaman, Montgomery County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on February 11, 2016 (the "SEQR Resolution"), the Agency determined that the Project constitutes a "Type II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA; and

WHEREAS, further resolution adopted by the members of the Agency on February 11, 2016 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2016 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project; and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2032 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof; and

WHEREAS, the Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2016 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2032; and (2) a bill of sale dated as of June 1, 2016 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a

copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company will obtain the following loans: (1) a loan in the principal sum of \$178,600.00 (the "First Loan") from Keybank National Association (the "First Lender"), which First Loan will be secured by a mortgage, assignment of rents, security agreement and fixture filing (the "First Mortgage") dated as of June 21, 2016, (2) a loan in the principal sum of \$284,600.00 (the "Second Loan") from the First Lender, which Second Loan will be secured by a second mortgage, assignment of rents, security agreement and fixture filing (the "Second Mortgage") dated as of June 21, 2016, and (3) a loan in the principal sum of \$106,000.00 (the "Third Loan," and together with the First Loan and the Second Loan, the "Loan") from the County of Montgomery (the "Second Lender," and together with the First Lender, the "Lender"), which Third Loan will be secured by (a) a mortgage (the "Third Mortgage," and together with the First Mortgage and the Second Mortgage, the "Mortgages") dated as of June 21, 2016, and (b) an assignment of rents (the "Assignment of Rents") dated as of June 21, 2016 from the Agency and the Company to the Second Lender; and

WHEREAS, the Company desires to convey the leasehold interest created pursuant to this Underlying Lease to the Agency on the terms and conditions set forth in this Underlying Lease; and

WHEREAS, pursuant to the Lease Agreement, the Company will, as agent of the Agency, undertake and complete the Project and the Agency will lease the Project Facility to the Company, and it is the intention of the parties hereto that the leasehold interest created pursuant to this Underlying Lease and the Company's leasehold interest in the Project Facility created by the Lease Agreement shall not merge; and

WHEREAS, all things necessary to constitute this Underlying Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Underlying Lease have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I  
DEFINITIONS

SECTION 1.1. DEFINITIONS. The following words and terms used in this Underlying Lease shall have the respective meanings set forth in the Lease Agreement.

SECTION 1.2. INTERPRETATION. In this Underlying Lease, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Underlying Lease, refer to this Underlying Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Underlying Lease.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the texts of the several Articles and Sections of this Underlying Lease, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Underlying Lease nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Underlying Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Underlying Lease.



## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE AGENCY.** The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Agency has been duly established under the provisions of the Act and has the power to enter into this Underlying Lease and to carry out its obligations hereunder.

(B) Neither the execution and delivery of this Underlying Lease nor the consummation of the transactions contemplated hereby will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

**SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.** The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is qualified and authorized to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Underlying Lease and carry out its obligations hereunder and has been duly authorized to execute this Underlying Lease. This Underlying Lease and the transactions contemplated hereby have been duly authorized by all necessary action on the part of the members of the Company.

(B) Neither the execution and delivery of this Underlying Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Underlying Lease will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Organization or Operating Agreement of the Company or any order, judgment, agreement or instrument to which the Company is a party or by which the Company is bound, or constitute a default under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Company other than pursuant to the Basic Documents, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) to the best of the Company's knowledge, require consent (which has not been heretofore received) under, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

## ARTICLE III

### LEASE PROVISIONS

SECTION 3.1. LEASE. (A) The Company hereby demises and leases to the Agency, and the Agency hereby hires and takes leases from the Company, the Land, as said Land is more particularly described on Exhibit A attached hereto and the improvements now and hereafter located thereon, including the Facility, (the Land, the Facility and said improvements being sometimes collectively referred to as the "Premises") for the term set forth in Section 3.2 hereof. The Premises are intended to include (1) all buildings and improvements located on the Land, (2) any strips or gores of land adjoining the Land, (3) any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (4) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Company by reason of the Company's ownership of the Land.

(B) It is the intention of the Company and the Agency that the Agency shall hold leasehold title to Premises. Accordingly, leasehold title to any improvements hereinafter constructed by the Company on the Land shall vest in the Agency or its successors and assigns as and when the same are constructed thereon.

SECTION 3.2. TERM. (A) The term of this Underlying Lease (the "Term") shall commence as of the dated date hereof and shall expire on the earlier to occur (1) December 31, 2032 or (2) so long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the term of the Lease Agreement.

(B) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, upon any termination of this Underlying Lease, the Company shall prepare and the Agency will execute and deliver to the Company such instruments as the Company shall deem appropriate to evidence the release and discharge of this Underlying Lease.

SECTION 3.3. RENT. The rent payable by the Agency under this Underlying Lease shall be one dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.

SECTION 3.4. USE; LEASE AGREEMENT; NON-MERGER. (A) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder have been terminated by the Agency pursuant to Article X thereof, the Agency shall (1) hold and use the Premises only for lease to the Company under the Lease Agreement and (2) shall not sell or assign its rights hereunder nor the leasehold estate hereby created, except as provided in the Lease Agreement.

(B) Contemporaneously with the execution and delivery of this Underlying Lease, the Agency is entering into the Lease Agreement, pursuant to which the Company as agent of the Agency agrees to undertake and complete the Project and the Agency agrees, upon completion of the Project, to lease (with an obligation to purchase) the Project Facility to the Company. Pursuant to the Lease Agreement, the Company, as tenant of the Project Facility under the Lease Agreement, is required to perform all of the Agency's obligations under this Underlying Lease. Accordingly, and notwithstanding anything to the contrary contained in this Underlying Lease, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency hereunder relates to a failure by the Company, as tenant of the Project Facility under the Lease Agreement, to perform its corresponding obligations under the Lease Agreement.

(C) Notwithstanding the lease of the Project Facility by the Agency to the Company pursuant to the Lease Agreement, during the Term of this Underlying Lease, there shall be no merger of this Underlying Lease nor of the leasehold estate created by this Underlying Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Underlying Lease or the leasehold estate created by this Underlying Lease or any interest in this Underlying Lease or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Underlying Lease or the leasehold estate created by this Underlying Lease and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

(D) Upon any termination of the Lease Agreement or the Company's rights of possession as lessee thereunder pursuant to Article X thereof, the Agency may use the Premises for any lawful purpose, may sell or assign its rights hereunder or the leasehold estate hereby created to any Person or Persons without the consent of the Company, and may enter upon the Premises for purpose of taking possession thereof.

**SECTION 3.5. ADDITIONS, ALTERATIONS AND IMPROVEMENTS.** Subject to the provisions of the Lease Agreement, the Company shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Premises as the Company shall deem necessary or desirable. Title to improvements now located or hereafter constructed upon the Premises, and any modifications, additions, restrictions, repairs and replacements, thereof, shall be in the Agency during the term of this Underlying Lease, except as otherwise provided in the Lease Agreement.

**SECTION 3.6. ASSIGNMENT.** (A) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, neither the Agency nor the Company shall assign or transfer this Underlying Lease, nor sublease the whole or any part of the Property leased hereby, except that the Agency may lease the leasehold interest created hereunder to the Company pursuant to the Lease Agreement. The Agency may enter into the Lease Agreement on the terms provided therein.

(B) Upon the occurrence and continuance of an Event of Default under the Lease Agreement, the Agency shall have the unrestricted right to assign and sublet, from time to time, all or any part of this Underlying Lease and the leasehold estate hereby created, to any one or more Persons. Upon such assignment, the assignee shall thereupon be subrogated to all the rights of the former lessee under this Underlying Lease, whereupon (1) the former lessee shall have no further rights or obligations hereunder and (2) such assignee shall forthwith be obligated to assume and perform each and all of the former lessee's obligations and covenants hereunder.

**SECTION 3.7. POSSESSION; QUIET ENJOYMENT.** (A) Pursuant to the terms of the Lease Agreement, except as otherwise provided therein after the occurrence of an Event of Default thereunder, the Company has the exclusive right to possess and make improvements to the Premises leased hereby.

(B) The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Underlying Lease on the Agency's part to be kept, shall quietly have, hold and enjoy the Premises during the Term of this Underlying Lease.

**SECTION 3.8. LIENS.** So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the Agency



shall not, directly, or indirectly, create or permit to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Premises or the Agency's interest therein (except for Permitted Encumbrances) without the Company's prior written consent.

**SECTION 3.9 TAXES.** (A) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision. Pursuant to the Lease Agreement, the Company has agreed to pay all taxes levied against the Premises.

(B) Pursuant to the Lease Agreement and the Payment in Lieu of Tax Agreement, the Agency has agreed to apply for the tax exemptions respecting the Premises to which the Agency may be entitled pursuant to the Act, upon the condition that the Company make certain payments in lieu of taxes respecting the Premises, as more fully set forth in the Lease Agreement and the Payment in Lieu of Tax Agreement. The Agency agrees to use its best efforts to apply for any tax exemptions to which the Agency may be entitled with respect to the Premises.

(C) In the event that (1) title to the Agency's interest in the Premises shall be conveyed to the Company, (2) on the date on which the Company obtains title to the Agency's interest in the Premises, the Premises shall be assessed as exempt upon the assessment roll of any one or more of any taxing entities, and (3) the fact of obtaining title to the Agency's interest in the Premises shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), the Company shall be obligated to make payments in lieu of taxes to the respective receivers of taxes in amounts equal to those amounts which would be due from the Company as real property taxes with respect to the Premises if the Premises were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various taxing entities having jurisdiction over the Premises as the legal owner of record of the Agency's interest in the Premises.

**SECTION 3.10. MAINTENANCE.** Pursuant to the Lease Agreement, during the term of this Underlying Lease, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained the Premises and all improvements now or hereafter located thereon in good order and condition and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

**SECTION 3.11. CONDEMNATION.** Subject to the provisions of the Lease Agreement, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Premises (including any unpaid amounts due pursuant to the Basic Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 4.1 DEFAULT.** (A) Any one or more of the following events shall constitute an "Event of Default" under this Underlying Lease:

(1) The failure of the Agency (or the Company on behalf of the Agency) to pay the rent due pursuant to this Underlying Lease within fifteen (15) days after notice to the Agency specifying the nature of such default; or

(2) The failure of the Agency (or the Company on behalf of the Agency) to observe and perform any covenant, condition or agreement on its part to be performed (other than as referred to in paragraph (1) above) and continuance of such failure for a period of thirty (30) days after notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Company on behalf of the Agency), to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(B) Notwithstanding the provisions of Section 4.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Underlying Lease and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Underlying Lease of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an event of default under this Section. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public, enemies, orders of any kind of government authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

**SECTION 4.2 REMEDIES ON DEFAULT.** Whenever any Event of Default hereunder by one party hereto shall have occurred and be continuing for more than fifteen (15) days after written notice of default by the other party, the other party may enforce the provisions of this Underlying Lease and may enforce and protect its right by a suit or suits in equity or at law for (1) the specific performance of any covenant or agreement contained herein or (2) any other appropriate legal or equitable remedy.

**SECTION 4.3. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Underlying Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article IV, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 4.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event either party should default under any of the provisions of this Underlying Lease and the other party should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the defaulting party herein contained, the defaulting party shall, on demand therefor, pay to the other party the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 4.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.1. SURRENDER. (A) The Agency shall, on the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, surrender and deliver the Premises and all buildings, improvements, alterations, equipment and fixtures located thereon to the possession and use of the Company without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, title to all buildings, improvements, alterations, equipment located on the Premises shall automatically, and without the need of any further or additional instrument, vest in the Company. Notwithstanding the foregoing, upon the reasonable request of the Company, the Agency shall execute and deliver to the Company an instrument in a form of Exhibit C to the Lease Agreement to be recorded to confirm this vesting of title.

SECTION 5.2. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

#### IF TO THE COMPANY:

Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010  
Attention: Ramon Rodriguez

#### WITH A COPY TO:

Schwartz Law Firm  
191 Guy Park Avenue  
Amsterdam, New York 12010  
Attention: Charles R. Schwartz, Esq.

#### IF TO THE AGENCY:

Montgomery County Industrial Development Agency  
9 Park Street  
Fonda, New York 12068  
Attention: Chairman

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: Christopher M. Martell, Esq.

(C) The Agency or the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications to the Agency or the Company, as the case may be, shall be sent.

**SECTION 5.3. APPLICABLE LAW.** This Underlying Lease shall be governed exclusively by the applicable laws of the State.

**SECTION 5.4. BINDING EFFECT.** This Underlying Lease shall inure to the benefit of, and shall be binding upon the Agency and the Company and their respective successors and assigns; provided, that, except as provided elsewhere herein, the interest of the Agency in this Underlying Lease may not be assigned, sublet or otherwise transferred without the prior written consent of the Company.

**SECTION 5.5. SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of the other provisions of this Underlying Lease.

**SECTION 5.6. AMENDMENTS, CHANGES AND MODIFICATIONS.** This Underlying Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

**SECTION 5.7. EXECUTION OF COUNTERPARTS.** This Underlying Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 5.8. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.** The Table of Contents and the headings of the several Sections in this Underlying Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Underlying Lease.

**SECTION 5.9. NO RECOURSE; SPECIAL OBLIGATION.** (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall not constitute or give rise to an obligation of the State of New York or Montgomery County, New York, and neither the State of New York nor Montgomery County, New York shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a



general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Basic Documents shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

**SECTION 5.10. RECORDING.** The Agency and the Company agree that this Underlying Lease (or a memorandum thereof) shall be recorded by the Agency in the appropriate office of the County Clerk of Montgomery County, New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY: \_\_\_\_\_  
Authorized Member

IN WITNESS WHEREOF, the Agency and the Company have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: Robert Hoef  
(Vice) Chairman

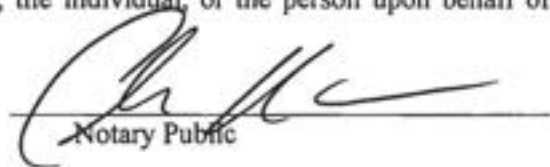
RAMA REAL PROPERTIES LLC

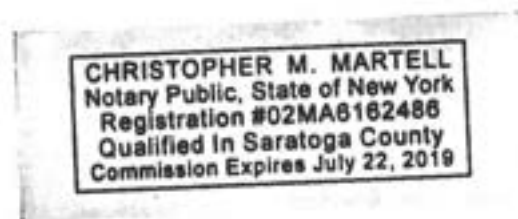
BY: Rama  
Authorized Member



STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

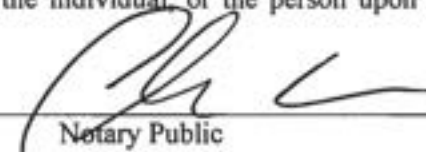
On the 22 day of June, in the year 2016, before me, the undersigned, personally appeared Robert Hoeffs, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public



STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

On the 20 day of June, in the year 2016, before me, the undersigned, personally appeared Robert Hoeffs, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**CHRISTOPHER M. MARTELL**  
Notary Public, State of New York  
Registration #02MA6162486  
Qualified In Saratoga County  
Commission Expires July 22, 2019

## EXHIBIT A

### DESCRIPTION OF THE LAND

#### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S.  $47^{\circ} 53'$  W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N.  $75^{\circ} 48'$  W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N.  $13^{\circ} 41'$  E. one hundred sixteen (116) feet more or less to a point; thence N.  $86^{\circ} 42'$  W. twelve hundred and five (1205) feet more or less to a point; thence N.  $3^{\circ} 15'$  E. five hundred forty two (542) feet more or less to a point; thence S.  $86^{\circ} 42'$  E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S.  $36^{\circ} 16'$  W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S.  $53^{\circ} 56'$  E. forty two and eight-tenths (42.8) feet; thence S.  $43^{\circ} 40'$  W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S.  $55^{\circ} 12'$  E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Haganan, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

#### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S  $12^{\circ} 41' 00''$  W along Powers westerly line for a distance of 523.32 feet; thence S  $76^{\circ} 57' 20''$  E for a distance of 44.79 feet; thence S  $14^{\circ} 06' 45''$  W along the westerly line of lands owned reputedly by the Village of Haganan for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N  $73^{\circ} 55' 10''$  W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N  $13^{\circ} 25' 40''$  E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N  $80^{\circ} 21' 00''$  W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N  $3^{\circ} 52' 15''$  E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S  $86^{\circ} 04' 45''$  E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Haganan, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

#### **SCHEDULE A**

All of that tract or parcel of land situate in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York being more particularly described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Haganan S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

---

RAMA REAL PROPERTIES LLC,  
AS LANDLORD

AND

MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY,  
AS TENANT

---

MEMORANDUM OF UNDERLYING LEASE

---

DATED AS OF JUNE 1, 2016

---

RELATING TO A CERTAIN PARCEL OF LAND HAVING AN  
ADDRESS OF 46 PAWLING STREET IN THE VILLAGE OF  
HAGAMAN, MONTGOMERY COUNTY, NEW YORK.

---

THIS DOCUMENT IS INTENDED TO BE RECORDED IN LIEU OF  
THE WITHIN-DESCRIBED UNDERLYING LEASE IN  
ACCORDANCE WITH THE PROVISIONS OF SECTION 291-c OF  
THE NEW YORK REAL PROPERTY LAW.

## MEMORANDUM OF UNDERLYING LEASE

The undersigned, RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (referred to in the hereinafter described Underlying Lease as the "Company") and MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York, as tenant (referred to in the hereinafter described Underlying Lease as the "Agency") have entered into a certain lease to Agency dated as of June 1, 2016 the "Underlying Lease").

The Underlying Lease covers a parcel of land (the "Land") located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York, said Land being more particularly described on Exhibit A attached hereto and made a part hereof, together with any improvements now or hereafter located on the Land (the Land and all of said improvements being sometimes collectively referred to as the "Premises").

The Underlying Lease provides for the rental of the Premises for a term (the "Term") commencing as of June 1, 2016 and expiring on the earlier to occur of (A) December 31, 2028 or (B) upon the termination of the Lease Agreement (as defined in the Underlying Lease) or the Company's right of possession as lessee shall have been terminated by the Agency pursuant to Article X thereof. The Underlying Lease obligates the Agency, among other things, to pay rent of \$1.00 for the Term.

Pursuant to the Lease Agreement, the Company as agent of the Agency has agreed to promptly acquire, and assume control, management and operation of the Project Facility ( including, the Land, the Facility, and the Project Equipment). The Lease Agreement grants to the Company various rights to reacquire full ownership and control of the Project Facility. Upon any such resumption of full control of the Project Facility, the Agency shall surrender and deliver the Premises and all improvements located thereon to the Company. The Lease Agreement (or a memorandum thereof) is intended to be recorded in the Otsego County Clerk's Office immediately subsequent to the recording of this Memorandum of Underlying Lease.

Notwithstanding the lease of the Project Facility by the Agency to the Company pursuant to the Lease Agreement, during the term of the Underlying Lease, there shall be no merger of the Underlying Lease nor of the leasehold estate created by the Underlying Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person or entity may acquire, own or hold the Underlying Lease or the leasehold estate created thereunder and the fee estate in the Premises.

IN WITNESS WHEREOF, the Company and the Agency have caused this Memorandum of Underlying Lease to be executed in their respective names, by their respective duly authorized officers and to be dated as of the 1st day of June, 2016.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

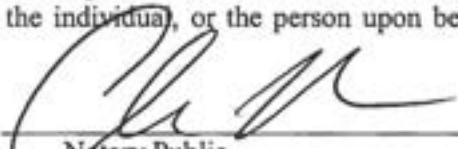
BY: Robert Hoef  
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY: Rama  
Authorized Member

STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

On the 2 day of June, in the year 2016, before me, the undersigned, personally appeared Robert Hoeffs, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

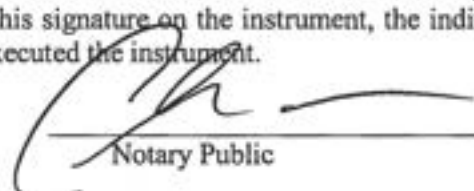
  
\_\_\_\_\_  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
Registration #02MA6162486  
Qualified in Saratoga County  
Commission Expires July 22, 2019



STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

On the 21 day of June, in the year 2016, before me, the undersigned, personally appeared RAMON RODRIGUEZ, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public



## EXHIBIT A

### DESCRIPTION OF THE LEASED LAND

#### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagsman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

#### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned reputedly by the Village of Hagsman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Hagsman, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

#### **SCHEDULE A**

All of that tract or parcel of land situate in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York being more particularly described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Hagsman S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

BILL OF SALE  
TO  
MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all right, title and interest of the Grantor in and to the materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment"), whether now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on the real property (the "Land") located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York, which Land is more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever, and the said Grantor, for itself, its successors and assigns, covenants and agrees to and with the Grantee, its successors and assigns, to warrant and defend the sale of said Equipment hereby made unto the Grantee, its successors and assigns against the claims and demands of every and all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer and dated as of the 1st day of June, 2016.

RAMA REAL PROPERTIES LLC

BY: \_\_\_\_\_

  
Authorized Member

EXHIBIT A  
DESCRIPTION OF THE LAND

SEE ATTACHED

PARCEL NO. 1

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## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed prior to the Completion Date (as defined in the hereinafter defined Lease Agreement) in connection with the acquisition, construction and installation of the Rama Real Properties LLC Project (the "Project") of Montgomery County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by Rama Real Properties LLC (the "Company") as agent of the Agency pursuant to a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.



CLOSING ITEM NO.: A-4

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MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

RAMA REAL PROPERTIES LLC

---

LEASE AGREEMENT

---

DATED AS OF JUNE 1, 2016

---

RELATING TO A CERTAIN PARCEL OF LAND HAVING AN  
ADDRESS OF 58 N. PAWLING STREET IN THE VILLAGE OF  
HAGAMAN, MONTGOMERY COUNTY, NEW YORK.

---

THIS LEASE AGREEMENT CONSTITUTES A SECURITY  
AGREEMENT UNDER THE UNIFORM COMMERCIAL  
CODE OF THE STATE OF NEW YORK.

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## LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of June 1, 2016 (the "Lease Agreement") by and between MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Agency"), and RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (the "Company");

### WITNESSETH:

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 666 of the Laws of 1970 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2015, the Company presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project

Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 11, 2015 (the "Public Hearing Resolution"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board located at the Old County Courthouse, Fonda, New York, (C) caused notice of the Public Hearing to be published in a newspaper of general circulation available to the residents of the Village of Hagaman, Montgomery County, New York, (D) conducted the Public Hearing on the 7th day of December, 2015 at 9:00 o'clock a.m., local time, at the Village Office of Hagaman, Pawling Hall, located at 86 Pawling Street, Village of Hagaman, Montgomery County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on February 11, 2016 (the "SEQR Resolution"), the Agency determined that the Project constitutes a "Type II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA; and

WHEREAS, further resolution adopted by the members of the Agency on February 11, 2016 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2016 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project; and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2032 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof; and

WHEREAS, the Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2016 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2032; and (2) a bill of sale dated as of June 1, 2016 (the "Bill of



Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company will obtain the following loans: (1) a loan in the principal sum of \$178,600.00 (the "First Loan") from Keybank National Association (the "First Lender"), which First Loan will be secured by a mortgage, assignment of rents, security agreement and fixture filing (the "First Mortgage") dated as of June 21, 2016, (2) a loan in the principal sum of \$284,600.00 (the "Second Loan") from the First Lender, which Second Loan will be secured by a second mortgage, assignment of rents, security agreement and fixture filing (the "Second Mortgage") dated as of June 21, 2016, and (3) a loan in the principal sum of \$106,000.00 (the "Third Loan," and together with the First Loan and the Second Loan, the "Loan") from the County of Montgomery (the "Second Lender," and together with the First Lender, the "Lender"), which Third Loan will be secured by (a) a mortgage (the "Third Mortgage," and together with the First Mortgage and the Second Mortgage, the "Mortgages") dated as of June 21, 2016, and (b) an assignment of rents (the "Assignment of Rents") dated as of June 21, 2016 from the Agency and the Company to the Second Lender; and

WHEREAS, the providing of the Project Facility and the lease of the Project Facility to the Company pursuant to this Lease Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, all things necessary to constitute this Lease Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Lease Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

ARTICLE I  
DEFINITIONS

SECTION 1.1. DEFINITIONS. The following words and terms used in this Lease Agreement shall have the respective meanings set forth below, unless the context or use indicates another or different meaning or intent:

"Act" means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 666 of the 1970 Laws of the State, constituting Section 895-d of the General Municipal Law of the State, as amended from time to time.

"Agency" means (A) Montgomery County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which Montgomery County Industrial Development Agency or its successors or assigns may be a party.

"Applicable Laws" means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

"Approving Resolution" means the resolution duly adopted by the Agency on February 11, 2016, authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

"Assignment to Company" means the assignment from the Agency to the Company, substantially in the form attached as Exhibit C to the Lease Agreement, which assignment is intended to convey to the Company, upon certain terminations of the Lease Agreement, all title and interest of the Agency in the Project Facility, including the leasehold interest created pursuant to the Underlying Lease.

"Authorized Representative" means the person or persons at the time designated to act in behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (A) the Agency by its Chairman or Vice-Chairman or such other person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by any Officer or such other person as may be authorized in writing by the Board of the Company to act on behalf of the Company.

"Basic Documents" means the Underlying Lease, the Project Benefits Agreement, the Bill of Sale to Agency, the Lease Agreement, the Payment in Lieu of Tax Agreement, and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

"Bill of Sale to Agency" means the bill of sale delivered on the Closing Date from the Company to the Agency conveying all of the Company's interest in the Equipment to the Agency.

"Bill of Sale to Company" means the bill of sale from the Agency to the Company conveying all of the Agency's interest in the Equipment to the Company, substantially in the form attached as Exhibit D to the Lease Agreement.

"Business Day" means a day on which banks located in the Montgomery, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the closing at which the Basic Documents are executed and delivered by the Company and the Agency.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

"Company" means Rama Real Properties LLC, a limited liability company duly organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

"Completion Date" means the earlier to occur of (A) December 31, 2017 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

"Default Interest Rate" means a per annum rate of interest equal to twelve percent (12%) per annum, or the maximum rate of interest permitted by law, whichever is less.

"Equipment" means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to the Lease Agreement, including without limitation, all the Property described in Exhibit B attached to the Lease Agreement.

"Event of Default" means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

"Facility" shall have the meaning assigned to such term in the fifth recital clause to the Lease Agreement.

"Financial Assistance" shall have the meaning assigned to such term in the fifth recital clause to the Lease Agreement.

"Governmental Authority" means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

"Gross Proceeds" means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

"Hazardous Materials" shall mean all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

"Indebtedness" means (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under the Lease Agreement and the other Basic Documents, and (2) all interest accrued on any of the foregoing.

"Independent Counsel" means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Company or the Agency.

"Land" shall have the meaning assigned to such term in the fifth recital clause to the Lease Agreement.

"Lease Agreement" means the lease agreement dated as of June 1, 2016 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

"Lender" shall have the meaning assigned to such term in the twelfth recital clause to the Lease Agreement.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not

limited to mechanics', materialmen's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Loan" shall have the meaning assigned to such term in the twelfth recital clause to the Lease Agreement.

"Loan Documents" means, collectively, the Mortgages and any building loan and other agreements reasonably requested by the Lender in connection with the Loans.

"Mortgages" shall have the meaning assigned to such term in the twelfth recital clause to the Lease Agreement.

"Mortgaged Property" means all Property which may from time to time be subject to the Lien of the Mortgage.

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

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of June 1, 2016 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens, to the extent permitted by Section 8.8 of the Lease Agreement, (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.2(B) of the Lease Agreement, (D) any Lien on the Project Facility obtained through any Basic Document, (E) any lien on the Project Facility that exists on the Closing Date, and (F) any Lien requested by the Company in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed.

"Person" means an individual, partnership, corporation, trust, unincorporated organization or Governmental Authority.

"Plans and Specifications" means the description of the Project appearing in the fifth recital clause to the Lease Agreement.

"Premises" means the Property leased to the Agency pursuant to the Underlying Lease.

"Project" means the project undertaken by the Agency consisting of (A) (1) the acquisition of a leasehold interest in the Land and the Facility, (2) the construction of the Facility, and (3) the acquisition and installation of the Equipment, all of the foregoing to constitute assisted living and senior housing



facilities, (B) the granting of certain Financial Assistance with respect to the foregoing, and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement.

"Project Facility" means, collectively, the Land, the Facility and the Equipment.

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

"Real Property Tax Exemption Form" means a New York State Board of Real Property Services Form RP-412-a relating to the Project Facility.

"Sales Tax Exemption Letter" shall have the meaning assigned to such term in Section 8.12 of the Lease Agreement.

"SEQRA" means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

"State" means the State of New York.

"Term" means the term of the Underlying Lease.

"Termination of Lease Agreement" means a termination of lease agreement by and between the Company, as tenant, and the Agency, as landlord, intended to evidence the termination of the lease agreement, substantially in the form attached as Exhibit E to the Lease Agreement.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E)(2), 4.1(F), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 9.3, 11.1, 12.4, 12.8 and 12.10 of the Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents and employees of the Agency for their own account pursuant to Sections 2.2(F), 3.3, 4.1, 5.3(B)(2), 5.3(C), 6.4(B), 8.2, 10.2 and 10.4 of the Lease Agreement, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of the Lease Agreement and the Payment in Lieu of Tax Agreement, and (D) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

"Underlying Lease" means the lease to agency dated as of June 1, 2016 by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has conveyed a leasehold interest in the Premises to the Agency, as said lease to agency may be amended or supplemented from time to time.

**SECTION 1.2. INTERPRETATION.** In this Lease Agreement, unless the context otherwise requires:

(A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Lease Agreement, refer to this Lease Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Lease Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa; and

(D) any certificates, letters or opinions required to be given pursuant to this Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease Agreement.



## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY. The Agency makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Lease Agreement and the other Basic Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

(C) Pursuant to the Basic Documents, the Agency will acquire a leasehold interest in the Premises from the Company, will cause the Project Facility to be acquired, constructed and installed and will lease the Project Facility to the Company pursuant to this Lease Agreement, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided in Article IX and Article X hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances, except as contemplated or allowed by the terms of this Lease Agreement and the other Basic Documents.

SECTION 2.2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is qualified and authorized to do business in the State of New York and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Lease Agreement and the other Basic Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its Board, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Company is a party.

(B) Except as has been heretofore disclosed to the Agency, neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's Articles of Organization and Operating Agreement or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (3) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project Facility will not result in the removal of a plant or facility of the Company or an occupant of the Project Facility from one area of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Company or an occupant of the Project Facility located in the State of New York.

(D) The Project does not constitute a project where facilities or property are primarily used in making retail sales of services to customers who personally visit such facilities.

(E) The Basic Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(F) The Project Facility is, and so long as this Lease Agreement shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Basic Documents or which the Agency advises the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the Financial Assistance to be applied in a manner contrary to that provided in the Basic Documents.

(G) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(H) The Project will not have a "significant effect on the environment" (within the meaning of such term as used in SEQRA), and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the Final SEQR Resolution under SEQRA applicable to the acquisition, construction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes

with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(I) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(J) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(K) The Company acknowledges receipt of notice of Section 874(9) of the Act, which requires the Company, as agent of the Agency, to file within thirty (30) days of the date the Company is appointed the agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

### ARTICLE III

#### CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1. CONVEYANCE TO THE AGENCY. Pursuant to the Underlying Lease the Company has or will convey, or will cause to be conveyed, to the Agency a leasehold interest in the Land and all improvements located or to be located thereon. Pursuant to the Bill of Sale to Agency the Company has or, will convey, or will cause to be conveyed, to the Agency title to the Equipment. The Company hereby represents and warrants that it has good and marketable title to the portions of the Project Facility that exist on the Closing Date, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend, indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons. The Company also agrees to pay all reasonable expenses incurred by the Agency in defending any action with respect to title to or a Lien affecting the Project Facility, except for Permitted Encumbrances.

SECTION 3.2. USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Basic Documents or the Act, provided such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project Facility into disrepute as a public project; provided, further, however, that at no time shall any such use be other than as professional administrative office space without the written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

SECTION 3.3. HAZARDOUS MATERIALS. (A) The Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(B) The Company shall keep or cause the Project Facility to be kept free of all Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Applicable Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, or any tenant or subtenant of the Company, an unlawful release of Hazardous Materials onto the Project Facility or onto any other property.

(C) The Company shall comply with, and ensure compliance by all tenants and subtenants of the Company with, all Applicable Laws regarding Hazardous Materials whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants of the Company obtain and comply with, any and all approvals, registrations or permits required thereunder.



(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility (a) in accordance with all Applicable Laws, (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 (2) defend, indemnify, and hold harmless the Agency and its employees, agents, officers and members 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 Materials used, transported, stored, manufactured, refined, handled, produced or disposed of on or in the Project Facility which are on, from or affecting soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Applicable Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (D) will be repaid immediately with interest at the Default Interest Rate or the maximum permitted by law, whichever is less.

(E) In the event the Project Facility is foreclosed by the Agency, or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Project Facility to the purchaser free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Federal, State or local laws, ordinances, rules and regulations governing the use and storage of such materials), so that the condition of the Project Facility shall conform with all Applicable Laws affecting the Project Facility.

(F) The Company agrees that the Agency and its officers, agents or representatives, may at any reasonable time and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Applicable Laws.

(G) In the event that insurance shall become available at a reasonable cost to cover the Company's obligations under this Section 3.3, then, at the option of the Agency, the Company shall obtain adequate coverage.

**SECTION 3.4. NON-MERGER.** During the term of this Lease Agreement, there shall be no merger of this Lease Agreement nor of the leasehold estate created by this Lease Agreement with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease Agreement or the leasehold estate created by this Lease Agreement or any interest in this Lease Agreement or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Lease Agreement or the leasehold estate created by this Lease Agreement and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

**SECTION 3.5. COMPLIANCE WITH UNDERLYING LEASE.** (A) Notwithstanding the granting of the leasehold interest created by the Underlying Lease in the Premises to the Agency pursuant to the Underlying Lease, the Company agrees, in consideration of the undertakings of the Agency set forth

herein, that the Company will be and remain solely liable under the Underlying Lease for the performance of all covenants, agreements, obligations and duties of the Agency as tenant under the Underlying Lease, including but not limited to the making of all rental and other payments thereunder, and the Company will perform all of the covenants, agreements and obligations of the Agency as tenant under the Underlying Lease, at no expense to the Agency, in consideration of the execution and delivery by the Agency of the Basic Documents.

(B) The Company shall, on behalf of the Agency, (1) pay all rents, additional rents and other sums required to be paid by the Agency as tenant under and pursuant to the provisions of the Underlying Lease and (2) diligently perform and observe all of the terms, covenants and conditions of the Underlying Lease on the part of the Agency, as tenant thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the landlord under the Underlying Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Agency, as tenant, under the Underlying Lease.

## ARTICLE IV

### UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1. ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE PROJECT FACILITY. (A) The Company shall, on behalf of the Agency, promptly acquire, construct, and install the Project Facility, or cause the acquisition, construction and installation of the Project Facility, all in accordance with the Plans and Specifications.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent of the Agency shall not be unreasonably withheld or delayed).

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor and advanced by the Company for such purpose pursuant to Section 4.1(H) hereof.

(E) The Agency hereby appoints the Company as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Basic Documents, and the Company hereby accepts such appointment: (1) to acquire, construct and install the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the acquisition, construction and installation of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement, (3) to pay all fees, costs and expenses incurred in the acquisition, construction and installation of the Project Facility from funds made available therefor in accordance with this Lease Agreement, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the acquisition, construction and installation of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

(F) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend, indemnify and save the Agency and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply



therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(G) To the extent required by Applicable Law, the Company, as agent of the Agency, will cause (1) compliance with the requirements of Article 8 of the New York Labor Law, and (2) any contractor, subcontractor and other person involved in the acquisition, construction and installation of the Project Facility to comply with Article 8 of the New York Labor Law. The covenant in this subsection is not intended as a representation that Article 8 of the New York Labor Law applies to the Project.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. Title to portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction or installation vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

(I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Lease Agreement.

**SECTION 4.2. COMPLETION OF THE PROJECT FACILITY.** The Company will proceed with due diligence to commence and complete the acquisition, construction and installation of the Project Facility. Completion of the same shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, construction and installation of the Project Facility has been completed, with the exception of ordinary punchlist items and work awaiting seasonal opportunity, (D) that the Company or the Agency has good and valid title to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (1) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (2) that it is given only for the purposes of this Section 4.2, and (3) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by a certificate of occupancy, or a letter from the local Governmental Authority stating that no certificate of occupancy is required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes.

**SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.** In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, construction and installation of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the

Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility, and thereafter be paid to the Company for its own use. The Company shall advise the Agency of any actions or proceedings taken hereunder.

## ARTICLE V

### DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. LEASE OF THE PROJECT FACILITY. In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to demise and lease to the Company, and the Company hereby agrees to rent and lease from the Agency, the Agency's interest in the Project Facility, subject only to Permitted Encumbrances. The obligation of the Agency under this Section 5.1 to lease the Project Facility to the Company shall be subject to there being no Event of Default existing hereunder, or any other event which would, but for the passage of time, be such an Event of Default.

SECTION 5.2. DURATION OF THE LEASE TERM; QUIET ENJOYMENT. (A) The Agency shall deliver to the Company possession of the Project Facility, and the leasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

(B) Except as otherwise provided in Article X hereof, the leasehold estate created hereby shall terminate on the earlier to occur of (1) December 31, 2032 or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

(C) The Agency shall take no action, other than pursuant to Article X of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease Agreement and will, at the request of the Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project Facility.

SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. (A)(1) The Company shall pay basic rental payments for the Project Facility as follows: (i) on the date of execution and delivery of this Lease Agreement, an amount equal to \$5,212.50 for a one-time Agency fee, and (ii) on January 1 of each year during the term of this Lease Agreement, an amount equal to .0005 of the total project cost of \$695,000, representing the annual Agency administrative fee; and (2) the fees and expenses of general counsel and special counsel to the Agency relating to the Project.

(B) Within seven (7) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable expenses of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency's ownership, leasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement or any of the other Basic Documents, and any other fee or expense of the Agency with respect to the Project Facility, the leasing or sale of the Project Facility to the Company, or any of the other Basic Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(C) The Company agrees to make the above-mentioned payments, without any further notice, by check or wire transfer, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the

Company shall pay the same, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

**SECTION 5.4. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.** (A) The obligations of the Company to make the payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.10 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy of or purchase of or title to the Project Facility, or any other liability of the Agency to the Company.

**SECTION 5.5. GRANT OF SECURITY INTEREST.** The Company hereby grants the Agency a security interest in all of the right, title and interest of the Company in the Project Facility and in all additions and accessions thereto, all replacements and substitutions therefor and all proceeds thereof, and all books, records and accounts of the Company pertaining to the Project Facility, and all proceeds thereof, as security for payment of the rental payments and all other payments and obligations of the Company hereunder. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute and deliver and file any instruments necessary or convenient to perfect and continue the security interest granted herein.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY. (A) During the term of this Lease Agreement, the Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), and (3) operate the Project Facility in a sound and economic manner.

(B) The Company shall not make any structural additions, modifications or improvements to the Project Facility or any part thereof unless:

(1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such addition, modification or improvement to the Project Facility, or a part thereof, (b) defend and save the Agency and its officers, members, agents (other than the Company) and employees harmless from all fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) make all payments in lieu of taxes required by Section 6.6 hereof and the Payment in Lieu of Tax Agreement, including those required by Section 2.03(D) thereof;

(2) the addition, modification or improvement to the Project Facility shall not constitute a default under any of the Basic Documents; and

(3) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such addition, modification or improvement to the Project Facility detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for nonstructural additions, modifications or improvements to the Project Facility which do not exceed, at any one time, \$250,000 in value.

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, as the same respectively become due, (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Lease Agreement and (4) all payments in lieu of taxes with respect to the Project Facility payable pursuant to the Payment in Lieu of Tax Agreement and Section 6.6 hereof.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company (1) first shall have notified the Agency in writing of such contest and (2) is not in default under any of the



Basic Documents. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 6.3. INSURANCE REQUIRED.** During the term of this Lease Agreement, the Company shall maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) Insurance protecting the interests of the Company and the Agency as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, construction or installation of the Project Facility.

(C) Insurance protecting the Company and the Agency, as additional insureds, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$500,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy protecting the Company and the Agency with a limit of not less than \$1,000,000.

(D) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTEREST.

**SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE.** (A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having a Best rating satisfactory to the Agency. 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 Company is engaged. All policies evidencing such insurance shall name the Company and the Agency as insureds, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or 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 in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish

to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

**SECTION 6.5. APPLICATION OF NET PROCEEDS OF INSURANCE.** The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.3(A) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Section 6.3(B) and 6.3(C) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**SECTION 6.6. PAYMENTS IN LIEU OF REAL ESTATE TAXES.** (A) It is recognized that under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation. Accordingly, the parties hereto acknowledge that the Payment in Lieu of Tax Agreement is expected to be executed with respect to the Project Facility, and a Real Property Tax Exemption Form will be filed by the Agency with respect to the Project Facility once the Payment in Lieu of Tax Agreement is executed by the Agency and the Company. Until the expiration date of the Payment in Lieu of Tax Agreement, the Agency and the Company hereby agree that the Company (or any subsequent user of the Project Facility pursuant to this Lease Agreement) shall be required to make or cause to be made payments in lieu of real estate taxes in the amounts and in the manner set forth in the Payment in Lieu of Tax Agreement.

(B) In the event that (1) the Project Facility would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, and (2) the Payment in Lieu of Tax Agreement shall not have been entered into by the Agency and the Company, or if entered into the Payment in Lieu of Tax Agreement shall for any reason no longer be in effect, the Agency and the Company hereby agree that the Company, or any subsequent user of the Project Facility under this Lease Agreement, shall in such event be required to make or cause to be made payments in lieu of taxes to the school district or school districts, city, town, county, village and other political units wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities") in such amounts as would result from taxes being levied on the Project Facility by the Taxing Entities if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, but with appropriate reductions similar to the tax exemptions and credits, if any, which would be afforded to the Company if it were the owner of the Project Facility. It is agreed that the Agency, in cooperation with the Company, (a) shall cause the Project Facility to be valued for purposes of determining the amounts due hereunder as if owned by the Company as aforesaid by the appropriate officer or officers of any of the Taxing Entities as may from time to time be charged with responsibility for making such valuations, (b) shall cause to be appropriately applied to the valuation or valuations so determined the respective tax rate or rates of the Taxing Entities that would be applicable to the Project Facility if so privately owned, (c) shall cause the appropriate officer or officers of the Taxing Entities charged with the duty of levying and collecting such taxes to submit to the Company, when the respective levies are made for purposes of such taxes upon Property privately owned as aforesaid,



statements specifying the amounts and due dates of such taxes which the Taxing Entities would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, and (d) shall file with the appropriate officer or officers any accounts or tax returns furnished to the Agency by the Company for the purpose of such filing.

(C) The Company shall pay or cause to be paid to the Taxing Entities when due all such payments in lieu of taxes with respect to the Project Facility required by Section 6.6(B) of this Lease Agreement to be paid to the Taxing Entities, subject in each case to the Company's right to (1) obtain exemptions and credits, if any, which would be afforded to a private owner of the Project Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Project Facility, (2) contest valuations of the Project Facility made for the purpose of determining such payments therefrom, and (3) seek to obtain a refund of any such payments made.

(D) Pursuant to Section 874(5) of the Act, if the Company shall fail to make or cause to be made any payments in lieu of taxes required under this Section 6.6, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company shall fail to make any payment required by this Section 6.6 when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) the Default Interest Rate, or (b) the same rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION. (A) If the Project Facility shall be damaged or destroyed, in whole or in part:

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

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

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) the amount necessary to prepay the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to prepay the Indebtedness in full.

(C) If all Indebtedness has been paid in full, all such Net Proceeds (or the balance thereof) shall be paid to the Company for its purposes.

(D) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3(A) hereof.

**SECTION 7.2. CONDEMNATION.** (A) To the knowledge of the Company, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:

- (1) the Agency shall have no obligation to restore the Project Facility;
- (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Project Facility is restored);
- (3) the Company shall promptly give notice thereof to the Agency; and
- (4) except as otherwise provided in subsection (C) of this Section 7.2, (a) the Company shall promptly restore the Project Facility (excluding any part of the Land or the Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any Condemnation award relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award, if any, remaining on deposit with the Agency after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) of this Section 7.2, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to prepay all of the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to prepay the

Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be prepaid in full.

(D) If all of the Indebtedness has been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(E) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(F) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company.

**SECTION 7.3. ADDITIONS TO THE PROJECT FACILITY.** All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Company's own money, shall automatically become part of the Project Facility as if the same were specifically described herein.

## ARTICLE VIII

### SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project 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 Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any of the Basic Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

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



(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Lease Agreement, its liabilities assumed pursuant to this Section 8.2.

(D) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

**SECTION 8.3. RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Project Facility. The Company further agrees that the Agency shall have such rights of access to the Project Facility as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder.

**SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS ARE PERMITTED.** The Company agrees that, during the term of this Lease Agreement, it will maintain its existence, will not dissolve or otherwise dispose of all or 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, without notice to the Agency and obtaining the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing, the Company may consolidate with or merge into another domestic entity organized and existing under the laws of one of the states of the United States, or permit one or more such domestic entities to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided that (A) the Agency has received notice of such action, (B) the Agency gives its written consent to the proposed transaction, which consent shall not be unreasonably withheld or delayed, (C) the surviving, resulting or transferee entity assumes in writing all of the obligations of and restrictions on the Company under this Lease Agreement and the other Basic Documents, and (D) as of the date of such transaction, the Agency shall be furnished with (1) an opinion of counsel to the Company as to compliance with item (C) of this Section 8.4 and (2) a certificate, dated the effective date of such transaction, signed by an Authorized Representative of the Company and an authorized officer of the surviving, resulting or transferee entity, as the case may be, or the transferee of its assets, as the case may be, to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under this Lease Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default.

**SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION.** The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

**SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.** (A) The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be

made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

(B) As soon as possible after the end of each fiscal year of the Company, but in any event within thirty (30) days after such date, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

**SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS.** (A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease Agreement, promptly comply with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents (other than the Company), servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES.** Other than the Permitted Encumbrances, the Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency (other than the Project Facility) or on any funds of the Agency applicable to the Project Facility.

**SECTION 8.9. PERFORMANCE OF THE COMPANY'S OBLIGATIONS.** Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith, and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

**SECTION 8.10. DEPRECIATION DEDUCTIONS AND TAX CREDITS.** The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.



**SECTION 8.11. EMPLOYMENT OPPORTUNITIES.** (A) The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Company agrees that except as otherwise provided by collective bargaining agreements where applicable, (1) to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division ("NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)) and (2), where practicable, to first consider for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Lease Agreement, an employment plan, in substantially the form attached hereto as Exhibit F.

(D) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, the initial said annual employment report to be in substantially the form annexed hereto as Exhibit G.

**SECTION 8.12. SALES AND USE TAX EXEMPTION.** (A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax. It is the intention of the parties hereto that the Company will receive a sales tax exemption with respect to the Project, said sales tax exemption letter to be issued on the date of the execution of this Lease Agreement and in a form similar to the form attached hereto as Exhibit H.

(B) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of this Lease Agreement. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (B), the Company shall

immediately cease to be the agent of the Agency in connection with the Project. A current sample form of such Annual Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit I. For future filings of the Annual Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Annual Sales Tax Report.

(C) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

(D) Pursuant to Section 874(9) of the Act, the Company agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit J. For future filings of the Thirty-Day Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Thirty-Day Sales Tax Report.

**SECTION 8.13. IDENTIFICATION OF THE EQUIPMENT.** All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## ARTICLE IX

### ASSIGNMENTS; MERGER OF THE AGENCY

SECTION 9.1. ASSIGNMENT OF THE LEASE AGREEMENT. Except as otherwise provided in Section 8.4 hereof, this Lease Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

SECTION 9.2. MERGER OF THE AGENCY. (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease Agreement shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company may reasonably request.

SECTION 9.3. SALE OR LEASE OF THE PROJECT FACILITY. (A) Except for subleases of portions of the Project Facility entered into by the Company in the ordinary course of business and in compliance with the terms of this Lease Agreement and the other Basic Documents and as otherwise provided herein, the Company may not sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed; provided, however, that the prior written consent of the Agency shall not be required when the Company proposes to sublease a portion of the Project Facility in the ordinary course of business and such sublease is consistent with Section 3.2 hereof and the provisions of Section 854(4) and Section 862(1) of the Act.

(B) Notwithstanding anything to the contrary contained in this Lease Agreement, in any instance after the Completion Date where the Company reasonably determines that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with similar items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Basic Documents. The Company shall pay all costs and expenses (including counsel fees) incurred in transferring title to and releasing from the Liens of the Basic Documents any item of Property removed pursuant to this Section 9.3.



## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Lease Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3 or Section 6.6 hereof, and the continuance thereof for a period of ten (10) days after written notice thereof is given by the Agency to the Company.

(2) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(3) The occurrence of an "Event of Default" under any other Basic Document.

(4) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(5) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(6) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (b) the failure by the Company within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days, (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment.

(7) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance.

(8) The removal of the Project Facility, or any portion thereof, outside Montgomery County, New York, without the prior written consent of the Agency, other than in connection with a removal under Section 9.3(B) hereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 4.1(H), 5.3, 6.2 and 6.6 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 3.3 and 8.2 hereof and to comply with the provisions of Sections 2.2(G), 6.6, 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

**SECTION 10.2. REMEDIES ON DEFAULT.** (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease Agreement or any of the other Basic Documents; or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease Agreement, sell the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, for such consideration as may be deemed appropriate in the circumstances, and hold the Company liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Company, holding the Company liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the lessee pursuant to such lease and the rental



payments and other amounts payable by the Company hereunder, cancel or modify leases, evict tenants, bring or defend any suits in connection with the possession of the Project Facility in its own name or in the Company's name, make repairs as the Agency deems appropriate, and perform such other acts in connection with the management and operation of the Project Facility as the Agency, in its discretion, may deem proper; or

(3) terminate this Lease Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the recording by the Agency of the Assignment to Company and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

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

(B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by this Lease Agreement and the other Basic Documents.

**SECTION 10.3. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

**SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI

### OPTIONS AND OBLIGATION TO PURCHASE

**SECTION 11.1. EARLY TERMINATION OF THE LEASE AGREEMENT.** The Company shall have the option to terminate this Lease Agreement prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1.

**SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE PROJECT FACILITY.** Contemporaneously with the termination of this Lease Agreement in accordance with Section 5.2 or Section 11.1 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to the Project Facility for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Lease Agreement and the other Basic Documents. The obligation of the Agency under this Section 11.2 to convey the Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under the Payment in Lieu of Tax Agreement or under any other Basic Document, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

**SECTION 11.3. CONVEYANCE ON PURCHASE OF THE PROJECT FACILITY.** (A) At the closing of any purchase of the Project Facility pursuant to Section 11.2 hereof, the Agency shall, upon the satisfaction of the conditions set forth in Section 11.1 and Section 11.2 hereof, as appropriate, deliver to the Company all necessary documents (1) to convey to the Company all the Agency's right, title and interest in and to the Property being purchased, as such property then exists, subject only to the following: (a) any Liens or title defects to which title to such Property was subject when conveyed to the Agency, (b) any Liens created at the request of the Company or to the creation of which the Company consented, (c) any Permitted Encumbrances, and (d) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default; and (2) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance settlements or Condemnation awards with respect to the Project Facility (but not including amounts relating to the Unassigned Rights).

(B) The sale and conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution and delivery by the Agency to the Company of the Assignment to Company (an unexecuted copy of which is attached hereto as Exhibit C and by this reference made a part hereof). The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit D and by this reference made a part hereof). The termination of this Lease Agreement shall be effected by the execution and delivery of the Company and the Agency of the Termination of Lease Agreement (an unexecuted copy of which is attached hereto as Exhibit E and by this reference made a part hereof). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfers of title.

(C) The Company agrees to prepare the Assignment to Company and/or the Bill of Sale to Company and/or the Termination of Lease Agreement and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Project Facility or any portion thereof is to be conveyed to the Company.

(D) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 11.3.

(E) This Lease Agreement shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.3 and shall remain in full force and effect until all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.8 hereof.

(F) Upon the payment in full of all Indebtedness under or secured by this Lease Agreement, and notwithstanding the survival of certain obligations of the Company as described in Section 12.8 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

ARTICLE XII  
MISCELLANEOUS

SECTION 12.1. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010  
Attention: Ramon Rodriguez

WITH A COPY TO:

Schwartz Law Firm  
191 Guy Park Avenue  
Amsterdam, New York 12010  
Attention: Charles R. Schwartz, Esq.

IF TO THE AGENCY:

Montgomery County Industrial Development Agency  
9 Park Street  
Fonda, New York 12068  
Attention: Chairman

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: Christopher M. Martell, Esq.

(C) The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 12.2. BINDING EFFECT. This Lease Agreement shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Lease Agreement, their respective successors and assigns.

**SECTION 12.3. SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease Agreement.

**SECTION 12.4. AMENDMENT.** This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

**SECTION 12.5. EXECUTION OF COUNTERPARTS.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 12.6. APPLICABLE LAW.** This Lease Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**SECTION 12.7. RECORDING AND FILING.** The Underlying Lease (or a memorandum thereof) and this Lease Agreement (or a memorandum hereof) shall be recorded by the Agency in the office of the County Clerk of Montgomery County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

**SECTION 12.8. SURVIVAL OF OBLIGATIONS.** (A) The obligations of the Company to make the payments required by Sections 5.3 and 6.6 hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Lease Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company to the Agency with respect to the Unassigned Rights shall survive the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees, relating thereto.

**SECTION 12.9. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.** The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

**SECTION 12.10. NO RECOURSE; SPECIAL OBLIGATION.** (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Montgomery County, New York, and neither the State of New York nor Montgomery County, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

**SECTION 12.11. SUBORDINATION TO A MORTGAGE.** This Lease Agreement and all rights of the Company and the Agency hereunder are and shall be subordinate to the Lien of any mortgage on the Project Facility. The subordination of this Lease Agreement to any mortgage shall be automatic, without the execution of any further subordination agreement by the Company or the Agency. Nonetheless, if a lender requires a further written subordination agreement, the Company and the Agency hereby agree to execute, acknowledge and deliver the same.



IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY


BY: Robert Hoef  
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY: Rama  
Authorized Member

STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

On the 17 day of June, in the year 2016, before me, the undersigned, personally appeared Robert Hoeffs, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02MAG162486  
Qualified in Saratoga County  
Commission Expires March 12, 20 19

STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

On the 11 day of June, in the year 2016, before me, the undersigned, personally appeared RAYMOND ROBINSON, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02MAG162486  
Qualified in Saratoga County  
Commission Expires March 12, 20 17

## EXHIBIT A

### DESCRIPTION OF THE LAND

#### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Haganan, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

#### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned reputedly by the Village of Haganan for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of

601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Haganan, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

#### **SCHEDULE A**

All of that tract or parcel of land situate in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York being more particularly described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Haganan S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed prior to the Completion Date (as defined in the hereinafter defined Lease Agreement) in connection with the acquisition, construction and installation of the Rama Real Properties LLC Project (the "Project") of Montgomery County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by Rama Real Properties LLC (the "Company") as agent of the Agency pursuant to a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

- (1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;
- (2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.



EXHIBIT C

FORM OF ASSIGNMENT TO COMPANY

THIS ASSIGNMENT TO COMPANY (the "Assignment to Company") dated as of \_\_\_\_\_, \_\_\_\_\_, by and between MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Agency"), and RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (the "Company").

In consideration of the sum of Ten Dollars (\$10.00), receipt and sufficiency of which is acknowledged, the Agency hereby sells, assigns and conveys to the Company all of the Agency's right, title and interest in and to a certain lease to agency dated as of June 1, 2016 (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, whereby the Company granted to the Agency a leasehold interest in the parcel of the land more particularly described in Exhibit A attached thereto (the "Land") and in and to all those buildings, improvements, structures and other related facilities affixed or attached to the Land now or in the future.

The Company hereby agrees to indemnify the Agency as to any claims that have arisen heretofore or shall arise hereafter under the Underlying Lease and this Assignment to Company.

IN WITNESS WHEREOF, the Agency and the Company, for the purposes above set forth, have caused this Assignment to Company to be executed and delivered by their duly authorized officers, all as of the day and year first above written.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY: \_\_\_\_\_  
Authorized Member

STATE OF            )  
                          Ss.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF            )  
                          Ss.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

EXHIBIT A  
DESCRIPTION OF THE LAND

EXHIBIT D

FORM OF BILL OF SALE TO COMPANY

MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located in the City of Amsterdam, Montgomery County, New York, which Land is more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below and dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

STATE OF            )  
                          Ss.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public



## EXHIBIT A

### DESCRIPTION OF THE LAND

#### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagsman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

#### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned reputedly by the Village of Hagsman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Haganan, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

#### **SCHEDULE A**

All of that tract or parcel of land situate in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York being more particularly described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Haganan S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed prior to the Completion Date (as defined in the hereinafter defined Lease Agreement) in connection with the acquisition, construction and installation of the Rama Real Properties LLC Project (the "Project") of Montgomery County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by Rama Real Properties LLC (the "Company") as agent of the Agency pursuant to a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

## EXHIBIT E

### FORM OF TERMINATION OF LEASE AGREEMENT

WHEREAS, Rama Real Properties LLC (the "Company"), as tenant, and Montgomery County Industrial Development Agency (the "Agency"), as landlord, entered into a lease agreement dated as of June 1, 2016 (the "Lease Agreement") pursuant to which, among other things, the Agency leased the Project (as defined in the Lease Agreement) to the Company; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency agreed that the Lease Agreement would terminate on the earlier to occur of (1) December 31, 2032 or (2) the date of the Lease Agreement shall be terminated pursuant to Article X or Article XI of the Lease Agreement; and

WHEREAS, the Company and the Agency now desires to evidence the termination of the Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.8 of the Lease Agreement, certain obligations of the Company shall survive the termination of the Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Section 12.8 of the Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of lease agreement and caused to be dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

RAMA REAL PROPERTIES LLC

BY: \_\_\_\_\_  
Authorized Member

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

STATE OF            )  
                          Ss.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF            )  
                          Ss.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public



EXHIBIT F  
INITIAL EMPLOYMENT PLAN

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

Please complete the following chart describing your projected employment plan following receipt of financial assistance (the "Financial Assistance") from Montgomery County Industrial Development Agency (the "Agency"):

Current and  
Planning Full Time  
Occupations in  
Company  
1 year

Current Number  
Full Time Jobs  
Per Occupation  
2 year

Estimated Number of  
Full Time Jobs After  
Completion of the  
Project  
3 year

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required.

Are the employees of your firm currently covered by a collective bargaining agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, Name and Local \_\_\_\_\_

In the event that this application for financing is accepted, we agree to schedule a meeting with \_\_\_\_\_ (insert name of Local New York State Job Service Superintendent) and \_\_\_\_\_ (insert name of representative of IDA's area under the Federal Job Training Partnership Act) prior to the closing of the financing for the purpose of supplying such information as may be requested in connection with this Employment Plan and to notify the regional office of the Department of Economic Development, in advance, of the time and place of such meeting.

Prepared by: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT G  
FORM OF ANNUAL EMPLOYMENT REPORT  
EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed<sup>1</sup></u>	<u>Number Filled</u>	<u>Job Service Division Applicants</u>	<u>Job Training Partnership Act eligible persons</u>
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<sup>1</sup>With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

## EXHIBIT H

### FORM OF SALES TAX EXEMPTION LETTER

#### MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

9 Park Street  
Fonda, New York 12068

June \_\_, 2016

To Whom It May Concern:

Re: New York State Sales or Use Tax Exemption  
Montgomery County Industrial Development Agency  
Rama Real Properties LLC Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), Rama Real Properties LLC (the "Company") has requested a letter from Montgomery County Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Project Site").

The Company has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency. Please be advised that on or about June \_\_, 2016, the Agency executed and delivered the Lease Agreement, pursuant to which the Agency appointed the Company as agent of the Agency to acquire, construct and install the Project Facility.

The Company, as agent of the Agency, is authorized to make purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project, and purchases or rentals of supplies, tools, equipment, or services necessary to acquire, construct, and install the Project.

To ensure that the above purchases or rentals are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, the vendor must identify the Project on each bill and invoice for such purchases and indicate on the bill or invoice that the

Company as agent for the Agency was the purchaser (e.g., "Rama Real Properties LLC, as agent for Montgomery County Industrial Development Agency"). In addition, the following procedures should be observed:

1. Each bill and invoice should identify the date of delivery and indicate the place of delivery.
2. Payment should be made by the Company acting as agent, directly to the vendor from either a requisition from a special project fund of the payor.
3. Deliveries should be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases should be billed or invoiced by the vendor to the Company as agent of the Agency, identify the date and place of delivery, the Agency's full name and address and the Project Site where the materials will ultimately be delivered for installation.

Pursuant to Section 874(8) of the Act, the Company, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

Pursuant to Section 874(9) of the Act, the Company, as agent of the Agency, must file within thirty (30) days of the date the Agency designates the Company as agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such manner as prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency.

This letter shall serve as proof of the existence of an agency contract between the Agency and the Company for the SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter received by any vendor or seller to the Company as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law Section 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect sales and use tax on purchases or rentals of such materials, supplies, tools, equipment, or services by the Agency through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL DECEMBER 31, 2017.

In the event you have any questions with respect to the above, please do not hesitate to call Kenneth F. Rose, Executive Director of the Agency, at 518-853-8334.

Very truly yours,

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chairman



CLOSING ITEM NO.: A-6

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MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

RAMA REAL PROPERTIES LLC

---

MEMORANDUM OF LEASE AGREEMENT

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DATED AS OF JUNE 1, 2016

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THIS DOCUMENT IS INTENDED TO CONSTITUTE A  
MEMORANDUM OF LEASE OF REAL ESTATE, AND IS INTENDED  
TO BE RECORDED IN LIEU OF SUCH LEASE, IN ACCORDANCE  
WITH THE PROVISIONS OF SECTION 294 OF THE NEW YORK  
REAL PROPERTY LAW.

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## MEMORANDUM OF LEASE AGREEMENT

The undersigned, MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Agency"), and RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 8 Brown Street,, Amsterdam, New York (the "Company"), have entered into a certain lease agreement dated as of June 1, 2016 (the "Lease Agreement").

The Lease Agreement covers a leasehold interest affecting the real property (the "Land") described on Exhibit A attached hereto and made a part hereof, certain improvements on the Land (the "Facility"), and the machinery, equipment and other personal property described on Exhibit B attached hereto and made a part hereof (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to in the Lease Agreement as the "Project Facility").

The Lease Agreement provides for the lease of the Project Facility by the Agency to the Company for a term commencing on the date of execution and delivery of the Lease Agreement and terminating on the earlier to occur of (A) December 31, 2028 or (B) the date that the Lease Agreement shall be terminated pursuant to Article X thereof (entitled "Events of Default and Remedies") or Article XI thereof (entitled "Options and Obligation to Purchase").

The Lease Agreement obligates the Company (A) to pay, on the date of execution and delivery of the Lease Agreement, a single lump sum basic rental payment equal to the Agency's administrative fee for the project which is the subject of the Lease Agreement (the "Project"), (B) throughout the term of the Lease Agreement, to provide indemnity to the Agency, (C) to make payments in lieu of taxes with respect to the Project Facility, and (D) to make certain other payments to the Agency.

Subject to the provisions of the Lease Agreement, the Lease Agreement (A) obligates the Company to assume full ownership and control of the Project Facility at the end of the lease term, or under certain circumstances upon the sooner termination of the Lease Agreement, and (B) grants to the Company the option, at any time the Company so elects, to purchase the Project Facility, or otherwise reassert full ownership and control, in each case for a purchase price equal to the sum of One Dollar (\$1.00) plus certain other amounts payable to the Agency pursuant to the Lease Agreement.

The Company, as tenant, is entitled to possession of the Project Facility from the date hereof. The Company, as tenant, has the right to enter into leases affecting all or a portion of the Project Facility as landlord, subject to the conditions set forth in the Lease Agreement.

The Lease Agreement is available for inspection during normal business hours at the office of the Agency, currently located as indicated above.

IN WITNESS WHEREOF, the Agency and the Company have caused this Memorandum of Lease Agreement to be executed in their respective names by their duly authorized officers and to be dated as of the 1st day of June, 2016.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

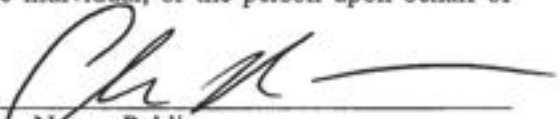
BY:   
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY:   
Authorized Member

STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

On the 12 day of June, in the year 2016, before me, the undersigned, personally appeared Robert Hoeffs, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

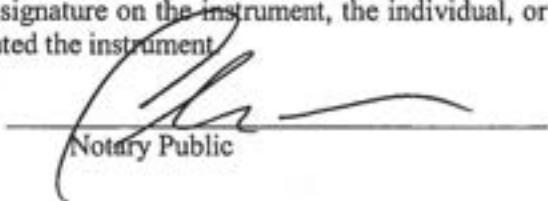
  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

)ss:

COUNTY OF MONTGOMERY )

On the 20 day of June, in the year 2016, before me, the undersigned, personally appeared RAMON RODRIGUEZ, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
Registration #02MA6162486  
Qualified in Saratoga County  
Commission Expires July 22, 2019

## EXHIBIT A

### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagsman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned reputedly by the Village of Hagsman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Haganan, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

#### **SCHEDULE A**

All of that tract or parcel of land situate in the Village of Haganan, Town of Amsterdam, County of Montgomery and State of New York being more particularly described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Haganan S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.



**MORTGAGE  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING**

**MADE BY**

**RAMA REAL PROPERTIES LLC and**

**MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY,**

**as Mortgagor**

**to**

**KEYBANK NATIONAL ASSOCIATION**

**as Mortgagee**

---

Dated as of: June 21, 2016

PREPARED BY AND UPON RECORDATION RETURN TO:

Nolan & Heller, LLP  
39 N. Pearl Street  
Albany, New York 12207  
Attention: John V. Hartzell, Esq.

**MORTGAGE  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of June 21, 2016, by **RAMA REAL PROPERTIES LLC**, a New York limited liability company ("Mortgagor"), whose address is 8 Brown Street, Amsterdam, New York 12010, and **MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation (the "Agency"), whose address is 9 Park Street, P.O. Box 1500, Fonda, New York 12068, in favor of **KEYBANK NATIONAL ASSOCIATION**, its successors and assigns ("Mortgagee"), with an office for the transaction of business located at 1196 Western Avenue, Albany, New York 12203.

**1. Grant and Secured Obligations.**

**1.1 Grant.** For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, each of Mortgagor and Agency hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, with power of sale and with right of entry and possession, all estate, right, title and interest which each of Mortgagor and Agency now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property") except any Unassigned Rights as defined in the Lease Agreement (as hereinafter defined):

(a) The real property located at 58 North Pawling Street (also known as 46 North Pawling Street) in the Town of Amsterdam, County of Montgomery, State of New York, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the "Premises"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage and any manufacturer's warranties with respect thereto; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All of Mortgagor's interest in and to all operating accounts, the Loan (defined below) funds, whether disbursed or not, and any other bank accounts of Mortgagor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally and any builder's or manufacturer's warranties with respect thereto; together with

(j) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All of Mortgagor's rights in and to all Interest Rate Agreements (defined below); together with

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(m) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

## 1.2 Secured Obligations.

(a) Mortgagor and Agency make the grant, conveyance, and mortgage set forth in Section 1.1 above, and grant the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under a promissory note (the "Note") bearing even date herewith, payable by Mortgagor as maker in the stated principal amount of **ONE HUNDRED SEVENTY-EIGHT THOUSAND SIX HUNDRED AND 00/100 DOLLARS (\$178,600.00)** to the order of Mortgagee (the "Loan"); and

(ii) Payment by Mortgagor and performance by Mortgagor and Agency of all obligations under this Mortgage; and

(iii) Payment and performance of all obligations of Mortgagor under a Loan Agreement bearing even date herewith between Mortgagor as "Borrower" and Mortgagee as "Lender" (the "Loan Agreement"); and

(iv) Payment and performance of any obligations of Mortgagor under any Loan Documents which are executed by Mortgagor. "Loan Documents" means the collective reference to this Mortgage and all other instruments, agreements and documents entered into from time to

time, evidencing or securing the Loan or any obligation of payment thereof or performance of Mortgagor's or any guarantor's obligations in connection with the transaction contemplated hereunder, each as amended; and

(v) Payment and performance of all obligations of Mortgagor arising from any Interest Rate Agreements. "Interest Rate Agreements" shall mean all agreements for any derivative or hedging product including, without limitation, interest rate or equity swaps, futures, options, caps, floors, collars or forwards now or hereafter entered into by Mortgagor with Mortgagee or any of its affiliates with respect to the Note; and

(vi) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and

(vii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## **2. Assignment of Rents**

2.1 Assignment. Each of Mortgagor and Agency hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.1 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2 above, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee and Mortgagor agree that the mere recordation of the assignment granted herein entitles Mortgagee immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 6.1, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Mortgagor or Agency, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Subsection 6.2(f). In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.5. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver

shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Leasing. Mortgagor shall comply with and observe Mortgagor's obligations as landlord or as tenant, as the case may be, under any leases of the Property or any part thereof. Mortgagor shall furnish Mortgagee with executed copies of the leases now existing or hereafter made of all or any part of the Property, and all future leases and all amendments or modifications thereto shall be subject to Mortgagee's prior written approval. Unless otherwise directed by Mortgagee, all leases of the Property made after the date hereof shall specifically provide that such leases are subordinate to this Mortgage; that the tenant attorns to Mortgagee, such attornment to be effective upon Mortgagee's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; and that the attornment of the tenant shall not be terminated by foreclosure. Mortgagor shall not, without Mortgagee's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease hereafter made of all or any part of the Property, permit an assignment or sublease of such a lease, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Mortgage, provided that such leases are on commercially reasonable terms. If Mortgagor becomes aware that any tenant proposes to do, or is doing, any act or thing that may give rise to any right to set-off against rent, Mortgagor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) notify Mortgagee thereof and of the amount of said set-offs, and (c) within twenty (20) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

### 3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, each of Mortgagor and Agency as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the state in which the Property is located, covering all such Property and Rents.

3.2 Financing Statements. Each of Mortgagor and Agency hereby authorizes Mortgagee to file one or more financing statements. In addition, each of Mortgagor and Agency shall execute such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.13 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor or Agency fails to execute any documents for the perfection or continuation of any security interest, each of Mortgagor and Agency hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.



4. Fixture Filing.

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the state in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of each of Mortgagor and Agency, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Mortgagor or Agency, as applicable, represents and warrants that:

(a) Mortgagor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

(b) Each of Agency and Mortgagor lawfully possesses and holds leasehold interest in all of the Premises and Improvements in accordance with the Lease Agreement (as hereinafter defined);

(c) Mortgagor has or will have good title to all Property;

(d) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(e) This Mortgage creates a first and prior lien on the Property;

(f) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(g) Mortgagor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(h) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

(i) Agency's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

5.2 Taxes and Assessments. Mortgagor shall pay all real estate taxes and assessments and charges of every kind upon the Property before the same become delinquent, provided, however, that Mortgagor shall have the right to pay such tax under protest or to otherwise contest any such tax or assessment, but only if (a) such contest has the effect of preventing the collection of such taxes so contested and also of preventing the sale or forfeiture of the Property or any part thereof or any interest therein, (b) Mortgagor has notified Mortgagee of Mortgagor's intent to contest such taxes, and (c) Mortgagor has deposited security in form and amount satisfactory to Mortgagee, in its sole discretion, and has increased the amount of such security so deposited promptly after Mortgagee's request therefor. If Mortgagor fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Mortgagee for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such tax, assessment or charge, Mortgagee may, at its election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Mortgagee shall be deemed to constitute disbursements of the Loan proceeds hereunder (even if the total amount of disbursements would exceed the face amount of the Note). Mortgagor shall furnish to Mortgagee evidence that taxes are paid at least five (5) days prior to the last date for payment of such taxes and before imposition of any penalty of accrual of interest.

5.3 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Funds for Taxes, Insurance and Other Charges. Mortgagee shall have the right to require Mortgagor to pay to Mortgagee on the first day of each month, until the Secured Obligations have been paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments that may be levied on the Property and (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance (if applicable) and such other insurance covering the Property as Mortgagee may require, all as reasonably estimated initially and from time to time by Mortgagee on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Mortgagee of a requirement that Mortgagor pay such Funds may be revoked by Mortgagee, in Mortgagee's sole discretion, at any time upon notice in writing to Mortgagor. Mortgagee may require Mortgagor to pay to Mortgagee, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Mortgagor or the Property that Mortgagee shall reasonably deem necessary to protect Mortgagee's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Mortgagee, at Mortgagee's option, may require Funds for Other Impositions to be paid by Mortgagor in a lump sum (not exceeding Other Impositions due for a one-year period) or in periodic installments.

The Funds shall be held by Mortgagee and shall be applied to pay such rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as no Event of Default has occurred. Mortgagee shall make no charge for so holding and applying the Funds, analyzing such account or for verifying and compiling said assessments and bills, unless Mortgagee pays Mortgagor interest, earnings or profits on the Funds and applicable law permits Mortgagee to make such a charge. Unless applicable law requires interest, earnings or profits on the Funds to be paid, Mortgagee shall not be required to pay Mortgagor any interest, earnings or profits on the Funds. Mortgagee shall give to Mortgagor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to such Funds was made. The Funds are pledged as additional security for the Secured Obligations and shall be subject to the right of set off.

If the amount of the Funds held by Mortgagee at the time of the annual accounting thereof shall exceed the amount deemed necessary by Mortgagee to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as such payments become due, Mortgagee (in its sole discretion) may either (i) return the amount of the excess to Mortgagor or (ii) apply a part or all of such excess at such time or times as it may elect to the Secured Obligations. If, at any time, the amount of the Funds held by Mortgagee shall be less than the amount deemed necessary by Mortgagee to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as such payments become due, Mortgagor shall, on demand, pay such deficiency. Upon the occurrence of an Event of Default, Mortgagee may apply, in any amount and in any order as Mortgagee shall determine in Mortgagee's sole discretion, any Funds held by Mortgagee at the time of application (A) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions that are now or shall hereafter become due; or (B) as a credit against sums secured by this Mortgage. Upon release of this Mortgage and payment in full of the Secured Obligations, Mortgagee shall promptly refund to Mortgagor any Funds held by Mortgagee.

5.5 Use of Property. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent. Mortgagor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime.

5.6 Lien, Charges and Encumbrances. Mortgagor shall pay all water and sewer rates, rents, taxes, assessments, premiums, charges and impositions, attributable to the Property. Mortgagor shall promptly discharge any lien that has, or may have, priority over or equality with, the lien of this Mortgage, other than Permitted Encumbrances.

If a mechanic's lien is filed against the Property, Mortgagor shall promptly notify Mortgagee and, at Mortgagee's request, shall, at Mortgagor's option, either (i) escrow with Mortgagee or, with the consent of Mortgagee, deposit in a court of competent jurisdiction a sum of money equal to the amount of the lien, or (ii) provide a bond against the lien in such amount and in such manner as to discharge the lien as an encumbrance against the Property. Without Mortgagee's prior written consent, Mortgagor shall not allow any lien, encumbrance, or other interest in the Property to be perfected against the Property, other than Permitted Encumbrances, unless Mortgagor is then diligently contesting same and has, as to the lien, encumbrance or interest being contested, complied with (i) or (ii) of the preceding sentence.



5.7 Insurance. Mortgagor shall keep all Improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies and in such amounts as Mortgagee may require from time to time with financially sound and reputable insurers, and Mortgagor will pay promptly when due any premiums on such insurance. All policies of insurance shall be delivered to and held by Mortgagee and have loss-payable clauses in favor of and in form acceptable to Mortgagee. Not less than fifteen (15) days before the expiration of any such policies, Mortgagor will deliver to Mortgagee new or renewal policies in like amounts covering the same risks. The policies shall provide that no cancellation shall occur without thirty (30) days prior written notice to Mortgagee. Should any loss occur to the insured property, Mortgagor will give immediate written notice to Mortgagee and will not adjust nor settle such loss without the written consent of Mortgagee, which may make proof of loss if not made promptly by Mortgagor. The insurance proceeds or any part thereof may be applied by Mortgagee, at Mortgagee's option, either to the reduction of the Secured Obligations or to restoration or repair of the property damaged. In the event of foreclosure of this Mortgage, all right, title, and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at foreclosure sale, and Mortgagee is hereby appointed attorney in fact for Mortgagor for the purpose of assigning and transferring such policies and receiving all or any part of the proceeds therefrom.

5.8 Condemnation. Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee.

With the consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, Mortgagor may apply such awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, to restoration or repair of the Property. Otherwise such sums so received shall be applied to payment of the Secured Obligations. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Mortgagee may reasonably require.

5.9 Preservation and Maintenance of Property. Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property; (b) shall not abandon the Property; (c) shall, unless Mortgagee withholds insurance proceeds as security for or application to the Secured Obligations, restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair unless the improvements constituting the Property are (i) totally destroyed, (ii) insurance has been maintained thereon as required by this Mortgage, and (iii) Mortgagee applies the proceeds of such insurance to payment of the Secured Obligations; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Mortgagor when necessary to keep such items in good repair; (e) shall comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, including, without limitation, the Americans with Disabilities Act, as it may be amended from time to time; and (f) shall give notice in writing to Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Mortgage or the rights or powers of Mortgagee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Mortgagee. Unless required by applicable law or unless Mortgagee has otherwise consented in writing, neither Mortgagor nor any tenant or other Person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture (other than trade fixtures), equipment, machinery or appliance in or on the Property owned by Mortgagor and used or intended to be used in connection with the Property.

5.10 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

- (a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property; or

(g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or

(h) Release the Property or any part of it.

**5.11 Protection of Mortgagee's Security.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Mortgagee therein, including, but not limited to, eminent domain, insolvency, enforcement of local laws, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee, at Mortgagee's option, may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interests, including, but not limited to, (a) disbursement of attorneys' fees; (b) entry upon the Property to remedy any failure of Mortgagor to perform hereunder; and (c) procurement of satisfactory insurance.

Any amounts disbursed by Mortgagee pursuant to this Section 5.11, with interest thereon, shall become part of the Secured Obligations and shall be secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate as defined in the Note. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Secured Obligations. Nothing contained in this Section 5.11 shall require Mortgagee to incur any expense or take any action hereunder.

The procurement of insurance of the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of the right of Mortgagee to accelerate the maturity of any of the Secured Obligations secured by this Mortgage. Mortgagee's receipt of any awards, proceeds or damages under the insurance or condemnation provisions of this Mortgage shall not operate to cure or waive any default in payment of sums secured by this Mortgage.

**5.12 Release.** When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under this Mortgage and the other Loan Documents have been received, Mortgagee shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of preparation and recordation of such release.

**5.13 Compensation, Exculpation, Indemnification.**

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.12 above. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.2, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.2(k) below) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Mortgagee in each of such

Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this Subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Mortgage, including the fees of any attorney (including the costs and fees of paralegals) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.13 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

#### 5.14 Hazardous Waste Covenants and Indemnification.

(a) Mortgagor covenants and warrants that Mortgagor's use of the Property shall at all times comply with and conform in all material respects to all laws, statutes, ordinances, rules and regulations of any governmental, quasi-governmental or regulatory authority now or hereafter in effect ("Laws") which relate to the transportation, storage, placement, handling, treatment, discharge, release, generation, production or disposal (collectively "Treatment") of any waste, waste products, petroleum or petroleum based products, radioactive materials, poly-chlorinated biphenyls, asbestos, hazardous materials or substances of any kind, pollutants, contaminants and any substance which is regulated by any law, statute, ordinance, rule or regulation (collectively "Waste"). Mortgagor further covenants that it shall not engage in or permit any Person to engage in any Treatment of any Waste on or that affects the Property except for activities which comply with all Laws in all material respects. "Person" means any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, institution, trust, estate, government or other agency or political subdivision thereof or any other entity.

(b) Except as specifically disclosed to Mortgagee in writing, Mortgagor has no actual knowledge that the Property is the subject of any Notice, as hereinafter defined, from any governmental authority or Person.

(c) Promptly upon receipt of any Notice from any Person, Mortgagor shall deliver to Mortgagee a true, correct and complete copy of any written Notice or a true, correct and complete report of any non-written Notice. Additionally, Mortgagor shall notify Mortgagee immediately after having knowledge or Notice of any Waste in or affecting the Property. "Notice" shall mean any note, notice, information, or report of any of the following:

(i) any suit, proceeding, investigation, order, consent order, injunction, writ, award or action related to or affecting or indicating the Treatment of any Waste in or affecting the Property;

(ii) any spill, contamination, discharge, leakage, release, threatened release, or escape of any Waste in or affecting the Property, whether sudden or gradual, accidental or anticipated, or of any other nature ("Spill");

(iii) any dispute relating to Mortgagor's or any other Person's Treatment of any Waste or any Spill in or affecting the Property;

(iv) any claims by or against any insurer related to or arising out of any Waste or Spill in or affecting the Property;

(v) any recommendations or requirements of any governmental or regulatory authority, insurer or board of underwriters relating to any Treatment of Waste or a Spill in or affecting the Property;

(vi) any legal requirement or deficiency related to the Treatment of Waste or any Spill in or affecting the Property; or

(vii) any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property or any part thereof which has engaged in or engages in the Treatment of any Waste in or affecting the Property in violation of applicable Laws.

(d) In the event that (i) Mortgagor has caused, suffered or permitted, directly or indirectly, any Spill in or affecting the Property during the term of this Mortgage, or (ii) any Spill of any Waste has occurred on the Property during the term of this Mortgage, then Mortgagor shall immediately take all of the following actions:

(A) notify Mortgagee, as provided herein;



(B) take all steps necessary or appropriate to clean up such Spill and any contamination related to the Spill, all in accordance with the requirements, rules or regulations of any local, state or federal governmental or regulatory authority or agency having jurisdiction over the Spill; provided that Mortgagor may contest any such requirement, rule or regulation by appropriate proceedings diligently and in good faith, so long as (1) Mortgagor provides Mortgagee, at Mortgagor's cost, such sureties, performance bonds and other assurances as Mortgagee may from time to time request in respect of such Spill and contamination and the cleanup thereof, (2) any governmental or other action against Mortgagor and the Property is effectively stayed during Mortgagor's efforts so to contest, and (3) in Mortgagee's determination, a delay in such clean-up will not result in or increase any loss or liability to Mortgagee;

(C) restore the Property, provided that such restoration shall be no less than, but need not be more than, what is otherwise required by applicable federal, state or local law or authorities;

(D) allow any local, state or federal governmental or regulatory authority or agency having jurisdiction thereof to monitor and inspect all cleanup and restoration related to such Spill; and

(E) at the written request of Mortgagee, post a bond or obtain a letter of credit for the benefit of Mortgagee (drawn upon a company or bank satisfactory to Mortgagee) or deposit an amount of money in an escrow account under Mortgagee's name upon which bond, letter of credit or escrow Mortgagor may draw, and which bond, letter of credit or escrow shall be in an amount sufficient to meet all of Mortgagor's obligations under this Section 5.14; and Mortgagee shall have the unfettered right to draw against the bond, letter of credit or escrow in its discretion in the event that Mortgagor is unable or unwilling to meet its obligation under this Section 5.14 or, if Mortgagor fails to post a bond or obtain a letter of credit or deposit such cash as is required herein, then Mortgagee, at Mortgagor's cost and expense, may, but shall have no obligation to do so for the benefit of Mortgagor and do those things that Mortgagor is required to do under clauses (B), (C) and (D) of this subsection (d).

(e) Mortgagor hereby agrees that it shall indemnify, defend, save and hold harmless Mortgagee and Mortgagee's officers, directors employees, agents, successors, assigns and affiliates (collectively, "Indemnified Parties") against and from, and to reimburse the Indemnified Parties with respect to, any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys', engineers' and consultants' fees and expenses, court costs, administrative costs, costs of appeals and all clean up, administrative, fines, penalties and enforcement costs of applicable governmental agencies) that are incurred by or asserted against the Indemnified Parties by reason or arising out of: (i) the breach of any representation, warranty or undertaking of Mortgagor under this Section 5.14, or (ii) the Treatment of any Waste by Mortgagor or any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property, in or affecting the Property, or (iii) any Spill governed by the terms of this Section 5.14.

(f) The obligations of Mortgagor under this Section 5.14 shall survive any termination or satisfaction of this Mortgage.

**5.15 Defense and Notice of Claims and Actions.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

**5.16 Subrogation.** Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

**5.17 Site Visits, Observation and Testing.** Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the

Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Waste is or is not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Waste or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Waste or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section 5.17. Mortgagor shall bear all expense of any site visit, observation or testing.

5.18 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name, business structure and/or state of organization. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

5.19 Transfers. Mortgagor shall not (a) voluntarily or involuntarily sell, lease, exchange, assign, convey, transfer or otherwise dispose of all or any portion of the Property (or any interest therein, legal or equitable), or all or any of the ownership interest in Mortgagor, or (b) convey to any Person, other than Mortgagee, a security interest in the Property or any part thereof or voluntarily or involuntarily permit or suffer the Property to be further encumbered.

## **6. Default and Remedies.**

6.1 Events of Default. Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default," any one singly, an "Event of Default").

(a) If (i) the interest on any Note or any commitment or other fee shall not be paid in full punctually when due and payable or within three days thereafter, or (ii) the principal of any Note shall not be paid in full punctually when due and payable.

(b) If Mortgagor or Agency fails to perform or observe any covenant or agreement contained in this Mortgage or in any other of the Loan Documents, and such failure remains unremedied for thirty (30) days after the Mortgagee gives notice thereof to Mortgagor or Agency, as applicable.

(c) If any representation, warranty or statement made in or pursuant to this Mortgage or any Loan Document or any other material information furnished by Mortgagor to Mortgagee or any other holder of any Note, shall be false or erroneous.

(d) If any event of default or default shall occur under any other Loan Document, or if under any Loan Document in which payment is required to be made by Mortgagor or any guarantor on demand of Mortgagee, such demand for payment is made.

(e) If Mortgagor shall default in the payment of principal or interest due and owing upon any other obligation for borrowed money, beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of such indebtedness or to permit the holder thereof to cause such Indebtedness to become due prior to its stated maturity.

(f) If Mortgagor shall abandon any of the Property or shall sell, lease, convey or transfer (or contract to sell, lease, convey or transfer) all or any part of the Property without first obtaining Mortgagee's written consent.

(g) If Mortgagor shall assign any part of the rents or profits of the Property other than to Mortgagee without first obtaining Mortgagee's written consent or, by the cancellation, surrender or modification of any existing lease (or in any other manner) the security for the payment of the Secured Obligations shall be in any manner impaired.

(h) If Mortgagor shall default in the payment of any amount due and owing under the Lease Agreement (as hereinafter defined), beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in the Lease Agreement.

6.2 Remedies. At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Declare all of the Secured Obligations to be immediately due and payable, whereupon all unpaid principal, interest and fees in respect of such Obligations, together with all of Mortgagee's costs, expenses and attorneys' fees related thereto, under the terms of the Loan Documents or otherwise, shall be immediately due and payable;

(b) Terminate any commitment to make any additional advances under any Loan;

(c) Exercise any and all rights and remedies available to Mortgagee under any applicable law;

(d) Exercise any and all rights and remedies granted to Mortgagee under the terms of this Mortgage and any of the other Loan Documents;

(e) Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (g) below.

(f) Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Mortgagee at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(g) Mortgagee may cure any breach or default of Mortgagor or Agency, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in



Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Subsection 6.2(g) either with or without giving notice to any person. Any amounts expended by Mortgagee under this Subsection 6.2(g) shall be secured by this Mortgage.

(h) Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Subsection 6.2(a), upon, or at any time after the filing of a complaint to foreclose this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment.

(i) Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(j) Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the state in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, each of Mortgagor and Agency agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor and Agency not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(k) If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or

in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.3 Credit Bids. At any Foreclosure Sale, any person, including Mortgagor, Agency or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.13 of this Mortgage; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

6.4 Application of Foreclosure Sale Proceeds. Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.13 of this Mortgage;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.5 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.2 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

## 7. Miscellaneous Provisions.

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

## 7.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor or Agency. Consent by Mortgagee to any act or omission by Mortgagor or Agency shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.2 (f).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.5 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee hereunder.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.17 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

## 7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.10 or Subsection 6.2(d) of this Mortgage, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.2(e) and/or 6.2(f) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

7.6 Applicable Law. The creation, perfection and enforcement of the lien of this Mortgage shall be governed by the law of the state in which the property is located. Subject to the foregoing, in all other respects, this Mortgage shall be governed by the substantive laws of the State of New York.

7.7 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.7 does not waive the provisions of Section 5.19 above.

7.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.9 Waiver of Statutory Rights.

(a) To the extent permitted by law, each of Mortgagor and Agency hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Each of Mortgagor and Agency for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Each of Mortgagor and Agency hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of itself and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

(b) Each of Mortgagor and Agency further agrees that, in the event Mortgagee commences and prosecutes a foreclosure action respecting the Property or this Mortgage, or engages in the enforcement of any or all of Mortgagee's other rights, recourses and remedies against Mortgagor or Agency under the Note, this Mortgage, any of the other Loan Documents, at law and in equity, then neither Mortgagor nor Agency shall, and each of Mortgagor and Agency waives the right to, interpose any Answer or assert any defense, setoff or counterclaim whatsoever to or otherwise contest any such foreclosure action or any such other action.

7.10 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.11 Notices. All notices, requests, demands or other communications provided for hereunder shall be in writing and mailed or delivered to any party hereto at the address of such party specified below. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or

made when delivered or forty-eight (48) hours after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile with telephonic confirmation of receipt, except that notices from Mortgagor or Agency to Mortgagee pursuant to any of the provisions hereof shall not be effective until received by Mortgagee.

Mortgagor: Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010  
Attention: Ramon Rodriguez, Member  
Telephone: (518) 842-5626

With a copy to: Schwartz Law Firm  
191 Guy Park Ave # 2  
Amsterdam, New York 12010  
Attention: Charles R. Schwartz, Esq.  
Telephone: (518) 770-1588

Agency: Montgomery County Industrial Development Agency  
9 Park Street, P.O. Box 1500  
Fonda, New York 12068  
Attention: Kenneth F. Rose, Chief Executive Officer  
Telephone: (518) 853-8334

Mortgagee: KeyBank National Association  
1196 Western Avenue  
Albany, New York 12203  
Attention: April J. Volk, Vice President  
Telephone: (518) 292-4426  
Facsimile: (518) 370-9269

With a copy to: Nolan & Heller, LLP  
39 N. Pearl Street  
Albany, New York 12207  
Attention: John V. Hartzell, Esq.  
Telephone: (518) 449-3300  
Facsimile: (518) 432-3123

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Any notice or demand delivered to the person or entity named above to accept notices and demands for Mortgagor or Agency shall constitute notice or demand duly delivered to Mortgagor or Agency, even if delivery is refused.

7.12 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Bank may, but shall not be obligated to, make under this Mortgage, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed **ONE HUNDRED SEVENTY-EIGHT THOUSAND SIX HUNDRED DOLLARS (\$178,600.00)**, plus interest thereon, and any disbursements made for the enforcement of this Mortgage and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Mortgagee pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

7.13 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee not to exceed the maximum amount secured hereby. For purposes hereof, all obligations of



Mortgagor to Mortgagee under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Mortgagor secured hereby.

7.14 WAIVER OF TRIAL BY JURY. MORTGAGOR, AGENCY AND MORTGAGEE EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG MORTGAGEE, AGENCY AND MORTGAGOR ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED THERETO.

7.15 UCC Financing Statements. Each of Mortgagor and Agency hereby authorizes Mortgagee to file UCC financing statements to perfect Mortgagee's security interest in any part of the Property. In addition, each of Mortgagor and Agency agrees to sign any and all other documents that Mortgagee deems necessary in its sole discretion to perfect, protect, and continue Mortgagee's lien and security interest on the Property.

7.16 Certain Matters Relating to Property Located in the State of New York. With respect to the Property which is located in the State of New York, notwithstanding anything contained herein to the contrary:

(a) Payment of Mortgage Taxes. Mortgagor shall pay all taxes imposed pursuant to Article 11 of the Tax Law or any other statute, order or regulation, whether said tax is imposed at the time of recording or subsequent thereto. This obligation shall survive the satisfaction or other termination of this Mortgage. Mortgagee shall pay the tax imposed by Section 253 2-a(a), if applicable, if the Property consists of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential units, each dwelling unit having its own separate cooking facilities.

(b) Real Property Law. All covenants hereof, which are in addition to those set forth in Sections 254 and 291-f of the Real Property Law, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of said Sections 254 and 291-f.

(c) Lien Law. Mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

(d) Tax Law Section 253 Statement. Check one box only.

☐ This Mortgage covers real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.

☒ This Mortgage does not cover real property improved as described above.

(e) Costs, Expenses and Attorneys' Fees. If Mortgagor fails to pay in full, immediately upon Mortgagee's demand, all principal, interest and other sums owing under the Note, and should an action be commenced for the foreclosure of this Mortgage, Mortgagee shall be entitled to recover all sums due hereunder, statutory costs, and any additional allowances made pursuant to Section 8303(a) of the Civil Practice Law and Rules of the State of New York, and in addition thereto, reasonable attorneys' fees in such proceeding and in all proceedings related thereto necessary to and related to the foreclosure proceeding, and such amount shall be added to the principal balance and interest then due and shall be a lien on the Property prior to any right or title to, interest in or claim upon the Property attaching and accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and the indebtedness which it secures.

7.17 Agency Provisions.

(a) This Mortgage is executed by the Agency solely for the purpose of subjecting its interest in the Premises to the lien of this Mortgage and for no other purpose. All representations, covenants, and warranties of the Mortgagor herein are hereby deemed to have been made by Mortgagor, and not by the Agency. The parties hereby



expressly agree that the term "Mortgagor" as such term is used in this Mortgage, shall not be defined to include the Agency.

(b) The obligations and agreements of the Agency contained herein and any other instrument or documents executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Mortgagor) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Mortgagor) and employees of the Agency, shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(c) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Montgomery County, New York and neither the State of New York nor Montgomery County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility, as such term is defined in the lease agreement between the Mortgagor and the Agency, dated as of June 1, 2016 (the "Lease Agreement") (except for revenues derived by the Agency with respect to the Unassigned Rights, as such term is defined in the Lease Agreement).

(d) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount of undertaking sufficient to cover such reasonable fees and expenses and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Mortgagor) or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Mortgagor) and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Mortgagor) and employees against all liability expected to be incurred as a result of compliance with such request.

(e) The Agency will not record or cause this Mortgage to be recorded in any offices where recordation hereof is necessary and will not pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Mortgage.

(f) Notwithstanding anything to the contrary stated in this document, the Agency specifically intends to except, and hereby excepts, from any and all property which the Agency agrees to mortgage, pledge, assign, grant a lien on, or otherwise convey pursuant to this document the "Unassigned Rights" as such term is defined in the Lease Agreement.

7.18 Priority of Mortgage. Mortgagee acknowledges and agrees that, regardless of the order of their recording, this Mortgage is and shall continue to be coordinate and co-equal in lien with the lien of that certain Second Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith made by the Mortgagor and the Agency in favor of Mortgagee, intended to be recorded in the Montgomery County Clerk's Office, and to all advances heretofore made or which hereafter may be made thereon.

[Signature Page Follows]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

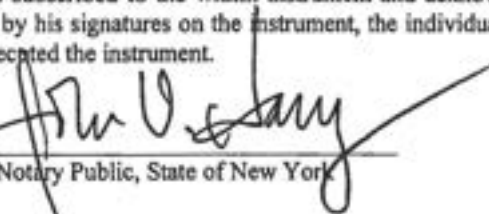
Mortgagor:

**RAMA REAL PROPERTIES LLC**

By:   
Ramon Rodriguez, Member


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

On the 20th day of June, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Ramon Rodriguez, 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 capacities, and that by his signatures on the instrument, the individuals, entities or persons upon behalf of which the individual acted, executed the instrument.

  
Notary Public, State of New York

Agency:

**MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Robert Hoefs, Chairman

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

On the 17th day of June, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Hoefs, 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 capacities, and that by his signatures on the instrument, the individuals, entities or persons upon behalf of which the individual acted, executed the instrument.

  
Notary Public, State of New York

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02MAG162486  
Qualified in Saratoga County  
Commission Expires March 12, 20 17

## EXHIBIT A

### *Description of Premises*

#### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagaman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

#### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned, reputedly by the Village of Hagaman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Hagaman, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

All of that tract or parcel of land situate in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York being more particularly-described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Hagsman S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

**SECOND MORTGAGE  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING**

**MADE BY**

**RAMA REAL PROPERTIES LLC and**

**MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY,  
as Mortgagor**

**to**

**KEYBANK NATIONAL ASSOCIATION**

**as Mortgagee**

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Dated as of: June 21, 2016

**PREPARED BY AND UPON RECORDATION RETURN TO:**

Nolan & Heller, LLP  
39 N. Pearl Street  
Albany, New York 12207  
Attention: John V. Hartzell, Esq.

**SECOND MORTGAGE  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING**

THIS SECOND MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of June 21, 2016, by **RAMA REAL PROPERTIES LLC**, a New York limited liability company ("Mortgagor"), whose address is 8 Brown Street, Amsterdam, New York 12010, and **MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation (the "Agency"), whose address is 9 Park Street, P.O. Box 1500, Fonda, New York 12068, in favor of **KEYBANK NATIONAL ASSOCIATION**, its successors and assigns ("Mortgagee"), with an office for the transaction of business located at 1196 Western Avenue, Albany, New York 12203.

**1. Grant and Secured Obligations.**

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, each of Mortgagor and Agency hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, with power of sale and with right of entry and possession, all estate, right, title and interest which each of Mortgagor and Agency now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property") except any Unassigned Rights as defined in the Lease Agreement (as hereinafter defined):

(a) The real property located at 58 North Pawling Street (also known as 46 North Pawling Street) in the Town of Amsterdam, County of Montgomery, State of New York, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the "Premises"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage and any manufacturer's warranties with respect thereto; together with



(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All of Mortgagor's interest in and to all operating accounts, the Loan (defined below) funds, whether disbursed or not, and any other bank accounts of Mortgagor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally and any builder's or manufacturer's warranties with respect thereto; together with

(j) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All of Mortgagor's rights in and to all Interest Rate Agreements (defined below); together with

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(m) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

## 1.2 Secured Obligations.

(a) Mortgagor and Agency make the grant, conveyance, and mortgage set forth in Section 1.1 above, and grant the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under a promissory note (the "Note") bearing even date herewith, payable by Mortgagor as maker in the stated principal amount of **TWO HUNDRED EIGHTY-FOUR THOUSAND AND 00/100 DOLLARS (\$284,000.00)** to the order of Mortgagee (the "Loan"); and

(ii) Payment by Mortgagor and performance by Mortgagor and Agency of all obligations under this Mortgage; and

(iii) Payment and performance of all obligations of Mortgagor under a Loan Agreement bearing even date herewith between Mortgagor as "Borrower" and Mortgagee as "Lender" (the "Loan Agreement"); and

(iv) Payment and performance of any obligations of Mortgagor under any Loan Documents which are executed by Mortgagor. "Loan Documents" means the collective reference to this Mortgage and all other instruments, agreements and documents entered into from time to

time, evidencing or securing the Loan or any obligation of payment thereof or performance of Mortgagor's or any guarantor's obligations in connection with the transaction contemplated hereunder, each as amended; and

(v) Payment and performance of all obligations of Mortgagor arising from any Interest Rate Agreements. "Interest Rate Agreements" shall mean all agreements for any derivative or hedging product including, without limitation, interest rate or equity swaps, futures, options, caps, floors, collars or forwards now or hereafter entered into by Mortgagor with Mortgagee or any of its affiliates with respect to the Note; and

(vi) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and

(vii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## **2. Assignment of Rents.**

2.1 Assignment. Each of Mortgagor and Agency hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.1 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2 above, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee and Mortgagor agree that the mere recordation of the assignment granted herein entitles Mortgagee immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 6.1, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Mortgagor or Agency, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Subsection 6.2(f). In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.5. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver

shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

**2.4 Mortgagee Not Responsible.** Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

**2.5 Leasing.** Mortgagor shall comply with and observe Mortgagor's obligations as landlord or as tenant, as the case may be, under any leases of the Property or any part thereof. Mortgagor shall furnish Mortgagee with executed copies of the leases now existing or hereafter made of all or any part of the Property, and all future leases and all amendments or modifications thereto shall be subject to Mortgagee's prior written approval. Unless otherwise directed by Mortgagee, all leases of the Property made after the date hereof shall specifically provide that such leases are subordinate to this Mortgage; that the tenant attorns to Mortgagee, such attornment to be effective upon Mortgagee's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; and that the attornment of the tenant shall not be terminated by foreclosure. Mortgagor shall not, without Mortgagee's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease hereafter made of all or any part of the Property, permit an assignment or sublease of such a lease, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Mortgage, provided that such leases are on commercially reasonable terms. If Mortgagor becomes aware that any tenant proposes to do, or is doing, any act or thing that may give rise to any right to set-off against rent, Mortgagor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) notify Mortgagee thereof and of the amount of said set-offs, and (c) within twenty (20) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

### **3. Grant of Security Interest.**

**3.1 Security Agreement.** The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, each of Mortgagor and Agency as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the state in which the Property is located, covering all such Property and Rents.

**3.2 Financing Statements.** Each of Mortgagor and Agency hereby authorizes Mortgagee to file one or more financing statements. In addition, each of Mortgagor and Agency shall execute such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.13 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor or Agency fails to execute any documents for the perfection or continuation of any security interest, each of Mortgagor and Agency hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

4. **Fixture Filing.**

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the state in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of each of Mortgagor and Agency, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage.

5. **Rights and Duties of the Parties.**

5.1 **Representations and Warranties.** Mortgagor or Agency, as applicable, represents and warrants that:

(a) Mortgagor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

(b) Each of Agency and Mortgagor lawfully possesses and holds leasehold interest in all of the Premises and Improvements in accordance with the Lease Agreement (as hereinafter defined);

(c) Mortgagor has or will have good title to all Property;

(d) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(e) This Mortgage creates a first and prior lien on the Property, subject only to liens in favor of the Mortgagee;

(f) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(g) Mortgagor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(h) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

(i) Agency's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

5.2 **Taxes and Assessments.** Mortgagor shall pay all real estate taxes and assessments and charges of every kind upon the Property before the same become delinquent, provided, however, that Mortgagor shall have the right to pay such tax under protest or to otherwise contest any such tax or assessment, but only if (a) such contest has the effect of preventing the collection of such taxes so contested and also of preventing the sale or forfeiture of the Property or any part thereof or any interest therein, (b) Mortgagor has notified Mortgagee of Mortgagor's intent to contest such taxes, and (c) Mortgagor has deposited security in form and amount satisfactory to Mortgagee, in its sole discretion, and has increased the amount of such security so deposited promptly after Mortgagee's request therefor. If Mortgagor fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Mortgagee for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such tax, assessment or charge, Mortgagee may, at its election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Mortgagee shall be deemed to constitute disbursements of the Loan proceeds hereunder (even if the total amount of disbursements would exceed the face amount of the Note). Mortgagor shall furnish to Mortgagee evidence that taxes are paid at least five (5) days prior to the last date for payment of such taxes and before imposition of any penalty of accrual of interest.



**5.3 Performance of Secured Obligations.** Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

**5.4 Funds for Taxes, Insurance and Other Charges.** Mortgagee shall have the right to require Mortgagor to pay to Mortgagee on the first day of each month, until the Secured Obligations have been paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments that may be levied on the Property and (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance (if applicable) and such other insurance covering the Property as Mortgagee may require, all as reasonably estimated initially and from time to time by Mortgagee on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Mortgagee of a requirement that Mortgagor pay such Funds may be revoked by Mortgagee, in Mortgagee's sole discretion, at any time upon notice in writing to Mortgagor. Mortgagee may require Mortgagor to pay to Mortgagee, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Mortgagor or the Property that Mortgagee shall reasonably deem necessary to protect Mortgagee's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Mortgagee, at Mortgagee's option, may require Funds for Other Impositions to be paid by Mortgagor in a lump sum (not exceeding Other Impositions due for a one-year period) or in periodic installments.

The Funds shall be held by Mortgagee and shall be applied to pay such rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as no Event of Default has occurred. Mortgagee shall make no charge for so holding and applying the Funds, analyzing such account or for verifying and compiling said assessments and bills, unless Mortgagee pays Mortgagor interest, earnings or profits on the Funds and applicable law permits Mortgagee to make such a charge. Unless applicable law requires interest, earnings or profits on the Funds to be paid, Mortgagee shall not be required to pay Mortgagor any interest, earnings or profits on the Funds. Mortgagee shall give to Mortgagor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to such Funds was made. The Funds are pledged as additional security for the Secured Obligations and shall be subject to the right of set off.

If the amount of the Funds held by Mortgagee at the time of the annual accounting thereof shall exceed the amount deemed necessary by Mortgagee to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as such payments become due, Mortgagee (in its sole discretion) may either (i) return the amount of the excess to Mortgagor or (ii) apply a part or all of such excess at such time or times as it may elect to the Secured Obligations. If, at any time, the amount of the Funds held by Mortgagee shall be less than the amount deemed necessary by Mortgagee to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as such payments become due, Mortgagor shall, on demand, pay such deficiency. Upon the occurrence of an Event of Default, Mortgagee may apply, in any amount and in any order as Mortgagee shall determine in Mortgagee's sole discretion, any Funds held by Mortgagee at the time of application (A) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions that are now or shall hereafter become due; or (B) as a credit against sums secured by this Mortgage. Upon release of this Mortgage and payment in full of the Secured Obligations, Mortgagee shall promptly refund to Mortgagor any Funds held by Mortgagee.

**5.5 Use of Property.** Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent. Mortgagor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime.

**5.6 Liens, Charges and Encumbrances.** Mortgagor shall pay all water and sewer rates, rents, taxes, assessments, premiums, charges and impositions, attributable to the Property. Mortgagor shall promptly discharge any lien that has, or may have, priority over or equality with, the lien of this Mortgage, other than Permitted Encumbrances.

If a mechanic's lien is filed against the Property, Mortgagor shall promptly notify Mortgagee and, at Mortgagee's request, shall, at Mortgagor's option, either (i) escrow with Mortgagee or, with the consent of Mortgagee, deposit in a court of competent jurisdiction a sum of money equal to the amount of the lien, or (ii) provide a bond against the lien in such amount and in such manner as to discharge the lien as an encumbrance against the Property. Without Mortgagee's prior written consent, Mortgagor shall not allow any lien, encumbrance, or other interest in the Property to be perfected against the Property, other than Permitted Encumbrances, unless

Mortgagor is then diligently contesting same and has, as to the lien, encumbrance or interest being contested, complied with (i) or (ii) of the preceding sentence.

**5.7 Insurance.** Mortgagor shall keep all Improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies and in such amounts as Mortgagee may require from time to time with financially sound and reputable insurers, and Mortgagor will pay promptly when due any premiums on such insurance. All policies of insurance shall be delivered to and held by Mortgagee and have loss-payable clauses in favor of and in form acceptable to Mortgagee. Not less than fifteen (15) days before the expiration of any such policies, Mortgagor will deliver to Mortgagee new or renewal policies in like amounts covering the same risks. The policies shall provide that no cancellation shall occur without thirty (30) days prior written notice to Mortgagee. Should any loss occur to the insured property, Mortgagor will give immediate written notice to Mortgagee and will not adjust nor settle such loss without the written consent of Mortgagee, which may make proof of loss if not made promptly by Mortgagor. The insurance proceeds or any part thereof may be applied by Mortgagee, at Mortgagee's option, either to the reduction of the Secured Obligations or to restoration or repair of the property damaged. In the event of foreclosure of this Mortgage, all right, title, and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at foreclosure sale, and Mortgagee is hereby appointed attorney in fact for Mortgagor for the purpose of assigning and transferring such policies and receiving all or any part of the proceeds therefrom.

**5.8 Condemnation.** Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee.

With the consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, Mortgagor may apply such awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, to restoration or repair of the Property. Otherwise such sums so received shall be applied to payment of the Secured Obligations. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Mortgagee may reasonably require.

**5.9 Preservation and Maintenance of Property.** Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property; (b) shall not abandon the Property; (c) shall, unless Mortgagee withholds insurance proceeds as security for or application to the Secured Obligations, restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair unless the improvements constituting the Property are (i) totally destroyed, (ii) insurance has been maintained thereon as required by this Mortgage, and (iii) Mortgagee applies the proceeds of such insurance to payment of the Secured Obligations; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Mortgagor when necessary to keep such items in good repair; (e) shall comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, including, without limitation, the Americans with Disabilities Act, as it may be amended from time to time; and (f) shall give notice in writing to Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Mortgage or the rights or powers of Mortgagee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Mortgagee. Unless required by applicable law or unless Mortgagee has otherwise consented in writing, neither Mortgagor nor any tenant or other Person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture (other than trade fixtures), equipment, machinery or appliance in or on the Property owned by Mortgagor and used or intended to be used in connection with the Property.



5.10 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

- (a) Release any person liable for payment of any Secured Obligation;
- (b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;
- (c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;
- (d) Alter, substitute or release any property securing the Secured Obligations;
- (e) Consent to the making of any plat or map of the Property or any part of it;
- (f) Join in granting any easement or creating any restriction affecting the Property; or
- (g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or
- (h) Release the Property or any part of it.

5.11 Protection of Mortgagee's Security. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Mortgagee therein, including, but not limited to, eminent domain, insolvency, enforcement of local laws, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee, at Mortgagee's option, may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interests, including, but not limited to, (a) disbursement of attorneys' fees; (b) entry upon the Property to remedy any failure of Mortgagor to perform hereunder; and (c) procurement of satisfactory insurance.

Any amounts disbursed by Mortgagee pursuant to this Section 5.11, with interest thereon, shall become part of the Secured Obligations and shall be secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate as defined in the Note. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Secured Obligations. Nothing contained in this Section 5.11 shall require Mortgagee to incur any expense or take any action hereunder.

The procurement of insurance of the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of the right of Mortgagee to accelerate the maturity of any of the Secured Obligations secured by this Mortgage. Mortgagee's receipt of any awards, proceeds or damages under the insurance or condemnation provisions of this Mortgage shall not operate to cure or waive any default in payment of sums secured by this Mortgage.

5.12 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under this Mortgage and the other Loan Documents have been received, Mortgagee shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of preparation and recordation of such release.

5.13 Compensation, Exculpation, Indemnification.

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.12 above. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.2, whether any lawsuit is filed or not, or in defending any

action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.2(k) below) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Mortgagee in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this Subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Mortgage, including the fees of any attorney (including the costs and fees of paralegals) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

- (i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;
- (ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or
- (iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

- (i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;
- (ii) Because of any failure of Mortgagor to perform any of its obligations; or
- (iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.13 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

#### 5.14 Hazardous Waste Covenants and Indemnification.

(a) Mortgagor covenants and warrants that Mortgagor's use of the Property shall at all times comply with and conform in all material respects to all laws, statutes, ordinances, rules and regulations of any governmental, quasi-governmental or regulatory authority now or hereafter in effect ("Laws") which relate to the transportation, storage, placement, handling, treatment, discharge, release, generation, production or disposal (collectively "Treatment") of any waste, waste products, petroleum or petroleum based products, radioactive materials, poly-chlorinated biphenyls, asbestos, hazardous materials or substances of any kind, pollutants, contaminants and any substance which is regulated by any law, statute, ordinance, rule or regulation (collectively "Waste"). Mortgagor further covenants that it shall not engage in or permit any Person to engage in any Treatment of any Waste on or that affects the Property except for activities which comply with all Laws in all material respects. "Person" means any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, institution, trust, estate, government or other agency or political subdivision thereof or any other entity.

(b) Except as specifically disclosed to Mortgagee in writing, Mortgagor has no actual knowledge that the Property is the subject of any Notice, as hereinafter defined, from any governmental authority or Person.

(c) Promptly upon receipt of any Notice from any Person, Mortgagor shall deliver to Mortgagee a true, correct and complete copy of any written Notice or a true, correct and complete report of any non-written Notice. Additionally, Mortgagor shall notify Mortgagee immediately after having knowledge or Notice of any Waste in or affecting the Property. "Notice" shall mean any note, notice, information, or report of any of the following:

(i) any suit, proceeding, investigation, order, consent order, injunction, writ, award or action related to or affecting or indicating the Treatment of any Waste in or affecting the Property;

(ii) any spill, contamination, discharge, leakage, release, threatened release, or escape of any Waste in or affecting the Property, whether sudden or gradual, accidental or anticipated, or of any other nature ("Spill");

(iii) any dispute relating to Mortgagor's or any other Person's Treatment of any Waste or any Spill in or affecting the Property;

(iv) any claims by or against any insurer related to or arising out of any Waste or Spill in or affecting the Property;

(v) any recommendations or requirements of any governmental or regulatory authority, insurer or board of underwriters relating to any Treatment of Waste or a Spill in or affecting the Property;

(vi) any legal requirement or deficiency related to the Treatment of Waste or any Spill in or affecting the Property; or

(vii) any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property or any part thereof which has engaged in or engages in the Treatment of any Waste in or affecting the Property in violation of applicable Laws.

(d) In the event that (i) Mortgagor has caused, suffered or permitted, directly or indirectly, any Spill in or affecting the Property during the term of this Mortgage, or (ii) any Spill of any Waste has

occurred on the Property during the term of this Mortgage, then Mortgagor shall immediately take all of the following actions:

(A) notify Mortgagee, as provided herein;

(B) take all steps necessary or appropriate to clean up such Spill and any contamination related to the Spill, all in accordance with the requirements, rules or regulations of any local, state or federal governmental or regulatory authority or agency having jurisdiction over the Spill; provided that Mortgagor may contest any such requirement, rule or regulation by appropriate proceedings diligently and in good faith, so long as (1) Mortgagor provides Mortgagee, at Mortgagor's cost, such sureties, performance bonds and other assurances as Mortgagee may from time to time request in respect of such Spill and contamination and the cleanup thereof, (2) any governmental or other action against Mortgagor and the Property is effectively stayed during Mortgagor's efforts so to contest, and (3) in Mortgagee's determination, a delay in such clean-up will not result in or increase any loss or liability to Mortgagee;

(C) restore the Property, provided that such restoration shall be no less than, but need not be more than, what is otherwise required by applicable federal, state or local law or authorities;

(D) allow any local, state or federal governmental or regulatory authority or agency having jurisdiction thereof to monitor and inspect all cleanup and restoration related to such Spill; and

(E) at the written request of Mortgagee, post a bond or obtain a letter of credit for the benefit of Mortgagee (drawn upon a company or bank satisfactory to Mortgagee) or deposit an amount of money in an escrow account under Mortgagee's name upon which bond, letter of credit or escrow Mortgagor may draw, and which bond, letter of credit or escrow shall be in an amount sufficient to meet all of Mortgagor's obligations under this Section 5.14; and Mortgagee shall have the unfettered right to draw against the bond, letter of credit or escrow in its discretion in the event that Mortgagor is unable or unwilling to meet its obligation under this Section 5.14 or, if Mortgagor fails to post a bond or obtain a letter of credit or deposit such cash as is required herein, then Mortgagee, at Mortgagor's cost and expense, may, but shall have no obligation to do so for the benefit of Mortgagor and do those things that Mortgagor is required to do under clauses (B), (C) and (D) of this subsection (d).

(e) Mortgagor hereby agrees that it shall indemnify, defend, save and hold harmless Mortgagee and Mortgagee's officers, directors employees, agents, successors, assigns and affiliates (collectively, "Indemnified Parties") against and from, and to reimburse the Indemnified Parties with respect to, any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys', engineers' and consultants' fees and expenses, court costs, administrative costs, costs of appeals and all clean up, administrative, fines, penalties and enforcement costs of applicable governmental agencies) that are incurred by or asserted against the Indemnified Parties by reason or arising out of: (i) the breach of any representation, warranty or undertaking of Mortgagor under this Section 5.14, or (ii) the Treatment of any Waste by Mortgagor or any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property, in or affecting the Property, or (iii) any Spill governed by the terms of this Section 5.14.

(f) The obligations of Mortgagor under this Section 5.14 shall survive any termination or satisfaction of this Mortgage.

**5.15 Defense and Notice of Claims and Actions.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.16 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.17 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Waste is or is not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Waste or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Waste or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section 5.17. Mortgagor shall bear all expense of any site visit, observation or testing.

5.18 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name, business structure and/or state of organization. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

5.19 Transfers. Mortgagor shall not (a) voluntarily or involuntarily sell, lease, exchange, assign, convey, transfer or otherwise dispose of all or any portion of the Property (or any interest therein, legal or equitable), or all or any of the ownership interest in Mortgagor, or (b) convey to any Person, other than Mortgagee, a security interest in the Property or any part thereof or voluntarily or involuntarily permit or suffer the Property to be further encumbered.

## **6. Default and Remedies**

6.1 Events of Default. Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default;" any one singly, an "Event of Default").

(a) If (i) the interest on any Note or any commitment or other fee shall not be paid in full punctually when due and payable or within three days thereafter, or (ii) the principal of any Note shall not be paid in full punctually when due and payable.

(b) If Mortgagor or Agency fails to perform or observe any covenant or agreement contained in this Mortgage or in any other of the Loan Documents, and such failure remains unremedied for thirty (30) days after the Mortgagee gives notice thereof to Mortgagor or Agency, as applicable.

(c) If any representation, warranty or statement made in or pursuant to this Mortgage or any Loan Document or any other material information furnished by Mortgagor to Mortgagee or any other holder of any Note, shall be false or erroneous.

(d) If any event of default or default shall occur under any other Loan Document, or if under any Loan Document in which payment is required to be made by Mortgagor or any guarantor on demand of Mortgagee, such demand for payment is made.

(e) If Mortgagor shall default in the payment of principal or interest due and owing upon any other obligation for borrowed money, beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of



such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity.

(f) If Mortgagor shall abandon any of the Property or shall sell, lease, convey or transfer (or contract to sell, lease, convey or transfer) all or any part of the Property without first obtaining Mortgagee's written consent.

(g) If Mortgagor shall assign any part of the rents or profits of the Property other than to Mortgagee without first obtaining Mortgagee's written consent or, by the cancellation, surrender or modification of any existing lease (or in any other manner) the security for the payment of the Secured Obligations shall be in any manner impaired.

(h) If Mortgagor shall default in the payment of any amount due and owing under the Lease Agreement (as hereinafter defined), beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in the Lease Agreement.

6.2 Remedies. At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Declare all of the Secured Obligations to be immediately due and payable, whereupon all unpaid principal, interest and fees in respect of such Obligations, together with all of Mortgagee's costs, expenses and attorneys' fees related thereto, under the terms of the Loan Documents or otherwise, shall be immediately due and payable;

(b) Terminate any commitment to make any additional advances under any Loan;

(c) Exercise any and all rights and remedies available to Mortgagee under any applicable law;

(d) Exercise any and all rights and remedies granted to Mortgagee under the terms of this Mortgage and any of the other Loan Documents;

(e) Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (g) below.

(f) Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Mortgagee at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.



(g) Mortgagee may cure any breach or default of Mortgagor or Agency, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Subsection 6.2(g) either with or without giving notice to any person. Any amounts expended by Mortgagee under this Subsection 6.2(g) shall be secured by this Mortgage.

(h) Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Subsection 6.2(a), upon, or at any time after the filing of a complaint to foreclose this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment.

(i) Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(j) Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the state in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, each of Mortgagor and Agency agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor and Agency not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(k) If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

**6.3 Credit Bids.** At any Foreclosure Sale, any person, including Mortgagor, Agency or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.13 of this Mortgage; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

**6.4 Application of Foreclosure Sale Proceeds.** Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.13 of this Mortgage;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

**6.5 Application of Rents and Other Sums.** Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.2 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

## 7. Miscellaneous Provisions.

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

### 7.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor or Agency. Consent by Mortgagee to any act or omission by Mortgagor or Agency shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.2 (f).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.5 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee hereunder.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.17 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

### 7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.10 or Subsection 6.2(d) of this Mortgage, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.2(e) and/or 6.2(f) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured

Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

7.6 Applicable Law. The creation, perfection and enforcement of the lien of this Mortgage shall be governed by the law of the state in which the property is located. Subject to the foregoing, in all other respects, this Mortgage shall be governed by the substantive laws of the State of New York.

7.7 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.7 does not waive the provisions of Section 5.19 above.

7.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.9 Waiver of Statutory Rights.

(a) To the extent permitted by law, each of Mortgagor and Agency hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Each of Mortgagor and Agency for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Each of Mortgagor and Agency hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of itself and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

(b) Each of Mortgagor and Agency further agrees that, in the event Mortgagee commences and prosecutes a foreclosure action respecting the Property or this Mortgage, or engages in the enforcement of any or all of Mortgagee's other rights, recourses and remedies against Mortgagor or Agency under the Note, this Mortgage, any of the other Loan Documents, at law and in equity, then neither Mortgagor nor Agency shall, and each of Mortgagor and Agency waives the right to, interpose any Answer or assert any defense, setoff or counterclaim whatsoever to or otherwise contest any such foreclosure action or any such other action.

7.10 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.11 Notices. All notices, requests, demands or other communications provided for hereunder shall be in writing and mailed or delivered to any party hereto at the address of such party specified below. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when delivered or forty-eight (48) hours after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile with telephonic confirmation of receipt, except that notices from Mortgagor or Agency to Mortgagee pursuant to any of the provisions hereof shall not be effective until received by Mortgagee.

Mortgagor: Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010  
Attention: Ramon Rodriguez, Member  
Telephone: (518) 842-5626

With a copy to: Schwartz Law Firm  
191 Guy Park Ave # 2  
Amsterdam, New York 12010  
Attention: Charles R. Schwartz, Esq.  
Telephone: (518) 770-1588

Agency: Montgomery County Industrial Development Agency  
9 Park Street, P.O. Box 1500  
Fonda, New York 12068  
Attention: Kenneth F. Rose, Chief Executive Officer  
Telephone: (518) 853-8334

Mortgagee: KeyBank National Association  
1196 Western Avenue  
Albany, New York 12203  
Attention: April J. Volk, Vice President  
Telephone: (518) 292-4426  
Facsimile: (518) 370-9269

With a copy to: Nolan & Heller, LLP  
39 N. Pearl Street  
Albany, New York 12207  
Attention: John V. Hartzell, Esq.  
Telephone: (518) 449-3300  
Facsimile: (518) 432-3123

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Any notice or demand delivered to the person or entity named above to accept notices and demands for Mortgagor or Agency shall constitute notice or demand duly delivered to Mortgagor or Agency, even if delivery is refused.

7.12 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Bank may, but shall not be obligated to, make under this Mortgage, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed **TWO HUNDRED EIGHTY-FOUR THOUSAND AND 00/100 DOLLARS (\$284,000.00)**, plus interest thereon, and any disbursements made for the enforcement of this Mortgage and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Mortgagee pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount



secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

7.13 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee not to exceed the maximum amount secured hereby. For purposes hereof, all obligations of Mortgagor to Mortgagee under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Mortgagor secured hereby.

7.14 WAIVER OF TRIAL BY JURY. MORTGAGOR, AGENCY AND MORTGAGEE EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG MORTGAGEE, AGENCY AND MORTGAGOR ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED THERETO.

7.15 UCC Financing Statements. Each of Mortgagor and Agency hereby authorizes Mortgagee to file UCC financing statements to perfect Mortgagee's security interest in any part of the Property. In addition, each of Mortgagor and Agency agrees to sign any and all other documents that Mortgagee deems necessary in its sole discretion to perfect, protect, and continue Mortgagee's lien and security interest on the Property.

7.16 Certain Matters Relating to Property Located in the State of New York. With respect to the Property which is located in the State of New York, notwithstanding anything contained herein to the contrary:

(a) Payment of Mortgage Taxes. Mortgagor shall pay all taxes imposed pursuant to Article 11 of the Tax Law or any other statute, order or regulation, whether said tax is imposed at the time of recording or subsequent thereto. This obligation shall survive the satisfaction or other termination of this Mortgage. Mortgagee shall pay the tax imposed by Section 253 2-a(a), if applicable, if the Property consists of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential units, each dwelling unit having its own separate cooking facilities.

(b) Real Property Law. All covenants hereof, which are in addition to those set forth in Sections 254 and 291-f of the Real Property Law, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of said Sections 254 and 291-f.

(c) Lien Law. Mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

(d) Tax Law Section 253 Statement. Check one box only.

☐ This Mortgage covers real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.

☒ This Mortgage does not cover real property improved as described above.

(e) Costs, Expenses and Attorneys' Fees. If Mortgagor fails to pay in full, immediately upon Mortgagee's demand, all principal, interest and other sums owing under the Note, and should an action be commenced for the foreclosure of this Mortgage, Mortgagee shall be entitled to recover all sums due hereunder, statutory costs, and any additional allowances made pursuant to Section 8303(a) of the Civil Practice Law and Rules of the State of New York, and in addition thereto, reasonable attorneys' fees in such proceeding and in all proceedings related thereto necessary to and related to the foreclosure proceeding, and such amount shall be added to the principal balance and interest then due and shall be a lien on the Property prior to any right or title to, interest in



or claim upon the Property attaching and accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and the indebtedness which it secures.

#### 7.17 Agency Provisions.

(a) This Mortgage is executed by the Agency solely for the purpose of subjecting its interest in the Premises to the lien of this Mortgage and for no other purpose. All representations, covenants, and warranties of the Mortgagor herein are hereby deemed to have been made by Mortgagor, and not by the Agency. The parties hereby expressly agree that the term "Mortgagor" as such term is used in this Mortgage, shall not be defined to include the Agency.

(b) The obligations and agreements of the Agency contained herein and any other instrument or documents executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Mortgagor) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Mortgagor) and employees of the Agency, shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(c) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Montgomery County, New York and neither the State of New York nor Montgomery County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility, as such term is defined in the lease agreement between the Mortgagor and the Agency, dated as of June 1, 2016 (the "Lease Agreement") (except for revenues derived by the Agency with respect to the Unassigned Rights, as such term is defined in the Lease Agreement).

(d) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount of undertaking sufficient to cover such reasonable fees and expenses and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Mortgagor) or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Mortgagor) and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Mortgagor) and employees against all liability expected to be incurred as a result of compliance with such request.

(e) The Agency will not record or cause this Mortgage to be recorded in any offices where recordation hereof is necessary and will not pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Mortgage.

(f) Notwithstanding anything to the contrary stated in this document, the Agency specifically intends to except, and hereby excepts, from any and all property which the Agency agrees to mortgage, pledge, assign, grant a lien on, or otherwise convey pursuant to this document the "Unassigned Rights" as such term is defined in the Lease Agreement.

7.18 Priority of Mortgage. Mortgagee acknowledges and agrees that, regardless of the order of their recording, this Mortgage is and shall continue to be coordinate and co-equal in lien with the lien of that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith made by the Mortgagor and the Agency in favor of Mortgagee, intended to be recorded in the Montgomery County Clerk's Office, and to all advances heretofore made or which hereafter may be made thereon.

[Signature Page Follows]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

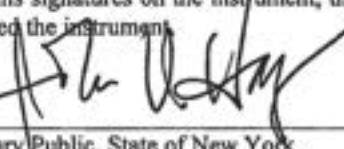
Mortgagor:

**RAMA REAL PROPERTIES LLC**

By:   
Ramon Rodriguez, Member

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

On the 20th day of June, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Ramon Rodriguez, 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 capacities, and that by his signatures on the instrument, the individuals, entities or persons upon behalf of which the individual acted, executed the instrument.

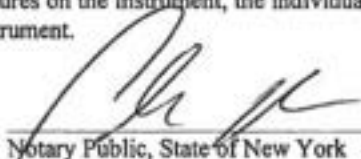
  
\_\_\_\_\_  
Notary Public, State of New York  
Agency:

**MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Robert Hoefs, Chairman

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

On the 17th day of June, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Hoefs, 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 capacities, and that by his signatures on the instrument, the individuals, entities or persons upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public, State of New York

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02060162486  
Qualified in Saratoga County  
Expiration Expires March 12, 20 17

## EXHIBIT A

### *Description of Premises*

#### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagaman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

#### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned, reputedly by the Village of Hagaman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Hagaman, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

All of that tract or parcel of land situate in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York being more particularly-described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Hagaman S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

**PREPARED BY AND UPON RECORDATION RETURN TO:**

Nolan & Heller, LLP  
39 North Pearl Street  
Albany, New York 12207  
Attention: John V. Hartzell, Esq.

**ASSIGNMENT OF LEASES AND RENTS**

**THIS ASSIGNMENT OF LEASES AND RENTS** (this "Assignment of Rents" or this "Assignment") made as of June 21, 2016, by **RAMA REAL PROPERTIES LLC**, a New York limited liability company with offices at 8 Brown Street, Amsterdam, New York 12010 (the "Assignor"), and **MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with offices at 9 Park Street, P.O. Box 1500, Fonda, New York 12068 ("Agency") in favor of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, with an office for the transaction of business at 1196 Western Avenue, Albany, New York 12203 ("**KeyBank**" or the "Assignee").

**RECITALS**

- A. Assignor is the owner of a fee simple estate of land located at 58 North Pawling Street (also known as 46 North Pawling Street) in the Town of Amsterdam, County of Montgomery, State of New York, which land is legally described in Exhibit "A" attached hereto (the "Land" or the "Property"). Each of Assignor and the Agency is the holder of a leasehold interest in the Property.
- B. Each of Assignor and the Agency claims an interest in the Property and improvements thereon (such improvements, together with offsite improvements and any existing improvements not to be demolished, being hereinafter referred to collectively as the "Improvements").
- C. Assignor is obligated to Assignee pursuant to, among other documents, that certain Promissory Note [Term Loan] dated as of even date herewith in the original principal amount of \$178,600.00 and that certain Promissory Note [Term Loan] dated as of even date herewith in the original principal amount of \$284,000.00, each made by Assignor in favor of Assignee (collectively, the "Note" or the "Loan"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Note.
- D. The Loan is secured by, among other documents, (i) that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith made by Assignor and the Agency in favor of Assignee, and (ii) that certain Second Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith made by Assignor and the Agency in favor of Assignee, each intended to be recorded in the Montgomery County Clerk's Office (collectively, the "Mortgage").
- E. Each of Assignor and the Agency is desirous of further securing to Assignee the performance of the terms, covenants and agreements hereof and of the Note, the Mortgage and all of the other documents evidencing, securing or otherwise relating to the Loan or either of them (such other documents, together with this Assignment, the Note and the Mortgage, each as the same may be amended, restated, renewed, replaced, supplemented, consolidated or otherwise modified from time to time, being hereinafter referred to collectively as the "Loan Documents").

**AGREEMENTS**

**NOW, THEREFORE**, in consideration of the making of the Loan evidenced by the Note by Assignee to Assignor and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of Assignor and the Agency does hereby irrevocably, absolutely and unconditionally transfer,



sell, assign, and convey to Assignee, its successors and assigns, all of the right, title and interest of each of Assignor and the Agency, except any Unassigned Rights as defined in the Lease Agreement (as hereinafter defined), in and to:

(a) any and all leases, licenses, rental agreements and occupancy agreements of whatever form now or hereafter affecting all or any part of the Property and any and all guarantees, extensions, renewals, replacements and modifications thereof (collectively, the "Leases") (the term "Leases" whenever used in this Assignment to also include any subleases of all or any portion of the Property or the Improvements).

(b) all issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property, including, without limitation, minimum rents, additional rents, termination payments, bankruptcy claims, forfeited security deposits, damages following default and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability due to destruction or damage to the Property, together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due, and together with all rights and claims of any kind that Assignor may have against any Tenant, lessee or licensee under the Leases or against any other occupant of the Property (collectively, the "Rents").

**TO HAVE AND TO HOLD** the same unto Assignee, its successors and assigns.

**IT IS AGREED** that, notwithstanding that this instrument is a present, absolute and executed assignment of the Rents and of the Leases and a present, absolute and executed grant of the powers herein granted to Assignee, Assignor is hereby permitted, at the sufferance of Assignee and at its discretion, and is hereby granted a license by Assignee, to retain possession of the Leases and to collect and retain the Rents unless and until there shall be an "Event of Default" (as defined herein) under the terms of this Assignment or any of the other Loan Documents. Upon an Event of Default, the aforementioned license granted to Assignor shall automatically terminate without notice to Assignor, and Assignee may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Further, from and after such termination, Assignor shall be the agent of Assignee in collection of the Rents, and any Rents so collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee and Assignor shall, within one (1) business day after receipt of any Rents, pay the same to Assignee to be applied by Assignee as hereinafter set forth. Furthermore, from and after such Event of Default and termination of the aforementioned license, Assignee shall have the right and authority, without any notice whatsoever to Assignor and without regard to the adequacy of the security therefor, to: (a) make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as particularly set forth in the Mortgage; (b) manage and operate the Property, with full power to employ agents to manage the same; (c) demand, collect, receive and sue for the Rents, including those past due and unpaid; and (d) do all acts relating to such management of the Property, including, but not limited to, negotiation of new Leases, making adjustments of existing Leases, contracting and paying for repairs and replacements to the Improvements and to the fixtures, equipment and personal property located in the Improvements or used in any way in the operation, use and occupancy of the Property as in the sole subjective judgment and discretion of Assignee may be necessary to maintain the same in a tenantable condition, purchasing and paying for such additional furniture and equipment as in the sole subjective judgment of Assignee may be necessary to maintain a proper rental income from the Property, employing necessary managers and other employees, purchasing fuel, providing utilities and paying for all other expenses incurred in the operation of the Property, maintaining adequate insurance coverage over hazards customarily insured against and paying the premiums therefor. Assignee shall apply the Rents received by Assignor from the Property, after deducting the costs of collection thereof, including, without limitation, reasonable attorneys' fees and a management fee for any management agent so employed, against amounts expended for repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums and such other expenses as Assignee incurs in connection with the operation of the Property and against interest, principal, required escrow deposits and other sums which have or which may become due, from time to time, under the terms of the Loan Documents, in such order or priority as to any of the items so mentioned as Assignee, in its sole subjective discretion, may determine.

The exercise by Assignee of the rights granted Assignee in this paragraph, and the collection of the Rents and the application thereof as herein provided, shall not be considered a waiver by Assignee of any Event of Default under the Loan Documents or prevent foreclosure of any liens on the Property nor shall such exercise make

Assignee liable under any of the Leases, Assignee hereby expressly reserving all of its rights and privileges under the Mortgage and the other Loan Documents as fully as though this Assignment had not been entered into.

Without limiting the rights granted hereinabove, in the event Assignor shall fail to make any payment or to perform any act required under the terms hereof and such failure shall not be cured within any applicable grace or cure period, then Assignee may, but shall not be obligated to, without prior notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, make or perform the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limitation, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, performing or discharging any obligation, covenant or agreement of Assignor under any of the Leases, and, in exercising any of such powers, paying all necessary costs and expenses, employing counsel and incurring and paying reasonable attorneys' fees. Any sum advanced or paid by Assignee for any such purpose, including, without limitation, attorneys' fees, together with interest thereon at the Default Rate (as defined in the Note) from the date paid or advanced by Assignee until repaid by Assignor, shall immediately be due and payable to Assignee by Assignor on demand and shall be secured by the Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

**IT IS FURTHER AGREED** that this Assignment is made upon the following terms, covenants and conditions:

1. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Assignee, nor for the performance of any of the terms and conditions of any of the Leases, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any Tenant or any other party or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or from any other act or omission of Assignee in managing the Property. Assignor shall and does hereby indemnify and hold Assignee harmless from and against any and all liability, loss, claim, demand or damage which may or might be incurred by reason of this Assignment, including, without limitation, claims or demands for security deposits from tenants deposited with Assignor, and from and against any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases. Should Assignee incur any liability by reason of this Assignment or in defense of any claim or demand for loss or damage as provided above, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, together with interest thereof at the Default Rate from the date paid or incurred by Assignee until repaid by Assignor, shall be immediately due and payable to Assignee by Assignor upon demand and shall be secured by the Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

2. This Assignment shall not be construed as making Assignee a mortgagee in possession.

3. Assignee is obligated to account to Assignor only for such Rents as are actually collected or received by Assignee.

4. Assignor hereby further presently and absolutely assigns to Assignee subject to the terms and provisions of this Assignment: (a) any award or other payment which Assignor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any Tenant under such Leases; and (b) any and all payments made by or on behalf of any Tenant of any part of the Property in lieu of Rent. Assignor hereby irrevocably appoints Assignee as its attorney-in-fact to appear in any such proceeding and to collect any such award or payment, which power of attorney is coupled with an interest by virtue of this Assignment and is irrevocable so long as any sums are outstanding under the loans evidenced by the Note. All awards or payments so collected shall be applied to the indebtedness secured hereby in such order as Assignee shall elect.

5. Assignor represents, warrants and covenants to and for the benefit of Assignee: (a) that Assignor now is (or with respect to any Leases not yet in existence, will be immediately upon the execution thereof) the absolute owner of the landlord's interest in the Leases, with full right and title to assign the same and the Rents due

or to become due thereunder; (b) that, other than this Assignment and any other assignment to Assignee pursuant to the Mortgage or otherwise, there are no outstanding assignments of the Leases or Rents; (c) that no Rents have been anticipated, discounted, released, waived, compromised or otherwise discharged except for prepayment of rent of not more than one (1) month prior to the accrual thereof; (d) that there are no material defaults now existing under any of the Leases by the landlord or any Tenant, and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases by the landlord or any Tenant, except as disclosed in writing to Assignee; (e) that Assignor has and shall duly and punctually observe and perform all covenants, conditions and agreements in the Leases on the part of the landlord to be observed and performed thereunder; and (f) that the Leases are in full force and effect and are the valid and binding obligations of Assignor, and, to the knowledge of Assignor, are the valid and binding obligations of each Tenant thereto.

6. Assignor covenants and agrees that Assignor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any Tenant thereunder, and shall pay on demand all costs and expenses, including, without limitation, attorneys' fees, which Assignee may incur in connection with Assignee's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Assignee until repaid by Assignor.

7. At any time, Assignee may, at its option, notify any Tenant or other parties of the existence of this Assignment. Assignor does hereby specifically authorize, instruct and direct each and every present and future tenant, lessee and licensee of the whole or any part of the Property to pay all unpaid and future Rents to Assignee upon receipt of demand from Assignee to so pay the same and Assignor hereby agrees that each such present and future Tenant, lessee and licensee may rely upon such written demand from Assignee to so pay said Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Assignee is otherwise entitled to said Rents. Assignor hereby waives any right, claim or demand which Assignor may now or hereafter have against any present or future tenant, lessee or licensee by reason of such payment of Rents to Assignee, and any such payment shall discharge such tenant's, lessee's or licensee's obligation to make such payment to Assignor.

8. Assignee may take or release any security for the indebtedness evidenced by the Note, may release any party primarily or secondarily liable for the indebtedness evidenced by the Note, may grant extensions, renewals or indulgences with respect to the indebtedness evidenced by the Note and may apply any other security therefor held by it to the satisfaction of any indebtedness evidenced by the Note, in each case without prejudice to any of its rights hereunder.

9. The acceptance of this Assignment and the collection of the Rents in the event Assignor's license is terminated, as referred to above, shall be without prejudice to Assignee. The rights of Assignee hereunder are cumulative and concurrent, may be pursued separately, successively or together and may be exercised as often as occasion therefor shall arise, it being agreed by Assignor that the exercise of any one or more of the rights provided for herein shall not be construed as a waiver of any of the other rights or remedies of Assignee, at law or in equity or otherwise, so long as any obligation under the Loan Documents remains unsatisfied.

10. All rights of Assignee hereunder shall inure to the benefit of its successors and assigns, and all obligations of Assignor shall bind its successors and assigns and any subsequent lessee of the Property. All rights of Assignee in, to and under this Assignment shall pass to and may be exercised by any assignee of such rights of Assignee. Assignor hereby agrees that if Assignee gives notice to Assignor of an assignment of said rights, upon such notice the liability of Assignor to the assignee of the Assignee shall be immediate and absolute. Assignor will not set up any claim against Assignee or any intervening assignee as a defense, counterclaim or setoff to any action brought by Assignee or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases or the Rents.

11. It shall be an "Event of Default" hereunder (a) if any representation or warranty made herein by Assignor is determined by Assignee to have been false or misleading in any material respect at the time made, or (b) upon any failure by Assignor in the performance or observance of any other covenant or condition hereof. Any such default shall be an "Event of Default" under each of the other Loan Documents, entitling Assignee to exercise any or all rights and remedies available to Assignee under the terms hereof or of any or all of the other Loan Documents,

and any Event of Default under the other Loan Documents, or any default under any other Loan Document which is not cured within any applicable grace or cure period, shall be deemed an Event of Default hereunder subject to no grace or cure period, entitling Assignee to exercise any or all rights provided for herein.

12. Failure by Assignee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Assignee, and the waiver by Assignee of any default hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion. No collection by Assignee of any Rents pursuant to this Assignment shall constitute or result in a waiver of any default then existing hereunder or under any of the other Loan Documents.

13. If any provision under this Assignment or the application thereof to any entity, person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Assignment and the application of the provisions hereof to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

14. This Assignment may not be amended, modified or otherwise changed except by a written instrument duly executed by Assignor, the Agency and Assignee.

15. This Assignment shall be in full force and effect continuously from the date hereof to and until the payment, discharge and performance of any and all indebtedness and obligations evidenced by the Note or secured or guaranteed by any of the Loan Documents, and the release of the Mortgage shall, for all purposes, automatically terminate this Assignment and render this Assignment null and void and of no further effect whatsoever.

16. In case of a conflict between any provision of this Assignment and any provision of the other Loan Documents, the provision selected by Assignee in its sole subjective discretion shall prevail and be controlling.

17. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be given and become effective as provided in the Mortgage.

18. This Assignment shall be governed by and construed in accordance with the laws of the State in which the Property is located.

19. This Assignment may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Assignment may be detached from any counterpart of this Assignment without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Assignment identical in form hereto but having attached to it one or more additional signature pages.

20. In addition to, but not in lieu of, any other rights hereunder, Assignee shall have the right to institute suit and obtain a protective or mandatory injunction against Assignor and Agency to prevent a breach or default, or to reinforce the observance, of the agreements, covenants, terms and conditions contained herein, as well as the right to damages occasioned by any breach or default by Assignor.

21. Each of Assignor and Agency hereby covenants and agrees that Assignee shall be entitled to all of the rights, remedies and benefits available by statute, at law, in equity or as a matter of practice for the enforcement and perfection of the intents and purposes hereof. Assignee shall, as a matter of absolute right, be entitled, upon application to a court of applicable jurisdiction, and without notice to Assignor or Agency, to the appointment of a receiver to obtain and secure the rights of Assignee hereunder and the benefits intended to be provided to Assignee hereunder.

22. Notwithstanding anything to the contrary stated in this Assignment, the Assignor, Agency and Assignee agree that:

(a) This Assignment is executed by the Agency solely for the purpose of subjecting its interest in the Property to the lien of this Assignment and for no other purpose. All representations, covenants, and warranties of



the Assignor herein are hereby deemed to have been made by Assignor, and not by the Agency. The parties hereby expressly agree that the term "Assignor" as such term is used in this Assignment, shall not be defined to include the Agency.

(b) The obligations and agreements of the Agency contained herein and any other instrument or documents executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Assignor) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Assignor) and employees of the Agency, shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(c) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Montgomery County, New York and neither the State of New York nor Montgomery County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility, as such term is defined in the lease agreement between the Assignor and the Agency, dated as of June 1, 2016 (the "Lease Agreement") (except for revenues derived by the Agency with respect to the Unassigned Rights, as such term is defined in the Lease Agreement).

(d) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount of undertaking sufficient to cover such reasonable fees and expenses and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Assignor) or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Assignor) and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Assignor) and employees against all liability expected to be incurred as a result of compliance with such request.

(e) The Agency will not record or cause this Assignment to be recorded in any offices where recordation hereof is necessary and will not pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Assignment.

(f) Notwithstanding anything to the contrary stated in this document, the Agency specifically intends to except, and hereby excepts, from any and all property which the Agency agrees to mortgage, pledge, assign, grant a lien on, or otherwise convey pursuant to this document the "Unassigned Rights" as such term is defined in the Lease Agreement.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Assignor has executed this Assignment under seal as of the day and year first above written.

ASSIGNOR:

RAMA REAL PROPERTIES LLC

By: Ram  
Ramon Rodriguez, Member

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

On the 20th day of June, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Ramon Rodriguez, 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 capacities, and that by his signatures on the instrument, the individuals, entities or persons upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public, State of New York

AGENCY:

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: Robert Hoefs  
Robert Hoefs, Chairman

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

On the 17th day of June, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Hoefs, 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 capacities, and that by his signatures on the instrument, the individuals, entities or persons upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public, State of New York

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02MA0162486  
Qualified in: Saratoga County  
Commission Expires March 12, 20 17



**EXHIBIT A**  
**LEGAL DESCRIPTION**

**PARCEL NO. 1**

All that tract or parcel of land situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagaman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

**PARCEL NO. 2**

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned, reputedly by the Village of Hagaman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Hagaman, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

All of that tract or parcel of land situate in the Village of Hagan, Town of Amsterdam, County of Montgomery and State of New York being more particularly-described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Hagan S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

CLOSING ITEM NO.: A-4

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MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

RAMA REAL PROPERTIES LLC

---

PAYMENT IN LIEU OF TAX AGREEMENT

---

DATED AS OF JUNE 1, 2016

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RELATING TO A CERTAIN PARCEL OF LAND HAVING AN  
ADDRESS OF 46 PAWLING STREET IN THE VILLAGE OF  
HAGAMAN, MONTGOMERY COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Agency"), and RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (the "Company");

### WITNESSETH:

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 666 of the Laws of 1970 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2015, the Company presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project



Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 11, 2015 (the "Public Hearing Resolution"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board located at the Old County Courthouse, Fonda, New York, (C) caused notice of the Public Hearing to be published in a newspaper of general circulation available to the residents of the Village of Hagaman, Montgomery County, New York, (D) conducted the Public Hearing on the 7th day of December, 2015 at 9:00 o'clock a.m., local time, at the Village Office of Hagaman, Pawling Hall, located at 86 Pawling Street, Village of Hagaman, Montgomery County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on February 11, 2016 (the "SEQR Resolution"), the Agency determined that the Project constitutes a "Type II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA; and

WHEREAS, further resolution adopted by the members of the Agency on February 11, 2016 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2016 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project; and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2032 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof; and

WHEREAS, the Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2016 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2032; and (2) a bill of sale dated as of June 1, 2016 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the

Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company will obtain the following loans: (1) a loan in the principal sum of \$178,600.00 (the "First Loan") from Keybank National Association (the "First Lender"), which First Loan will be secured by a mortgage, assignment of rents, security agreement and fixture filing (the "First Mortgage") dated as of June 21, 2016, (2) a loan in the principal sum of \$284,600.00 (the "Second Loan") from the First Lender, which Second Loan will be secured by a second mortgage, assignment of rents, security agreement and fixture filing (the "Second Mortgage") dated as of June 21, 2016, and (3) a loan in the principal sum of \$106,000.00 (the "Third Loan," and together with the First Loan and the Second Loan, the "Loan") from the County of Montgomery (the "Second Lender," and together with the First Lender, the "Lender"), which Third Loan will be secured by (a) a mortgage (the "Third Mortgage," and together with the First Mortgage and the Second Mortgage, the "Mortgages") dated as of June 21, 2016, and (b) an assignment of rents (the "Assignment of Rents") dated as of June 21, 2016 from the Agency and the Company to the Second Lender; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its board has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its Certificate of Incorporation, By-Laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its board, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and

performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization or Operating Agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.



## ARTICLE II

### COVENANTS AND AGREEMENTS

**SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY.** (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

**SECTION 2.02. PAYMENTS IN LIEU OF TAXES.** (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined by the appropriate Assessors. The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (i) appraise the Land in the same manner as other similar properties in the general area of the Land, (ii) place an Assessed Value upon the Land, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes, (iii) appraise the Facility (as it exists prior to the completion of the Project and prior to the acquisition and installation of the Equipment contemplated by the Project (the unimproved Facility being referred to hereinafter as the "Unimproved Facility") in the same manner as other similar properties in the general area of the Unimproved Facility, (iv) place an Assessed Value upon the Unimproved Facility, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes, (v) appraise the Facility (as it exists (or would exist) following the completion of the renovations and reconstruction contemplated by the Project and any portion of the Equipment contemplated by the Project that is assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (vi) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Unimproved Facility and the Improvements, and of any change in the Assessed Value of the Land, the Unimproved Facility or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Unimproved Facility or the Improvements as initially established or with the amount of the Assessed Value of the Land, the Unimproved Facility or the Improvements as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Assessed Value of the Improvements, or of a change in such Assessed Value of the Land, the Unimproved Facility or the Improvements, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Assessed Value of the Project Facility for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Assessed Value has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Assessed Value or to determine a higher or a lower Assessed Value. Any payments in lieu of taxes due upon the Project Facility may not be withheld by the Company pending determination of the Assessed Value by the arbitrators.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be computed separately for each Taxing Entity as follows:

(1) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Land was owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Land determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such



Taxing Entity that would be applicable to the Land if the Land was owned by the Company and not the Agency.

(2) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land for such tax year.

(3) Next, determine the Normal Tax that would be payable to each Taxing Entity if the Unimproved Facility were owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Unimproved Facility determined pursuant to Subsection (B) of this Section 2.03, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Unimproved Facility if the Unimproved Facility were owned by the Company and not the Agency.

(4) Next, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Improvements determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency. **Note – the Assessed Value of the Improvements is equal to the Assessed Value of the Facility after the completion of the Project, minus the value of the Facility as it existed prior to the commencement of the Project.**

(5) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Unimproved Facility and the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Unimproved Facility and the Improvements shall be an amount equal to the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements and the Unimproved Facility for such tax year, as shown in the following table:

Tax Year Commencing in Calendar Year	Percentage of Assessed Value of <u>the</u> <u>Improvements</u>	Percentage of Assessed Value of <u>the</u> <u>Unimproved Facility</u>	Percentage of Assessed Value of <u>the</u> <u>Land</u>
2017	0%	100%*	100%
2018	0%	100%*	100%
2019	0%	100%*	100%
2020	50%	100%	100%
2021	50%	100%	100%
2022	75%	100%	100%
2023	75%	100%	100%
2024	75%	100%	100%
2025	75%	100%	100%
2026	75%	100%	100%
2027 and thereafter	100%	100%	100%

**\*The Assessed Value of the Unimproved Facility shall be Frozen at the 2016 Assessed Value through the end of 2019.**

(6) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (a) the amount due each Taxing Entity with respect to the Land for such tax year, as determined pursuant to Subsection (C)(2) hereof, plus (b) the amount due each Taxing Entity with respect to the Unimproved Facility for such tax year, as determined pursuant to Subsection (C)(3) hereof, and (c) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to Subsection (C)(4) hereof.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional

Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company pending determination of the Additional Assessed Value by the arbitrators.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to

the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.



ARTICLE III  
LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Montgomery County, New York, and neither the State of New York nor Montgomery County, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.



## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2028 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article VII of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010  
Attention: Ramon Rodriguez

WITH A COPY TO:

Schwartz Law Firm  
191 Guy Park Avenue  
Amsterdam, New York 12010  
Attention: Charles R. Schwartz, Esq.

IF TO THE AGENCY:

Montgomery County Industrial Development Agency  
9 Park Street  
Fonda, New York 12068  
Attention: Chairman

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: Christopher M. Martell, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in

Lieu of Tax 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.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY:   
Authorized Member



## EXHIBIT A

### DESCRIPTION OF THE LAND

#### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagaman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

#### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned reputedly by the Village of Hagaman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Hagsman, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

#### **SCHEDULE A**

All of that tract or parcel of land situate in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York being more particularly described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Hagsman S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

CLOSING ITEM NO.: A-9

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MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

RAMA REAL PROPERTIES LLC

---

PROJECT BENEFITS AGREEMENT

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DATED AS OF JUNE 1, 2016

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RELATING TO A LEASEHOLD INTEREST HELD BY THE  
AGENCY IN A CERTAIN PARCEL OF LAND LOCATED AT 46  
PAWLING STREET IN THE VILLAGE OF HAGAMAN,  
MONTGOMERY COUNTY, NEW YORK.

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## PROJECT BENEFITS AGREEMENT

THIS PROJECT BENEFITS AGREEMENT dated as of June 1, 2016 (the "Project Benefits Agreement") between MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at Old County Courthouse, Park Street, Fonda, New York (the "Agency"), and RAMA REAL PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 8 Brown Street, Amsterdam, New York (the "Company") is being entered into by the Agency and the Company to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance (as such term is defined herein) that has been granted to the Company under the Basic Documents (as such term is defined herein).

### ARTICLE I

#### DEFINITIONS

SECTION 1.01. DEFINITIONS. The following words and terms used in this Project Benefits Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

"Application" means the application submitted by the Company to the Agency on or about November 10, 2015, in which the Company describes the Project, certifies the number of Full Time Equivalent Employees that will be employed at the Project Facility, and requests the Agency's assistance with the completion of the Project.

"Basic Documents" means the Conveyance Documents, the Lease Agreement, the Payment in Lieu of Tax Agreement, the Project Benefits Agreement, the Loan Documents and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

"Completion Date" means the earlier to occur of (A) December 31, 2017 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

"Contract Employee" means (A) a full-time, private-sector employee (or self employed individual) that is not on the Company's payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self employed individuals) that are not on the Company's payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 32 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

"Conveyance Documents" means, collectively, the Lease to Agency and the Bill of Sale to Agency.

"Equipment" means various machinery and equipment that is located on the Land and in the Facility.



**"Facility"** means an approximately 17,000 square foot building located on the Land.

**"Financial Assistance"** means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

**"Full Time Equivalent Employee"** means (A) a full-time, permanent, private-sector employee on the Company's payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company's payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.

**"Land"** means an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagsman, Montgomery County, New York.

**"Lease Agreement"** means the lease agreement dated as of June 1, 2016 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

**"Payment in Lieu of Tax Agreement"** means the payment in lieu of tax agreement dated as of June 1, 2016 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility; as such agreement may be amended or supplemented from time to time.

**"Project"** means (A) (1) the acquisition of the Land and the Facility, (2) the renovation and reconstruction of the Facility, and (3) the acquisition and installation of the Equipment, all of the foregoing to constitute a facility that provides professional administrative office space;

**"Project Facility"** means, collectively, the Land, the Facility and the Equipment.

**"Recapture Period"** means a period of ten (10) years, commencing on the Completion Date.

**"Recapture Events"** shall mean the following:

- (1) failure to complete the acquisition, construction and installation of the Project Facility;
- (2) liquidation of substantially all of the Company's operating assets and/or cessation of substantially all of the Company's operations;
- (3) relocation of all or substantially all of Company's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (4) elimination of jobs or transfer of jobs out of Montgomery County that is equal to at least fifteen percent (15%) of the Company's Employment Level;

- (5) sublease of all or part of the Project Facility in violation of Basic Documents; or
- (6) a change in the use of the Project Facility, other than as warehouse, office and distribution facilities.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into this Project Benefits Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Project Benefits Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Project Benefits Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State of New York to enter into this Project Benefits Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Project Benefits Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State of New York to enter into this Project Benefits Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement. By proper action of its board of directors, the Company has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Project Benefits Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement by (and the execution, delivery and performance of this Project Benefits Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Project Benefits Agreement will not conflict

with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization and operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Project Benefits Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Project Benefits Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Project Benefits Agreement by the Company or as a condition to the validity of this Project Benefits Agreement.

## ARTICLE III

### COVENANTS AND AGREEMENTS

**SECTION 3.01. FINANCIAL ASSISTANCE.** (A) Financial Assistance. In connection with the Project, and in reliance on the certifications provided by the Company in the Application, the Agency has agreed to provide the Company with (i) sales and use tax exemptions, (ii) a mortgage recording tax exemption, and (iii) a real property tax abatement on the Project Facility.

(B) Contingent Nature of the Financial Assistance. The Agency and the Company agree that the purpose of the Project is to create or retain permanent private sector jobs in Montgomery County in the form of direct employees at the Project Facility. Accordingly, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall bear a direct relationship to the success or lack of success of the Project in achieving this goal.

**SECTION 3.02. COMPANY AGREEMENTS.** The Company hereby agrees as follows:

(A) To file with the Agency, prior to the Closing Date, an employment plan, in substantially the form attached as Exhibit G to the Lease Agreement.

(B) To file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, including as required under Applicable Law, the initial said annual employment report to be in substantially the form annexed as Exhibit H to the Lease Agreement.

(C) To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(D) (1) In the Application, the Company certified to the Agency employment information with respect to the Project Facility and the Company's operations.

(2) To maintain the following employment levels (the "Employment Levels") during the term of the Lease Agreement (beginning immediately after the Completion Date):

Year	Full Time Equivalent Employees
1	79
2	82
3	82
4	82
5 and thereafter	82

(3) To verify that the Company is achieving the Employment Levels, the Company is required to submit the following reports: (1) by the 15<sup>th</sup> day of the first calendar month of each

new quarter, a form NYS-45-MN (the "Quarterly Report," a copy of which is attached hereto as **Exhibit A**), and (2) by February 1 of each year during the term of this Project Benefits Agreement, a project and employment plan status report (the "Status Report," a copy of which is attached hereto as **Exhibit B** and, together with the Quarterly Report, being collectively referred to as the "Employment Affidavits"). Full Time Equivalent Employees for each calendar year during the term of this Project Benefits Agreement shall be determined by calculating the average number of Full Time Equivalent Employees for the prior calendar year, computed by adding the number of Full Time Equivalent Employees as of the Company's last payroll date in the months of March, June, September and December and dividing that sum by 4.

(4) For purposes of determining the number of Full Time Equivalent Employees, no more than ten percent (10%) of such Full Time Equivalent Employees may consist of Contract Employees.



## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 4.01. EVENTS OF DEFAULT DEFINED.** (A) The following shall be "Events of Default" under this Project Benefits Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Project Benefits Agreement, any one or more of the following events:

(1) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Project Benefits Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(2) The occurrence of an "Event of Default" under any other Basic Document.

(3) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

**SECTION 4.02. REMEDIES ON DEFAULT.** (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement, and (b) all other payments due under this Project Benefits Agreement or any of the other Basic Documents; or

(2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the recording by the Agency of the Termination of Lease to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Project Benefits Agreement.

(B) No action taken pursuant to this Section 4.01 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by this Project Benefits Agreement and the other Basic Documents.

**SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE.** (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company to provide for the recapture of the project financial assistance (the "Project Financial Assistance"), all in accordance with the terms of this Section 4.03. The Company hereby agrees, if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

(B) Project Financial Assistance to be Recaptured. The Project Financial Assistance to be recaptured by the Agency upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to the sum of the following:

(1) the portion of the amount of New York State sales and use taxes allocable to Montgomery County that the Company would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency;

(2) the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project; and

(3) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.

(C) Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the Company shall pay the following amounts as recapture:

Year	Amount of Recapture
1-4	100% of the Project Financial Assistance
5-8	75% of the Project Financial Assistance
9-11	50% of the Project Financial Assistance
12-15	25% of the Project Financial Assistance
Thereafter	0% of the Project Financial Assistance

(D) Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Lease Agreement.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Project Benefits Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 4.05 of this Project Benefits Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Project Benefits Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Project Benefits Agreement and the Agency should employ attorneys or incur other expenses for the collection of any

amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Benefits Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of Recapture Event hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Project Benefits Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Project Benefits Agreement.

(D) No Waiver. In the event any provision contained in this Project Benefits Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Project Benefits Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V  
MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Project Benefits Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Project Benefits Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Project Benefits Agreement shall continue to remain in effect until December 31, 2022.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Project Benefits Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Project Benefits Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010  
Attention: Ramon Rodriguez

WITH A COPY TO:

Schwartz Law Firm  
191 Guy Park Avenue  
Amsterdam, New York 12010  
Attention: Charles R. Schwartz, Esq.

**IF TO THE AGENCY:**

Montgomery County Industrial Development Agency  
9 Park Street  
Fonda, New York 12068  
Attention: Chairman

**WITH A COPY TO:**

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: Christopher M. Martell, Esq.

(C) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

**SECTION 5.06. BINDING EFFECT.** This Project Benefits Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Project Benefits Agreement are intended to be for the benefit of the Agency.

**SECTION 5.07. SEVERABILITY.** If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Project Benefits Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Project Benefits 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.

**SECTION 5.08. COUNTERPARTS.** This Project Benefits Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 5.09. APPLICABLE LAW.** This Project Benefits Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Project Benefits Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: Robert Hoepf  
(Vice) Chairman

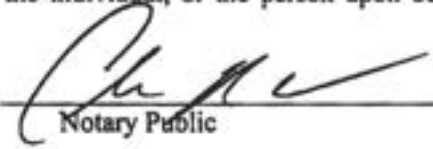
RAMA REAL PROPERTIES LLC

BY: Ram  
Authorized Officer



STATE OF NEW YORK                    )  
  )ss:  
COUNTY OF MONTGOMERY            )

On the 17 day of June, in the year 2016, before me, the undersigned, personally appeared Robert Hoeffs, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02MA6162486  
Qualified in Saratoga County  
Commission Expires March 12, 2019

STATE OF NEW YORK


)

)ss:

COUNTY OF MONTGOMERY

)

On the 17 day of June, in the year 2016, before me, the undersigned, personally appeared AMIR RODRIGUEZ, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02MA6162486  
Qualified in Saratoga County  
Commission Expires March 12, 2019

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CLOSING RECEIPT

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MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
(RAMA REAL PROPERTIES LLC PROJECT)

---

CLOSING RECEIPT executed this 21 day of June, 2016, by MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") and RAMA REAL PROPERTIES LLC (the "Company").

WITNESSETH:

Capitalized terms used herein which are not otherwise defined herein and which are defined in the lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company shall have the meanings ascribed to them in the Lease Agreement, except that, for purposes of this Closing Receipt, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Closing Receipt and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this Closing Receipt and not as of any future date or to any successor or assign.

(1) The Agency (A) has executed, delivered and acknowledged, where appropriate, the Basic Documents to which it is a party, (B) acknowledges receipt of the Basic Documents duly executed and acknowledged, where appropriate, by the Company and (C) acknowledges receipt from the Company of the Agency's administrative fee relating to the Project.

(2) The Company (A) has executed, delivered and acknowledged, where appropriate, the Basic Documents to which it is a party and (B) acknowledges receipt of the Basic Documents duly executed and acknowledged by the Agency, where appropriate.

IN WITNESS WHEREOF, the Agency and the Company have caused this Closing Receipt to be executed in their respective names by their duly authorized officers and dated as of the day and year set forth above.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: Robert Hoek  
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY: Ram  
Authorized Member

GENERAL CERTIFICATE  
OF  
MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

This certificate is made in connection with the execution by Montgomery County Industrial Development Agency (the "Agency") of a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between Rama Real Properties LLC (the "Company") and the Agency, the Memorandum of Lease Agreement, the Underlying Lease, the Memorandum of Underlying Lease, the Payment in Lieu of Tax Agreement, the Project Benefits Agreement, and the Mortgage, (as each of said documents is defined in the Lease Agreement) and any other document to be executed by the Agency (all of the preceding documents being collectively referred to as the "Agency Documents") in connection with the undertaking by the Agency of a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagsman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of the Lease Agreement.

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to them in the Lease Agreement except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED OFFICER OF THE AGENCY HEREBY CERTIFIES THAT:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of and on behalf of the Agency.

2. The Agency is a corporate governmental agency constituting a public benefit corporation of the State of New York (the "State") duly established under Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 666 of the Laws of 1970 of the State, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"). A copy of Chapter 666 of the Laws of 1970 of the State is attached hereto as Exhibit A.

3. The Agency (A) has full legal power and authority to own its Properties, conduct its business, execute, deliver and perform its obligations under each of the Agency Documents and (B) has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations.

4. Under the Act, it is the purpose of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, and research facilities, including commercial facilities, and the Agency has the power to acquire, construct, reconstruct, lease, sell, improve, maintain, equip or furnish certain properties, including commercial facilities.

5. Pursuant to the Act, the governing body of Montgomery County, New York, for whose benefit the Agency was established filed or caused to be filed within six (6) months after the effective date of such Chapter 666 of the Laws of 1970 of the State, in the office of the New York State Department of State, Miscellaneous Records Unit, the Certificate of Establishment of the Agency pursuant to Section 856(1)(a) of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the governing body of Montgomery County, New York. Attached hereto as Exhibit B is a certified copy of said Certificate of Establishment of the Agency and certificates of appointment relating to all of the current members of the Agency.

6. The current members and officers of the Agency are as follows: Robert Hoefs, Chairman, Carol Shinemen, Vice Chairman, John Macci, Secretary, Robert Harris, Treasurer, John McGlone, Member, Daniel Wilson, Member and Matthew Beck, Member. The foregoing named individuals constitute all of the members of the Agency; each of such individuals was and is duly appointed, qualified and acting as such member; each of such individuals who is indicated as an officer of the Agency was and is duly elected or appointed, qualified and acting as such officer; and each of such individuals has been a member of the Agency since at least January 1, 2016.

7. Attached hereto as Exhibit C is a true, correct and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

8. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency. The Agency Documents are in full force and effect on and as of the date hereof, and no authority for the execution, delivery or performance of the Agency Documents has been repealed, revoked or rescinded.

9. The execution, delivery and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each by the Agency do not and will not (A) violate the Act or the by-laws of the Agency, (B) require consent under (which has not heretofore been received) or result in a breach of or default under any credit agreement, purchase agreement, indenture, mortgage, deed of trust, commitment, guaranty, lease or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected, or (C) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Agency or any of the Property of the Agency.



10. The Agency has duly authorized the taking of and has taken any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Agency Documents.

11. Each of the representations and warranties of the Agency contained in each of the Agency Documents is true, accurate and complete on and as of the date of this certificate with the same force and effect as though such representations and warranties were made on and as of the date hereof.

12. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to our knowledge, threatened against or affecting the Agency (nor, to our knowledge, any basis therefor), wherein an unfavorable decision, ruling or finding would adversely affect (A) the transactions contemplated by the Approving Resolution (as hereinafter defined), (B) the validity or the enforceability of the Approving Resolution or the Agency Documents or the transactions contemplated therein, or (C) the existence or organization of the Agency.

13. The Agency Documents have been each duly executed, acknowledged, where appropriate, and delivered on behalf of the Agency by the Chairman or Vice Chairman of the Agency; the signature of said officer thereon is the genuine signature of such officer; and said executed Agency Documents are in substantially the same form as the forms thereof presented to the members of the Agency and approved by the Approving Resolution.

14. Pursuant to a resolution adopted by the members of the Agency on November 11, 2015 (the "Public Hearing Resolution"), the Agency authorized the Executive Director to conduct a public hearing with respect to the Project. Attached hereto as Exhibit D is a certified copy of the Public Hearing Resolution.

15. Attached hereto as Exhibit E is proof of mailing of notice of the public hearing, held with respect to the Project (the "Public Hearing"), to the chief executive officers of the "affected tax jurisdictions" with respect to the Project (as such quoted term is defined in Section 854(16) of the Act).

16. Attached hereto as Exhibit F is an affidavit of publication of notice of the Public Hearing pursuant to Section 859-a of the Act.

17. Attached hereto as Exhibit G is the report of the Public Hearing (the "Report").

18. Pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on February 11, 2016 (the "SEQR Resolution"), the Agency determined that the Project constitutes a "Type II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA.

19. Attached hereto as Exhibit I is a true, correct and complete copy of the resolution of the members of the Agency adopted on February 11, 2016 (the "Approving Resolution") approving and authorizing execution by the Agency of the Agency Documents. Such Approving Resolution was duly adopted by the members of the Agency, has not been amended or modified since its adoption and is in full force and effect as of the date of this certificate in accordance with its terms.

20. The Agency is not contemplating instituting bankruptcy, insolvency or similar proceedings against itself.

21. The Agency has complied with all of the agreements and satisfied all of the conditions on its part to be performed and satisfied by the terms of the Agency Documents on or prior to the Closing Date.

IN WITNESS WHEREOF, I have hereunto set my signature as (Vice) Chairman the Agency this 16<sup>th</sup> day of June, 2016.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: Robert Hoef  
(Vice) Chairman

**EXHIBIT A**

**CHAPTER 666 OF THE LAWS OF 1970**

**ON FILE WITH THE AGENCY**

**EXHIBIT B**

**CERTIFICATE OF ESTABLISHMENT OF THE AGENCY AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

**ON FILE WITH THE AGENCY**

**EXHIBIT C**  
**BY-LAWS OF THE AGENCY**  
**ON FILE WITH THE AGENCY**



EXHIBIT D  
PUBLIC HEARING RESOLUTION

**ON FILE WITH THE AGENCY**

EXHIBIT E

PROOF OF MAILING OF NOTICE OF PUBLIC HEARING

## SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Montgomery County Legislature  
County Annex Building  
PO Box 1500  
Fonda, New York 120681500  
Attention: Martin P. Kelly, Chairman



9590 9403 0184 5120 9854 33

2. Article Number (Transfer from service label)

7011 3500 0003 3803 0251

PS Form 3811, April 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Martin P. Kelly*☐ Agent☐ Addressee

B. Received by (Printed Name)

Martin P. Kelly

C. Date of Delivery

DEC 3 2015

D. Is delivery address different from item 1?

☐ Yes☒ No

DEC 3 2015

USPS

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

## SENDER

1. Article Addressed to:

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

1. Article Addressed to:

Montgomery County  
Office of the County Executive  
PO Box 1500  
Fonda, New York 12068  
Attention: Matthew L. Ossenfort, County Executive



9590 9403 0184 5120 9854 64

2. Article Number (Transfer from service label)

7011 3500 0003 3803 0350

PS Form 3811, April 2015 PSN 7530-02-000-9053

X *Matthew L. Ossenfort*☐ Agent☐ Addressee

B. Received by (Printed Name)

Matthew L. Ossenfort

C. Date of Delivery

DEC 3 2015

D. Is delivery address different from item 1?

☐ Yes☒ No

DEC 3 2015

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

7011 3500 0003 3803 0251

U.S. Postal Service<sup>®</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$

Certified Fee \$

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Montgomery County Legislature  
County Annex Building  
PO Box 1500  
Fonda, New York 120681500  
Attention: Martin P. Kelly, Chairman

Postmark  
FONDA NY 12068  
DEC 3 2015

7011 3500 0003 3803 0350

U.S. Postal Service<sup>®</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$

Certified Fee \$

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Montgomery County  
Office of the County Executive  
PO Box 1500  
Fonda, New York 12068  
Attention: Matthew L. Ossenfort, County Executive

Postmark  
FONDA NY 12068  
DEC 3 2015

## SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.  
Print your name and address on the reverse  
so that we can return the card to you.  
Attach this card to the back of the mailpiece,  
or on the front if space permits.

Article, Article Number

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

*Mark Perillo*

☐ Agent  
☒ Addressee

## B. Received by (Printed Name)

*Mark Perillo*

## C. Date of Delivery

*12-3-15*

Is address different from item 1? ☐ Yes  
delivery address below: ☒ No

Greater Amsterdam School District  
11 Liberty Street  
Amsterdam, New York 12010  
Attention: Thomas F. Perillo, Superintendent



9590 9403 0184 5120 9854 40

Article Number (Transfer from service label)

7011 3500 0003 3803 0343

Form 3811, April 2015 PSN 7530-02-000-9033

Domestic Return Receipt

## 3. Service Type

☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

(over address)

## SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.  
Print your name and address on the reverse  
so that we can return the card to you.  
Attach this card to the back of the mailpiece,  
or on the front if space permits.

1.

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

*Robert T. Krom*

☐ Agent  
☒ Addressee

## B. Received by (Printed Name)

*MC KROM*

## C. Date of Delivery

*12/3/15*

Is address different from item 1? ☐ Yes  
delivery address below: ☐ No

Village of Haganan  
44 Haskell Street  
Haganan, New York 12086  
Attention: Robert T. Krom, Mayor



9590 9403 0184 5120 9854 26

2. Article Number (Transfer from service label)

7011 3500 0003 3803 0268

PS Form 3811, April 2015 PSN 7530-02-000-9033

Domestic Return Receipt

## 3. Service Type

☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Registered Mail Restricted Delivery

☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

(over address)

7011 3500 0003 3803 0343

Greater Amsterdam School District  
11 Liberty Street  
Amsterdam, New York 12010  
Attention: Thomas F. Perillo, Superintendent

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

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

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

DEC - 1 2015

USPS

7011 3500 0003 3803 0268

Village of Haganan  
44 Haskell Street  
Haganan, New York 12086  
Attention: Robert T. Krom, Mayor

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

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

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

DEC - 1 2015

USPS

U.S. Postal Service<sup>®</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$ \_\_\_\_\_  
 Certified Fee \_\_\_\_\_  
 Return Receipt Fee (Endorsement Required) \_\_\_\_\_  
 Restricted Delivery Fee (Endorsement Required) \_\_\_\_\_

**FONDANY 12068**  
**APR - 1 2015**  
**USPS**

Town of Amsterdam  
 283 Manny's Corners Road  
 Amsterdam, New York 12010  
 Attention: Thomas P. DiMezza, Supervisor

7011 3500 0003 3803 0367

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>	
<p>1. Is this address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Every address below: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		<p>2. Article Number (Transfer from service label)            7011 3500 0003 3803 0367</p>	
<p>Town of Amsterdam            283 Manny's Corners Road            Amsterdam, New York 12010            Attention: Thomas P. DiMezza, Supervisor</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail<sup>®</sup></p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Mail Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express<sup>®</sup></p> <p><input type="checkbox"/> Registered Mail<sup>™</sup></p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation<sup>®</sup></p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	



EXHIBIT F

PROOF OF PUBLICATION OF NOTICE OF PUBLIC HEARING

**AFFIDAVIT OF PUBLICATION**

State of New York

Montgomery County

) ss.:  
)



Deborah McClary, being duly sworn states that she resides in the Town of Mayfield, County of Fulton, and that she is an employee of McClary Media Inc. publisher of The Recorder, a daily newspaper published in the City of Amsterdam, NY and that the notice, a printed copy of which is hereto attached, was printed in The Recorder on the following dates: 11/30/15

Signed:

Deborah McClary

Subscribed and sworn to before me this 30 day of November, 2015

Stacey Menendez

Notary Public

State of New York, County of Montgomery Commission

expires 2/21/16

**STACEYA A. MENENDEZ**

NOTARY PUBLIC IN THE STATE OF NEW YORK

QUALIFIED IN MONTGOMERY COUNTY NO. 01ME6255982

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### LEGALS

#### NOTICE OF PUBLIC HEARING ON PROPOSED PROJECT AND FINANCIAL ASSISTANCE RELATING THERETO

Notice is hereby given that a public hearing pursuant to Section 859 of the General Municipal Law of the State of New York (the "Act") will be held by Montgomery County Industrial Development Agency (the "Agency") on the 7th day of December, 2015 at 9:00 o'clock a.m., local time, at the Village Office of Hagaman, Pawling Hall, located at 86 Pawling Street, Village of Hagaman, Montgomery County, New York,

[www.recordernews.com](http://www.recordernews.com)

### LEGALS

in connection with the following matters:  
Rama Real Properties LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company") submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Hagaman, Montgomery County,

### LEGALS

New York (the "Land"), together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the "Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from cer-

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tain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency. The Agency is considering whether: (A) to undertake the Project and (B) to provide certain exemptions from taxation with respect to the Project, including (1) exemption from mortgage recording taxes with respect to any documents recorded by the Agency with respect to the Project in the office of the County Clerk of Montgomery County, New York or elsewhere; (2) exemption from sales taxes relating to the acquisition, construction, and installation of the Project Facility; (3) exemption from deed transfer taxes on any real estate transfers with respect to the Project; and (4) exemption from real property taxes (not including special assessments and special ad valorem levies), subject to the obligation of the Company to make payments in lieu of taxes with respect to the Project. If any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency's uniform tax exemption policy, the Agency will follow the procedures for deviation from such policy set forth in Section 87(4)(b) of the Act prior to granting such portion of the Financial Assistance. The Agency has not completed its review of the Project pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto.

**LEGALS**

By: s/ Robert Hoefs  
Chairman  
Nov-57; 11/30/15  
**68 EAST MAIN STREET, LLC.**  
Art. of Org. filed with the SSNY on 11/17/15.  
Office: Montgomery County.  
SSNY designated as agent of the LLC upon whom process against it may be served. SSNY shall mail copy of process to the LLC, c/o George Haseotes, 19 Assinippi Avenue, Norwell, MA 02061. Purpose: Any lawful purpose.  
NOV-59 11/30, 12/7, 12/145, 12/21, 12/28, 1/4/2016

**SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF MONTGOMERY**  
**ROLAND H. VINYARD and JANET VINYARD Plaintiffs -vs- DAVID E. BURNS, ANDREA A. BURNS, Capital One Bank (USA), N.A., Wilbur National Bank, Credit Acceptance Corporation and "John Doe" and "Jane Doe" being fictitious names representing any tenant on the property, Defendants**  
**NOTICE OF SALE** Index No. 2013-0296 RJL No. 28-1-2013-0221

In pursuance by a judgment of foreclosure sale granted by this Court and entered in the Montgomery County Clerk's Office on November 17, 2015, I the undersigned referee, duly appointed in this action for such purpose, will for sale and sell at public to highest bidder at on the 22nd day of December, 2015, at 10:00 o'clock in the forenoon of that day, the mortgaged premises directed in and

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by said Judgment to be sold and in said Judgment described as follows: ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Root, County of Montgomery and State of New York and bounded and described as follows: SWISS CODE 4273600 - SBL# 80.11-1-33 - Location: 563 Sprakers Road - Approximate Size: 50.00 x 155.00 feet, AND being more particularly described as follows: ALL THAT TRACT OR PARCEL OF LAND with buildings thereon, situate in the hamlet of Sprakers, Town of Root, County of Montgomery and State of New York, briefly described as follows: Bounded on the north by lands of the State of New York, known as the Old Erie Canal; on the east by a line running parallel with the easterly foundation of the house on the said premises and located 12 feet easterly thereof and extending from the lands of the State of New York to the improved highway; on the South by the improved highway running from Canajoharie to and through the said Hamlet of Sprakers; and on the West by the town highway or road leading from the said improved highway to what is known as the Spakers Ferry. Subject, however, to all covenants, conditions and easements, if any, and to any state of facts an inspection of the premises and accurate survey may reveal. Said premises being known as and by street address: 563 Sprakers Road, Town of Root, Montgomery County, New York and bearing tax map designation: Section 80.11 Block 1 Lot. 33.

Robert J. Kruger, Esq.  
Attorney for the Plaintiffs

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P.O. Box 442, 6 Main Street  
Fultonville, New York 12072  
Telephone (518)853-4250  
LOCATION OF PROPERTY TO BE FORECLOSED: 563 SPRAKERS ROAD, TOWN OF ROOT, MONTGOMERY COUNTY, NEW YORK  
NOV - 42 11/23, 11/30, 12/7, 12/14/15

**PALATINE CHEESE OF NEW YORK, LLC.** Art. of Org. filed with the SSNY on 11/17/15.  
Office: Montgomery County.  
SSNY designated as agent of the LLC upon whom process against it may be served. SSNY shall mail copy of process to the LLC, c/o George Haseotes, 19 Assinippi Avenue, Norwell, MA 02061. Purpose: Any lawful purpose.  
NOV-58 11/30, 12/7, 12/14, 12/21, 12/28, 1/4/2016

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**SUPERINTENDENT OF SCHOOLS - STILLWATER CENTRAL SCHOOL DISTRICT** - Stillwater Central School District Board of Education is seeking a Superintendent of Schools for its 1,213 pupil UPK-12 district. A salary range of \$140,000 to \$150,000 is being offered. Brochure and application can be found at [www.boces.org/superschool](http://www.boces.org/superschool). Mail or submit electronically a letter of application, a completed application, resume, and credentials by December 31, 2015 to: James Deder, District Superintendent of Schools, WSWHE BOCES, 1153 Burgoyne Avenue, Suite 2, Ft. Edward, NY 12828, Voice (518) 746-3310, Ext. 8, Fax (518) 746-3319, email: [jdeder@wswhiboces.org](mailto:jdeder@wswhiboces.org).

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tively with the SEQR Act, "SEORA"). After the Agency completes its review under SEORA, it expects to be able to adopt a resolution determining that the Project will not have a significant effect on the environment. The Agency will at said time and place hear all persons with views on either the location and nature of the proposed Project or the Financial Assistance being contemplated by the Agency in connection with the proposed Project. A copy of the application filed by the Agency with respect to the Project is available for public inspection during normal business hours at the office of the Agency.

Dated: November 25, 2015.  
MONTGOMERY COUNTY  
INDUSTRIAL DEVELOPMENT  
AGENCY



**Interested persons may stop in and fill out an application.  
No phone calls please.**

**ATTN: Rich Kretser  
1 Venner Rd.  
Amsterdam, NY 12010**

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# The Recorder

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The Recorder currently has part-time positions available in our Mailroom Department. Applicants **MUST BE** at least 18 years of age, able to work flexible hours, days and weekends.

Team members will prepare inserts for newspaper by counting and sorting. Ensures proper count and quality are met in order to complete insertion orders. Keep work areas and equipment organized, neat and free of safety hazards, other duties as assigned by Supervisor. Team members must work quickly and accurately to meet deadlines.

Interested persons may stop in and fill out an application. No phone calls please.

**ATTN: Richard Kretser  
The Recorder  
1 Venner Rd.  
Amsterdam, NY 12010**

## JANRIC CLASSIC SUDOKU

Fill in the blank cells using numbers 1 to 9. Each number can appear only once in each row, column and 3x3 block. Use logic and process elimination to solve the puzzle. The difficulty level ranges from Bronze (easiest) to Silver to Gold (hardest).

				7		2	3	
7	3			1			8	
1		2			8			9
9	7		1			3		4
		4		9		7		
5		3			6		9	8
6			9			8		3
	9			3			1	7
	8	7		5				

Rating: BRONZE

Solution to 11/29/15

9	8	6	5	7	4	2	3	1
2	7	1	9	8	3	6	5	4
4	3	5	6	2	1	9	8	7
5	9	4	2	3	8	1	7	6
8	6	7	4	1	9	5	2	3
1	2	3	7	5	6	8	4	9
7	1	9	8	4	2	3	6	5
6	4	2	3	9	5	7	1	8
3	5	8	1	6	7	4	9	2

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11/30/15

## JUMBLE

THAT SCRAMBLED WORD GAME  
by David L. Hoyt and Jeff Kresak

Unscramble these four Jumbles, one letter to each square, to form four ordinary words.

ROGMO

--	--	--	--	--	--

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WONOS

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SOMTED

--	--	--	--	--	--

CEBRIK

--	--	--	--	--	--

--	--	--	--	--	--



Now arrange the circled letters to form the surprise answer, as suggested by the above cartoon.

(Answers tomorrow)

Saturday's. Jumbles: SHYLY GUEST VISUAL OFFEND  
Answer: When he blew all his money playing slot machines, poker, etc., he was in — "LOSS" VEGAS

EXHIBIT G

REPORT OF PUBLIC HEARING



**Public Hearing**  
**December 7, 2015, 9:00a.m.**  
**Village of Hagsman**  
**RAMA Real Properties – Home Helpers & Direct Link of Amsterdam**

Present: Ken Rose; IDA CEO, Sheila Snell; IDA CFO  
Sharon Kravis; Resident; Ramon Rodriguez; Home Helpers, Robert Palmation,  
Bill Bartman, Ed Kowalczyk, Diane Power  
Tom Power, Karen Rambler, Mary Jane Rubinski,  
Kathleen Louer, Emily Drew; Recorder, Carrie Talbert, Maria Cebula, Virginia  
Salamack, Robert T Krone, Mike Izeano, Frank Banewicz, Tom Slang

Mr. Ken Rose began the public hearing at 9:00 a.m. by reading the public notice as posted in the Recorder. He also stated he had the Affidavit of Publication and the Affidavit of Posting, as well as the Affidavit of Mailing. Mr. Rose introduced himself as the Agency Director. Mr. Rose stated that he would hear comments and answer any questions that he deems necessary although he stated this is a public hearing and is not required to answer or address comments and or concerns.

Mr. Rose started the conversation informing the public that this public hearing was specifically to take comments as it relates to financial assistance to the company that is currently being considered by the Montgomery County Industrial Development Agency. Applications for local approvals in relation to the actual project were not a part of this hearing. Mr. Rose also indicated that he asked Mr. Ramon Rodriguez to join the meeting to assist in answering questions if so chose.

One resident asked what type of business this was. Mr. Rodriguez explained the type of business he was operating and why he was looking to move and expand in the Village of Hagsman. He explained that he has outgrown his existing location in the Town of Amsterdam.

A resident asked what type of cliental would be present in the building. Mr. Rodriguez briefly explained the job descriptions that were laid out in the MCIDA application he presented to the MCIDA board.

One resident indicated that he was a neighbor to the adjoining property affected by the financial incentives. He indicated that he speaks on behalf of several neighbors and they are concerned with having their privacy exposed. He stated that he would not like to see the wooded area disturbed which is a part of the existing property be developed with a huge building.

Mr. Rodriguez explained that he would be placing the building back on the tax rolls, but would first need to obtain a variance from the village in order to pursue his proposed project. He

indicated that he had no intentions at this time to expand into the wooded area. Mr. Rodriguez passed out handouts and his phone number for anyone to call with questions and or concerns.

Ms. Karen Rambler spoke on research she has done on the business and found what she believes to be a franchise business that's very profitable. She asked what evidence Mr. Rodriguez could provide to determine his business need the assistance contemplated by the IDA Application.

Mr. Robert Palmation spoke that he is not in favor of a PILOT. He feels that everyone should pay their own share of municipal, school, and village taxes. He also indicated that he probably won't be in favor of the variance at least not for the wooded area. He may consider it for the building location, but not for the wooded area.

Again, a resident asked about the type of financial assistance. Mr. Rose again read the notice of where it spells out the incentives and detailed the IDA statute that defines what "financial assistance" pertains to. The residents again asked why Mr. Rodriguez would not be able to afford to pay taxes; how do they know he can afford the building. Ms. Rambler asked that he supply some type of evidence. Mr. Rodriguez explained his position and responded that he has provided the IDA with the required financials and he is not willing or required to provide them publically.

Mr. Robert Palmation asked on how the PILOT program worked. Mr. Rose explained the PILOT process and explained that Montgomery County Industrial Development Agency's Standard PILOT calculation was being utilized for this project. Mr. Palmation asked if that needed the Village Board approval and Mr. Rose explained that it does not. Mr. Palmation felt that was wrong and that the municipality should have a say.

A resident also requested an explanation on the Public hearing process and the IDA incentives. Mr. Rose give explanation that this was a process of due diligence in relation to this public hearing. He made clear that a final vote would not come until after the variance and any other local permits required by Village have been approved. He clarified that the IDA Board is the responsible party in making the final vote.

Ms. Rambler and a few others voiced their concern regarding the time of the hearing and that it should have been held at a time when residents were more apt to be able to participate, not at 9:00 a.m. They also voiced their concern and thought that in addition to the public hearing notice, the IDA should have inquired about the media placing additional articles in the paper. Mr. Rose stated that he had no control over what stories the local paper reports on.

Robert Krone indicated he would consider a PILOT if it's just on the building parcel and not any other land.

Mr. Rose furthered explained the values of IDA's and why it's important to generate, create and maintain businesses and why the tax incentives are provided.

Mr. Palmation spoke again as to why he's not in-favor of this PILOT; moving jobs from one location to another within the County without any job creation. Mr. Rose explained that Mr.

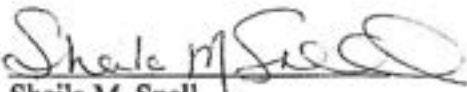
Rodriguez chose this location because of the availability of the building and that he has outgrown his current location. He explained that Mr. Rodriguez's business takes care of clients in surrounding Counties and could re-locate that to any of those. Mr. Palmation said that if he maybe he could move up to Fulton County and ask them for incentives.

A resident spoke out and said that the public hearing for the variance is really where their concerns should be voiced. Ms. Rambler indicated that their opinions count and should be heard.

Mr. Rose continued to explain the IDA's roll and why it's important to create and retain business. He discussed the re-use of buildings and how it affects the taxpayer if these buildings become part of the County's delinquent list of parcels.

At 9:40 a.m. Mr. Rose asked for any other comments. None were given and therefore the public hearing was declared closed at 9:40.

Respectfully submitted

A handwritten signature in dark ink, appearing to read 'Sheila M. Snell', is written over a horizontal line.

Sheila M. Snell  
CFO/Economic Development Specialist

EXHIBIT H  
SEQR RESOLUTION

**SEQR RESOLUTION – TYPE II ACTION  
RAMA REAL PROPERTIES LLC PROJECT**

A regular meeting of Montgomery County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at the Old County Courthouse, 9 Park Street Fonda, New York on February 11, 2016, at 4:35, p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Robert Hoefs	Chairman
Robert Harris	Treasurer
Matthew Beck	Secretary
John Macci	Member
John McGlone	Member

**ABSENT:**

Carol Shineman	Vice-Chair
Daniel Wilson	Member

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Kenneth Rose	Chief Executive Officer
Sheila Snell	Chief Financial Officer
Danielle Whelley	Ec. Dev. Specialist
Michele Marzullo	Ec. Dev. Program Assistant
Amanda Bearcroft	Sr. Planner/GIS
A. Joseph Scott , III, Esq.	Agency Counsel

The following resolution was offered by John Macci, seconded by Matthew Beck, to wit:

**Resolution No. 16-03**

**RESOLUTION DETERMINING THAT ACTION TO UNDERTAKE A COMMERCIAL PROJECT FOR RAMA REAL PROPERTIES LLC IS A "TYPE II ACTION" AND NO FURTHER ACTION IS REQUIRED UNDER SEQRA.**

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970

Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about November 11, 2015, Rama Real Properties LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company") submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Hagsman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA and the Regulations prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to the Regulations, the Agency has examined the Application and the Project in order to make an initial determination as to the potential environmental significance of the Project; and

WHEREAS, the Project appears to constitute a "Type II Action" (as said quoted term is defined in the Regulations), and therefore no environmental impact statement or any other determination or procedure under the Regulations is necessary;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon an examination of the Project, the Agency makes the following findings with respect to the Project:



(A) The Project consists of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Hagsman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

(B) The Project consists of the renovation and reconstruction of a structure or facility, in kind, on the same site.

Section 2. Based upon the foregoing, the Agency makes the following findings and determinations with respect to the Project:

(A) Pursuant to Section 617.5(c)(2) of the Regulations, the Project is a "Type II action" (as said quoted term is defined in the Regulations); and

(B) Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations.

Section 3. The Chairman of the Agency is hereby directed to file a copy of this Resolution with respect to the Project in the office of the Agency.

Section 4. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Robert Hoefs	VOTING	YES
Carol Shineman	VOTING	ABSENT
Robert Harris	VOTING	YES
Matthew Beck	VOTING	YES
John Macci	VOTING	YES
John McGlone	VOTING	YES
Dan Wilson	VOTING	ABSENT

The foregoing Resolution No. 16-03 was thereupon declared duly adopted.

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

I, the undersigned Secretary of Montgomery County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 11, 2016 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 11th day of February, 2016.

  
(Assistant) Secretary

(SEAL)

EXHIBIT I  
APPROVING RESOLUTION

**APPROVING RESOLUTION  
RAMA REAL PROPERTIES LLC PROJECT**

A regular meeting of Montgomery County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at the Old County Courthouse, 9 Park Street, Fonda, New York on February 11, 2016, at 4:35, p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Robert Hoefs	Chairman
Robert Harris	Treasurer
Matthew Beck	Secretary
John Macci	Member
John McGlone	Member

**ABSENT:**

Carol Shineman	Vice-Chair
Daniel Wilson	Member

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Kenneth Rose	Chief Executive Officer
Sheila Snell	Chief Financial Officer
Danielle Whelley	Ec. Dev. Specialist
Michele Marzullo	Ec. Dev. Program Assitant
Amanda Bearcroft	Sr. Planner/GIS
A. Joseph Scott , III., Esq.	Agency Counsel

The following resolution was offered by Matthew Beck, seconded by Robert Harris, to wit:

**Resolution No. 16-04**

**RESOLUTION AUTHORIZING THE EXECUTION OF DOCUMENTS IN  
CONNECTION WITH A LEASE/LEASEBACK PROJECT FOR RAMA REAL  
PROPERTIES LLC**

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970

Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, civic, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about November 11, 2015, Rama Real Properties LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company") submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 11, 2015 (the "Public Hearing Resolution"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board located at the Old County Courthouse, Fonda, New York, (C) caused notice of the Public Hearing to be published in a newspaper of general circulation available to the residents of the Village of Hagaman, Montgomery County, New York, (D) conducted the Public Hearing on the 7th day of December, 2015 at 9:00 o'clock a.m., local time, at the Village Office of Hagaman, Pawling Hall, located at 86 Pawling Street, Village of Hagaman, Montgomery County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on February 11, 2016 (the "SEQR Resolution"), the Agency determined that the Project constitutes a "Type

II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Montgomery County, New York; and (B) the completion of the Project will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Montgomery County, New York by undertaking the Project in Montgomery County, New York; and

WHEREAS, in order to consummate the Project and grant the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to agency (the "Lease to Agency" or the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (B) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; and (C) various certificates relating to the Project (the "Closing Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. All action taken by the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Agency Counsel with respect to all matters in connection with the Project. Agency Counsel is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 3. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a "project," as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of the Montgomery County, New York;



(D) It is estimated at the present time that the costs of the planning, development, acquisition, reconstruction, and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$695,000;

(E) The completion of the Project will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State of New York;

(F) The Project does not constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost;

(G) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Montgomery County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(H) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein; and

(I) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire the Project Facility; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; and (D) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a leasehold interest in the Premises pursuant to the Underlying Lease and (B) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (C) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The form and substance of the Agency Documents are hereby approved. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel, is authorized to negotiate and approve the form and substance of all of the Agency Documents.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Robert Hoefs	VOTING	YES
Carol Shinemen	VOTING	ABSENT
Robert Harris	VOTING	YES
Matthew Beck	VOTING	YES
John Macci	VOTING	YES
John McGlone	VOTING	YES
Daniel Wilson	VOTING	ABSENT

The foregoing Resolution No. 16-04 was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of Montgomery County Industrial Development Agency (the "Issuer"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Issuer, including the Resolution contained therein, held on February 11, 2016 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of such proceedings of the Issuer and of such Resolution set forth therein so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Issuer had due notice of said meeting; (B) said meeting was in all respect duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Issuer present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this 11th day of February, 2016.

  
(Assistant) Secretary

(SEAL)

CLOSING ITEM NO.: B-2

CERTIFICATE REGARDING  
NO CONFLICTS OF INTEREST

I, the undersigned Chief Executive Officer of Montgomery County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY, as follows:

1. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 666 of the Laws of 1970 of the State of New York, as amended (collectively, the "Act") and is a corporate governmental agency constituting a public benefit corporation of the State of New York.

2. In accordance with the Act, the Agency has determined, pursuant to a resolution duly adopted by the members of the Agency on February 11, 2016 (the "Approving Resolution") and in accordance with the provisions of a certain lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and RAMA Real Properties LLC (the "Company"), to undertake a project (the "Project") consisting of following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagsman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of the Lease Agreement.

3. Pursuant to the Approving Resolution, the Agency further determined to: (A) complete the acquisition, construction and installation of the Project Facility, or cause the Project Facility to be acquired, constructed and installed; and (B) lease the Project Facility to the Company pursuant to the Lease Agreement and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the Lease Agreement, among other things, the Company is obligated (1) to pay all costs incurred by the Agency with respect to the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project Facility and (2) to comply with the provisions of the Act applicable to beneficiaries of financial assistance from the Agency.

4. I have made careful inquiry of each member, officer and employee of the Agency having the power or duty to (a) negotiate, prepare, authorize or approve the Basic Documents or authorize or approve payment thereunder, (b) audit bills or claims under the Basic Documents, or (c) appoint an officer or employee who has any of the powers or duties as set forth above, as to whether or not such member, officer or employee has an "interest" (as defined pursuant to Article 18 of the General Municipal Law of the State of New York) in any of the Basic Documents. Upon information and belief, as a result

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2016.

  
\_\_\_\_\_  
(Vice) Chairman

EXHIBIT A

WRITTEN DISCLOSURES OF CONFLICTS OF INTEREST

---NONE---



**MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY**  
**9 Park Street**  
**Fonda, New York 12068**

June 21, 2016

To Whom It May Concern:

Re: New York State Sales or Use Tax Exemption  
Montgomery County Industrial Development Agency  
Rama Real Properties LLC Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), Rama Real Properties LLC (the "Company") has requested a letter from Montgomery County Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Project Site").

The Company has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency. Please be advised that on or about June 21, 2016, the Agency executed and delivered the Lease Agreement, pursuant to which the Agency appointed the Company as agent of the Agency to acquire, construct and install the Project Facility.

The Company, as agent of the Agency, is authorized to make purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project, and purchases or rentals of supplies, tools, equipment, or services necessary to acquire, construct, and install the Project.

To ensure that the above purchases or rentals are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, the vendor must identify the Project on each bill and invoice for such purchases and indicate on the bill or invoice that the Company as agent for the Agency was the purchaser (e.g., "Rama Real Properties LLC, as agent for Montgomery County Industrial Development Agency"). In addition, the following procedures should be observed:

1. Each bill and invoice should identify the date of delivery and indicate the place of delivery.

2. Payment should be made by the Company acting as agent, directly to the vendor from either a requisition from a special project fund of the payor.

3. Deliveries should be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases should be billed or invoiced by the vendor to the Company as agent of the Agency, identify the date and place of delivery, the Agency's full name and address and the Project Site where the materials will ultimately be delivered for installation.

Pursuant to Section 874(8) of the Act, the Company, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

Pursuant to Section 874(9) of the Act, the Company, as agent of the Agency, must file within thirty (30) days of the date the Agency designates the Company as agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such manner as prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency.

This letter shall serve as proof of the existence of an agency contract between the Agency and the Company for the SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter received by any vendor or seller to the Company as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law Section 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect sales and use tax on purchases or rentals of such materials, supplies, tools, equipment, or services by the Agency through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL DECEMBER 31, 2017.

In the event you have any questions with respect to the above, please do not hesitate to call Kenneth F. Rose, Executive Director of the Agency, at 518-853-8334.

Very truly yours,

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: Robert Hoef  
(Vice) Chairman

**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 MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCYStreet P.O. BOX 1500, OLD COUNTY COURTHOUSECity FONDA, NEW YORK 12068Telephone no. Day (518) 853-8334Evening ( )Contact KENNETH ROSETitle EXECUTIVE DIRECTOR2. **OCCUPANT (IF OTHER THAN IDA)** (If more than one occupant attach separate listing)Name RAMA REAL PROPERTIES, LLCStreet 8 BROWN STREETCity AMSTERDAM, NEW YORK 12010Telephone no. Day (518) 842-5626Evening ( )Contact RAMON RODRIGUEZTitle CEO3. **DESCRIPTION OF PARCEL**a. Assessment roll description (tax map no./roll year)  
25.11-2-1.1b. Street address 46 Pawling Streetc. City, Town or Village Village of Hagamand. School District Amsterdam City School Districte. County Montgomeryf. Current assessment As of June 1, 2016g. Lease to IDA As of June 1, 20164. **GENERAL DESCRIPTION OF PROPERTY** (if necessary, attach plans or specifications)a. Brief description (include property use) Former YMCA - being converted to office spaceb. Type of construction Office Space Renovationsc. Square footage 17,000d. Total cost \$200,000 (est)e. Date construction commenced July 1, 2016f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 20275. **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 Payment Formulab. Projected expiration date of agreement December 31, 2027

c. Municipal Corporations to which payments will be made

	YES	NO
County <u>Montgomery</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/city <u>Amsterdam</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village <u>Hagaman</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sch. dist. <u>Amsterdam CSD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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.

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

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

exemption \_\_\_\_\_ assessment roll year \_\_\_\_\_

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

## CERTIFICATION

1. Robert Hoefs

Name

Chairman

of

MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY

Organization

Title

hereby certify that this information on this application and accompanying papers constitutes a true statement of facts.

Date

Signature

## FOR USE BY ASSESSOR

1. Date application filed \_\_\_\_\_

2. Applicable taxable status date \_\_\_\_\_

3. a. Agreement (or extract) date \_\_\_\_\_

3. b. 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

Christopher M. Martell  
Partner  
cmartell@hodgsonruss.com



July 18, 2016

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Montgomery County Legislature  
County Annex Building  
PO Box 1500

Fonda, New York 12068-1500  
Attention: Martin P. Kelly, Chairman

7015 3010 0001 0952 1443

Town of Amsterdam  
283 Manny's Corners Road  
Amsterdam, New York 12010

Attention: Thomas P. DiMezza, Supervisor

7015 3010 0001 0952 1450

Greater Amsterdam School District  
11 Liberty Street

Amsterdam, New York 12010

Attention: Thomas F. Perillo, Superintendent

7015 3010 0001 0952 1474

Village of Hagaman

44 Haskell Street

Hagaman, New York 12086

Attention: Robert T. Krom, Mayor

7015 3010 0001 0952 1467

Montgomery County  
Office of the County Executive  
PO Box 1500  
Fonda, New York 12068

Attention: Matthew L. Ossenfort, County Executive

7015 3010 0001 0952 1436

Town of Amsterdam Assessor

283 Manny's Corners Road

Amsterdam, New York 12010

Attention: Edmund Kowalczyk, Jr., Assessor

7015 3010 0001 0952 1429

Re: Montgomery County Industrial Development Agency  
Rama Real Properties, LLC Project

Dear Sir/Madam:

Enclosed herewith please find an executed copy of the Payment in Lieu of Tax Agreement by and between Montgomery County Industrial Development Agency and Rama Real Properties, LLC, together with a real property tax exemption form regarding the above-captioned transaction.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact me.

Sincerely yours,

Christopher M. Martell

7015 0640 0003 6105 6824



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☐ Certified Mail Restricted Delivery \$ 0.00

☐ Adult Signature Required \$ 0.00

☐ Adult Signature Restricted Delivery \$ 0.00

Postage \$ 0.00

Total Postage and Fees \$ 2.80

Postmark Here

JUL 19 2016

CHILDRON 01178

LEWIS-RAND

Pilot: EA #12a

Montgomery County Legislature, Co. Annex Bldg  
 PO Box 1500, Fonda, NY 12068-1500  
 Attn: Martin A Kelly, Chairman

PS Form 3811, April 2015 PSN 7530-02-000-9053 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p><u>Town of Amsterdam Assessor</u>  <u>283 Mannys Corners Road</u>  <u>Amsterdam, NY, 12010</u>  <u>Attn: Edmund Kowalczyk, Jr., Assessor</u></p> <p>9590 9402 1454 5329 1661 56</p> <p>2. Article Number (Transfer from service label)</p> <p><u>7015 3010 0001 0952 1429</u></p>	<p>(A) Signature</p> <p><u>X</u> <u>[Signature]</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p><u>[Signature]</u></p> <p>C. Date of Delivery</p> <p><u>7/21/16</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA <b>MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY</b>		IDA project number (use OSC numbering system for projects after 1998)	
Street address <b>9 PARK STREET</b>		Telephone number <b>(518)853-8334</b>	
City <b>FONDA</b>		State <b>NY</b>	ZIP code <b>12068</b>
Name of IDA project operator or agent <b>RAMA REAL PROPERTIES LLC</b>	Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number	
Street address <b>8 BROWN STREET</b>	Telephone number <b>(518)842-5626</b>	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
City <b>AMSTERDAM</b>	State <b>NY</b>	ZIP code <b>12010</b>	
Name of project <b>RAMA REAL PROPERTIES LLC PROJECT</b>	Purpose of project (see instructions) <b>COMMERCIAL REHAB AND REUSE OF OLD YMCA</b>		
Street address of project site <b>58 N. PAWLING STREET</b>			
City <b>HAGAMAN</b>	State <b>NY</b>	ZIP code <b>12010</b>	
Description of goods and services intended to be exempted from sales and use taxes <b>SITE IMPROVEMENTS, BUILDING IMPROVEMENTS, MISCELLANEOUS FINISHINGS AND VARIOUS MACHINERY AND EQUIPMENT.</b>			

Date project operator or agent appointed (mm/dd/yy) <b>6-20 /2016</b>	Date project operator or agent status ends (mm/dd/yy) <b>12/31/2017</b>	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$ <b>500,000</b>	Estimated value of New York State and local sales and use tax exemption provided: \$ <b>42,500.00</b>	
<b>Certification:</b> I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.		
Print name of officer or employee signing on behalf of the IDA <b>Robert Hough</b>	Print title <b>(VICE) CHAIRMAN</b>	
Signature <i>Robert Hough</i>	Date	Telephone number <b>(518)853-8334</b>

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 306, 429, 475, 505, 697, 1095, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 40502(c)(2)(C).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5131.

### Need help?



Internet access: **www.tax.ny.gov**  
(for information, forms, and publications)



**Sales Tax Information Center** (518) 485-2889  
To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY) (518) 485-5082

Christopher M. Martell  
Partner  
cmartell@hodgsonruss.com



July 18, 2016

7015 3010 0001 0952 1368

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

NYS Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227

Re: Montgomery County Industrial Development Agency  
RAMA Real Property, LLC Project

Ladies/Gentlemen:

Enclosed herewith please find an executed Tax Form ST-60 - IDA Appointment of Project Operator or Agent for Sales Tax Purposes regarding the above-captioned transaction.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact me.

Sincerely yours,

Christopher M. Martell

Enclosure



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

Name of IDA <b>MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY</b>		IDA project number (use OSC numbering system for projects after 1998)	
Street address <b>9 PARK STREET</b>		Telephone number <b>(518)853-8334</b>	
City <b>FONDA</b>		State <b>NY</b>	ZIP code <b>12088</b>
Name of IDA project operator or agent <b>RAMA REAL PROPERTIES LLC</b>		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/> Employer identification or social security number	
Street address <b>8 BROWN STREET</b>		Telephone number <b>(518)842-5628</b>	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City <b>AMSTERDAM</b>		State <b>NY</b>	ZIP code <b>12010</b>
Name of project <b>RAMA REAL PROPERTIES LLC PROJECT</b>		Purpose of project (see instructions) <b>COMMERCIAL REHAB AND REUSE OF OLD YMCA</b>	
Street address of project site <b>58 N. PAWLING STREET</b>			
City <b>HAGAMAN</b>		State <b>NY</b>	ZIP code <b>12010</b>
Description of goods and services intended to be exempted from sales and use taxes		<b>SITE IMPROVEMENTS, BUILDING IMPROVEMENTS, MISCELLANEOUS FINISHINGS AND VARIOUS MACHINERY AND EQUIPMENT.</b>	

Date project operator or agent appointed (mm/dd/yy) <b>06/21/2016</b>	Date project operator or agent status ends (mm/dd/yy) <b>12/31/2017</b>	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$ <b>500,000</b>	Estimated value of New York State and local sales and use tax exemption provided: \$ <b>242,580</b>	

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA	Print title (VICE) CHAIRMAN
Signature <i>Robert Hoops</i>	Date <b>06-11-16</b> Telephone number <b>(518)853-8334</b>

## Instructions

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### Purpose of project

For Purpose of project, enter one of the following:

- |   |                   |
|---|-------------------|
| - Services  | - Construction    |
| - Agriculture, forestry, fishing                                  | - Wholesale trade |
| - Finance, insurance, real estate                                 | - Retail trade    |
| - Transportation, communication, electric, gas, sanitary services | - Manufacturing   |
|   | - Other (specify) |

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to: sections 5-a, 171, 171-a, 287, 306, 413, 475, 505, 697, 1006, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 40502(a)(2).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

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### Need help?



Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)  
(for information, forms, and publications)



Sales Tax Information Center: (518) 485-2889  
To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline  
(for persons with hearing and speech disabilities using a TTY) (518) 485-5052

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
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For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

SARATOGA SPRINGS, NY 12860

7015 3010 0001 0952 1368

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage \$

Total Postage and Fees \$

Sent to  
 NYS Tax Dept. IDA Unit  
 Street and Apt. No., or PO Box No.  
 Bldg 8, Rm 738, W.A. Harriman Campus  
 City, State, ZIP+4<sup>®</sup>  
 Albany NY 12227

PS Form 3800, April 2015 PSN 7530-02-000-9047 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.</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>	<p>A. Signature</p> <p><b>X</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>RECEIVED BY: ALBANY, NY 12227</p> <p>JUL 20 2016</p>
<p>1. Article Addressed to:</p> <p>NYS Tax Department          IDA Unit          Building 8, Rm 738          WA Harriman Campus          Albany NY 12227</p> <p>9590 9403 0895 5223 9266 46</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express<sup>®</sup></p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail<sup>TM</sup></p> <p><input type="checkbox"/> Certified Mail<sup>®</sup> <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation<sup>TM</sup></p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p>7015 3010 0001 0952 1368</p>	

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt



## SPECIAL COUNSEL DISCLOSURE STATEMENT

Pursuant to Section 858(8)(b) of the General Municipal Law of the State of New York, as amended, Hodgson Russ LLP (the "Firm") hereby certifies as follows:

**SECTION 1. DESCRIPTION OF THE TRANSACTION.** (A) General. The transaction which is the subject of this Disclosure Certificate (the "Transaction") is the following: The Firm is acting as counsel ("Counsel") to Montgomery County Industrial Development Agency (the "Agency") in connection with the project described below (the "Project") being undertaken by the Agency for the benefit of RAMA Real Properties LLC (the "Company").

(B) The Agency. The Agency is a public benefit corporation organized and existing pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act").

(C) The Project. The Project consists of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of the Lease Agreement.

(D) Additional Parties. Prior to or simultaneously with the execution and delivery of the Lease Agreement, the Company and the Agency will execute and deliver the following documents: (1) a certain lease to agency dated as of June 1, 2016 (the "Lease to Agency"), pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2032; (2) a bill of sale dated as of June 1, 2016 (the "Bill of Sale to Agency") from the Company to the Agency, pursuant to which the Company will convey to the Agency its interest in the portion of the Project Facility constituting fixtures and other personal property (including but not limited to the Equipment); (3) the Lease Agreement; (4) a payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Company and the Agency, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility to the Affected Tax Jurisdictions; and (5) various certificates and other documents relating to the Project (the "Closing Documents").

(E) Listing of Parties. Based upon the foregoing, the parties to the transaction (the "Parties") are as follows: the Agency and the Company.



SECTION 2. OTHER REPRESENTATION. Exhibit A attached hereto (A) identifies each Party which has a relationship with the Transaction, (B) indicates whether the Firm is representing such Party in the Transaction, (C) indicates whether such Party is separately represented (i.e., has counsel other than the Firm in the Transaction), and (D) indicates whether the Firm has represented such client in matters indirectly related to the Transaction.

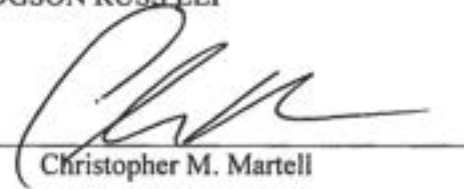
SECTION 3. DESCRIPTION OF SERVICES. If Exhibit A indicates that the Firm is providing legal services to any party other than the Agency, Exhibit B attached hereto contains a description of the nature of the legal services provided by the Firm to all of the Parties (including the Agency).

SECTION 4. AFFIRMATION. I hereby affirm that, to the best of my knowledge and belief, all information contained or described herein is true, correct and complete.

IN WITNESS WHEREOF, I have hereunto set my hand this 21<sup>st</sup> day of June, 2016.

HODGSON RUSS LLP

BY



Christopher M. Martell

**EXHIBIT A**

**PARTIES TO THE TRANSACTION**

<b>PARTY</b>	<b>DOES THE FIRM REPRESENT THIS PARTY IN THE TRANSACTION</b>	<b>DOES THIS PARTY HAVE SEPARATE COUNSEL IN THE TRANSACTION</b>	<b>DOES THE FIRM OTHERWISE REPRESENT THIS PARTY</b>	<b>HAS THE FIRM PROVIDED INDIRECT COUNSEL TO THIS PARTY IN THIS TRANSACTION</b>
Montgomery County Industrial Development Agency	Yes	Yes	Yes	Yes
RAMA Real Properties LLC	No	Yes	No	No

## **EXHIBIT B**

### **DESCRIPTION OF SERVICES**

#### **CLIENT**

Montgomery County Industrial  
Development Agency

#### **DESCRIPTION OF SERVICES PROVIDED BY THE FIRM**

The Firm represents the Agency as Counsel. As Counsel, the Firm has provided legal services to the Agency in connection with the following: (1) preparation of all major documentation related to the Transaction; and (2) rendering certain legal opinions required to establish that the Transaction has been properly undertaken.

---

IN THE MATTER OF TAXATION

OF

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

---

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

The undersigned, being duly sworn, deposes and says that :

1. He resides in Montgomery County, New York, and is the Chief Executive Officer of Montgomery County Industrial Development Agency (the "Agency") a public benefit corporation of the State of New York, established by Title 1 of Article 18-A of the General Municipal Law of the State of New York and Chapter 666 of the Laws of 1970 of the State of New York (collectively, the "Act").

2. On or about June 17, 2016, the Agency acquired an interest in 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land"), pursuant to a lease to Agency dated as of June 1, 2016 (the "Underlying Lease") between the Agency and Rama Real Properties LLC (the "Company"), said Land being more particularly described in Exhibit A attached hereto.

3. Pursuant to Section 874 of the Act and Section 1405(b)(1) of the Tax Law of the State of New York, no real estate transfer tax is due upon the instruments conveying the Land to the Agency.

4. On or about June 21, 2016, the Agency will grant certain "financial assistance" within the meaning of the Act (the "Financial Assistance") in connection with a project (the "Project") being undertaken by the Agency consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Company and the Agency, pursuant to which the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (D) the Agency will lease the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2032 or (2) the date on which the Lease

Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency.

5. In order to finance a portion of the costs of the Project, the Company will obtain the following loans: (1) a loan in the principal sum of \$178,600.00 (the "First Loan") from Keybank National Association (the "First Lender"), which First Loan will be secured by a mortgage, assignment of rents, security agreement and fixture filing (the "First Mortgage") dated as of June 21, 2016, (2) a loan in the principal sum of \$284,600.00 (the "Second Loan") from the First Lender, which Second Loan will be secured by a second mortgage, assignment of rents, security agreement and fixture filing (the "Second Mortgage") dated as of June 21, 2016, and (3) a loan in the principal sum of \$106,000.00 (the "Third Loan") from the County of Montgomery (the "Second Lender"), which Third Loan will be secured by (a) a mortgage (the "Third Mortgage," and together with the First Mortgage and the Second Mortgage, the "Mortgages") dated as of June 21, 2016, and (b) an assignment of rents (the "Assignment of Rents") dated as of June 21, 2016 from the Agency and the Company to the Second Lender.

6. Pursuant to the terms of the Lease Agreement, the Underlying Lease, the Mortgages, and the Assignment of Rents, the Agency has agreed to record the Mortgages, the Underlying Lease (or a memorandum thereof), and the Lease Agreement (or memorandum thereof) in the office of the County Clerk of Montgomery County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

7. Pursuant to Article 18-A of the General Municipal Law, the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision or upon its activities, and any bonds or notes issued by the Agency, together with the income therefrom, as well as the property of the Agency, together with the income therefrom, as well as the property of the Agency, pursuant to such legislation, are exempt from taxation, except for transfer and estate taxes.

8. Deponent submits that no mortgage tax should be imposed upon the Underlying Lease (or a memorandum thereof), the Lease Agreement (or a memorandum thereof), the Assignment of Rents or the Mortgages (collectively, the "Recording Documents") because (A) said Recording Documents are being executed and delivered under the state authority creating the Agency, (B) the use by the Agency of its powers to assist in the acquisition, construction and installation of the Project Facility is deemed by Article 18-A of the General Municipal Law to be a public purpose essential to the public interest and (C) both the New York State Department of Taxation and Finance (the "Department") and the Counsel to the Department have expressed their opinion that the recording of similar documents by similar agencies are operations of said agencies entitled to exemption from the mortgage recording tax.



MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: *Robert Hoef*  
(Vice) Chairman

Sworn to before me this  
17th day of June, 2016.

*Ch Martell*  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
No. 02MA6162486  
Qualified in Saratoga County  
Commission Expires March 12, 2019

[Signature Page to Mortgage Tax Affidavit]

EXHIBIT A  
DESCRIPTION OF THE LAND  
- SEE ATTACHED -

## SCHEDULE "A"

### PARCEL NO. 1

All that tract or parcel of land situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

BEGINNING at a point in the northwesterly margin of Pawling Street at the southeasterly corner of lands now or formerly owned by one Stewart and running thence S. 47° 53' W. along the said margin of Pawling Street one hundred nine (109) feet more or less to a point; thence N. 75° 48' W. two hundred ninety-four and nine-tenths (294.9) feet more or less to a point; thence N. 13° 41' E. one hundred sixteen (116) feet more or less to a point; thence N. 86° 42' W. twelve hundred and five (1205) feet more or less to a point; thence N. 3° 15' E. five hundred forty two (542) feet more or less to a point; thence S. 86° 42' E. seventeen hundred sixty eight (1768) feet more or less to a point; thence S. 36° 16' W. five hundred eighteen and nine tenths (518.9) feet more or less to a point; thence S. 53° 56' E. forty two and eight-tenths (42.8) feet; thence S. 43° 40' W. along the westerly line of lands of said Stewart on hundred thirty five (135) feet more or less to the southwesterly corner of said Stewart lands and thence S. 55° 12' E. along the southerly line of said Stewart lands one hundred forty two (142) feet more or less to the point and place of beginning.

BEING the same premises conveyed by Michael C. Murphy by deed dated December 19, 1983, to St. Stephen's Roman Catholic Church of Hagaman, New York, and recorded in the Montgomery County Clerk's office on January 5, 1984, in Book 440 of Deeds at Page 432.

### PARCEL NO. 2

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Hagaman, Town of Amsterdam, County of Montgomery and State of New York:

BEGINNING at a point in the southerly line of lands reputedly owned by St. Stephens R. C. Church, said point of beginning being the most northwest corner of lands reputedly of E. J. Power Inc.; thence from said point of beginning S 12° 41' 00" W along Powers westerly line for a distance of 523.32 feet; thence S 76° 57' 20" E for a distance of 44.79 feet; thence S 14° 06' 45" W along the westerly line of lands owned reputedly by the Village of Hagaman for a distance of 314.98 feet to an iron pipe in the north line of lands reputedly owned by Seigle; thence N 73° 55' 10" W along lands reputedly of Seigle, Rogoski and Spagnola for a distance of 353.32 feet to an iron pipe; thence N 13° 25' 40" E for a distance of 118.94 feet along the east line of lands reputedly of Buchman to an iron pipe; thence N 80° 21' 00" W 414.01 feet along the northerly line of lands reputedly of Buchman, Avery, Thibodeau, Carpenter and Crajowski to an iron pipe; thence N 3° 52' 15" E along the east line of lands reputedly owned by Phillips for a distance of 601.28 feet to an iron pipe; thence S 86° 04' 45" E for a distance of 829.45 feet along the south line of lands reputedly of St. Stephens R. C. Church to the point or place of beginning.

Containing 12.70 Acres of land more or less.

BEING a portion of the premises conveyed to Bonded Insulation Co., Inc. by Michael Murphy Co., Inc. by Deed dated September 22, 1983, recorded September 27, 1983, in the office of the Montgomery County Clerk in Book 439 of Deeds at Page 249. Bonded-Insulation Co., Inc., duly changed its name to JEM Assets Corporation July 22, 1987.

ALSO BEING the same premises conveyed by JEM Assets Corporation to St. Stephen's Roman Catholic Church of Hagsman, New York, by Deed dated December 4, 1987, and recorded December 29, 1987, in the Montgomery County Clerk's Office in Book 483 of Deeds at Page 153.

A new, more modern description follows:

#### **SCHEDULE A**

All of that tract or parcel of land situate in the Village of Hagsman, Town of Amsterdam, County of Montgomery and State of New York being more particularly described as follows:

Beginning at an iron pipe found in the northwesterly line of Pawling Street at the southeast corner of the lands of A. & M. Banewicz, running thence along the northwesterly line of Pawling Street S42°57'50"W 109.00' to an iron rod set, thence along the northerly line of the lands of Hughes & Shannon N77°12'56"W 301.22' to an iron pipe found, thence along the easterly, northerly and westerly lines of the lands of US Greenfiber the following three courses; N12°38'40"E 116.00' to an iron rod set, N87°39'25"W 392.51' to an iron rod set and S09°58'25"W 523.32' to an iron rod set, thence along the westerly line of the lands conveyed to Village of Hagsman S25°01'40"W 319.00' to the northerly line of the lands of T. Spagnola, thence along the northerly line of the lands of T. Spagnola N76°37'45"W 233.09' to an iron pipe found, thence along the easterly line of the lands of D. & S. Buchanan N10°39'12"E 119.03' to an iron pipe found, thence along the northerly line of the lands of Buchanan, the lands of R. & E. Avery, the lands of S. Phillips and the lands of J. Fonda N83°04'33"W 418.63' to an iron rod found, thence along the easterly line of the lands of Chad Chiara N01°25'15"E 286.12' to an iron rod set, thence along the easterly line of the lands of Kristine Roy N01°42'06"E 861.72' to an iron rod set, thence continuing along the southerly line of the lands of Roy and the southerly line of several lots fronting on Green Acres Road S88°30'20"E 1771.14' to an iron rod set, thence along the northwesterly line of several lots fronting on Pawling Street S34°31'57"W 518.90' to an iron pipe found, Thence along the southwesterly line of the lands of S. Bornt S55°39'50"E 42.80' to an iron rod set, thence along the northwesterly line of the lands of A. & M. Banewicz S41°41'55"W 134.89' to an iron pipe found and thence along the southwesterly line of the lands of Banewicz S57°00'02"E 150.32' to the point of beginning, containing 33.24 acres.

GENERAL CERTIFICATE  
OF  
RAMA REAL PROPERTIES LLC

This certificate is made in connection with the execution by Rama Real Properties LLC (the "Company") of a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Company and the Agency (as hereinafter defined), the Underlying Lease, the Memorandum of Underlying Lease, the Bill of Sale to Agency, the Memorandum of Lease Agreement, the Payment in Lieu of Tax Agreement, (as each of said documents is defined in the Lease Agreement) and any other document to be executed by the Company (all of the preceding documents being collectively referred to as the "Company Documents") in connection with the undertaking by Montgomery County Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), of a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of the Lease Agreement.

Capitalized terms which are not otherwise defined herein shall have the meanings ascribed to them in the Lease Agreement, except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED MEMBER OF THE COMPANY HEREBY CERTIFIES THAT:

1. I am a member of the Company and am duly authorized to execute and deliver this certificate in the name of and on behalf of the Company.
2. The Company (A) has been duly formed, is validly existing and is in good standing as a limited liability company under the laws of the State of New York, (B) is authorized to do business in the State of New York with full legal power and authority to own its Property, conduct its business and execute, deliver and perform its obligations under the Company Documents and (C) has taken all actions and obtained all approvals required in connection therewith.

3. Attached hereto as Exhibit A is a true, correct and complete copy of the Articles of Organization of the Company, together with all amendments thereto, certified by the New York State Secretary of State, as the same is in full force and effect on and as of the date of this certificate.

4. Attached hereto as Exhibit B is a true, correct and complete copy of the Operating Agreement of the Company, together with all amendments thereto, as the same is in full force and effect on and as of the date of this certificate.

5. Attached hereto as Exhibit C is a true, correct and complete copy of a certificate of good standing relating to the Company from the New York State Department of State, Corporations Unit.

6. Attached hereto as Exhibit D is a true, correct and complete copy of the resolution of the members of the Company (the "Company Resolution") approving and authorizing execution and delivery of the Company Documents. Such Company Resolution was duly adopted by the members of the Company, has not been amended or modified since its adoption and is in full force and effect on the date of this certificate in accordance with its terms.

7. Attached hereto as Exhibit E is a list of all material pending litigation relating to the Company. Except as set forth in Exhibit E, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the best of our knowledge, threatened against or affecting the Company, (nor to the best of our knowledge is there any basis therefor), wherein an unfavorable decision, ruling or finding would adversely affect (A) the transactions contemplated by the Company Resolution, (B) the validity or the enforceability of the Company Resolution or the Company Documents or the transactions contemplated therein, (C) the organization or existence of the Company, or (D) the business, prospects, Property or condition of the Company.

8. I have been duly designated to act as an "Authorized Representative" of the Company pursuant to and in accordance with the provisions of the Lease Agreement.

9. There are no Liens against or overdue taxes, assessments, fees or other governmental charges payable by the Company to the United States, the State, or, to my knowledge, to any other state or municipality in the United States.

10. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the Company in order to carry out, give effect to and consummate the transactions contemplated by the Company Documents have been duly authorized by all necessary action of the Company. The Company Documents are in full force and effect on and as of the date hereof, and no authority for the execution, delivery or performance of the Company Documents has been repealed, revoked or rescinded.

11. The execution, delivery and performance of the Company Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each by the Company do not and will not (A) violate the Company's Articles of Organization or Operating Agreement, (B) require consent under (which has not heretofore been received) or result in a breach of or default under any credit agreement, purchase agreement, indenture, mortgage, deed of trust, commitment, guaranty, lease or other agreement or instrument to which the Company is a party or by which the Company may be bound or affected, or (C) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of the Property of the Company.



IN WITNESS WHEREOF, the undersigned has set his signature as an authorized officer of the Company this 17th day of June, 2016.

RAMA REAL PROPERTIES LLC

BY:   
Authorized Member

EXHIBIT A

ARTICLES OF ORGANIZATION OF THE COMPANY

**NOT PROVIDED AT CLOSING**

**EXHIBIT B**  
**OPERATING AGREEMENT OF THE COMPANY**  
**NOT PROVIDED AT CLOSING**

EXHIBIT C

CERTIFICATE OF GOOD STANDING  
RELATING TO THE COMPANY

**NOT PROVIDED AT CLOSING**

**EXHIBIT D**

**RESOLUTION OF THE MEMBERS OF THE COMPANY**

**NOT PROVIDED AT CLOSING**

EXHIBIT E

PENDING LITIGATION  
AFFECTING THE COMPANY

- NONE -



CLOSING ITEM NO.: C-2

**AFFIDAVIT OF COMPANY**

STATE OF NEW YORK                     )  
  )ss:  
COUNTY OF MONTGOMERY            )

I, the undersigned, an Authorized Member of Rama Real Properties LLC (the "Company"), do hereby depose and state as follows:

1. Montgomery County Industrial Development Agency (the "Agency") may rely on the contents of this Affidavit in proceeding with the closing of its Rama Real Properties LLC, consisting of: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, mortgage recording taxes, real property transfer taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company, pursuant to the terms of a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company.

2. The Company delivered an application (the "Application") to the Agency for consideration of the Project.

3. The scope of the Project has not otherwise varied significantly from the description published in the Notice of Public Hearing attached hereto as Schedule A.

4. The total Project Costs, as of the date of this Affidavit, are estimated to be \$695,000.


5. There has been no other significant change or variation in the Project from the information contained in the Application, except as set forth on Schedule B attached hereto and made a part hereof.

IN WITNESS WHEREOF, the undersigned has set forth their hand as of the 17th day of June, 2016.

RAMA REAL PROPERTIES LLC

BY:   
Authorized Member

Sworn to before me this 17th day  
of June, 2016

  
Notary Public

CHRISTOPHER M. MARTELL  
Notary Public, State of New York  
Registration #02MA6162486  
Qualified in Saratoga County  
Commission Expires July 22, 2019

SCHEDULE A  
NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING  
ON PROPOSED PROJECT  
AND FINANCIAL ASSISTANCE  
RELATING THERETO

Notice is hereby given that a public hearing pursuant to Section 859 of the General Municipal Law of the State of New York (the "Act") will be held by Montgomery County Industrial Development Agency (the "Agency") on the 7th day of December, 2015 at 9:00 o'clock a.m., local time, at the Village Office of Haganan, Pawling Hall, located at 86 Pawling Street, Village of Haganan, Montgomery County, New York, in connection with the following matters:

Rama Real Properties LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company") submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Haganan, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

The Agency is considering whether (A) to undertake the Project and (B) to provide certain exemptions from taxation with respect to the Project, including (1) exemption from mortgage recording taxes with respect to any documents recorded by the Agency with respect to the Project in the office of the County Clerk of Montgomery County, New York or elsewhere, (2) exemption from sales taxes relating to the acquisition, construction, and installation of the Project Facility, (3) exemption from deed transfer taxes on any real estate transfers with respect to the Project, and (4) exemption from real property taxes (not including special assessments and special ad valorem levies), subject to the obligation of the Company to make payments in lieu of taxes with respect to the Project. If any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency's uniform tax exemption policy, the Agency will follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance.

The Agency has not completed its review of the Project pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the "Regulations", and collectively with the SEQR Act, "SEQRA"). After the Agency completes its review under SEQRA, it expects to be able to adopt a resolution determining that the Project will not have a significant effect on the environment.

The Agency will at said time and place hear all persons with views on either the location and nature of the proposed Project or the Financial Assistance being contemplated by the Agency in connection with the proposed Project. A copy of the application filed by the Agency with respect to the Project is available for public inspection during normal business hours at the office of the Agency.

Dated: November 25, 2015.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: s/ Robert Hoefs

\_\_\_\_\_  
Chairman

**SCHEDULE B**

**- NONE -**



SECTION 875 GML RECAPTURE AGREEMENT  
[Sales and Use Taxes]

THIS SECTION 875 GML RECAPTURE AGREEMENT (the "Recapture Agreement") dated as of June 1, 2016 is made by and between MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the "Agency") and a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 8 Brown Street, Amsterdam (the "Company").

WITNESSETH:

WHEREAS, Title I of Article 18 A of the General Municipal Law of the State of New York, as amended (the "Act") was initially enacted into law by Chapter 1030 of the Laws of 1969 of the State of New York (the "State") and has been amended and supplemented from time to time by various laws enacted subsequent thereto; and

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

WHEREAS, the Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, on June 21, 2016 (the "Closing"), the Agency granted certain financial assistance to the Company in connection with a project (the "Project"), said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 58 N. Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes, and mortgage recording taxes (the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to a lease

agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company.

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of June 1, 2016 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on January 31, 2030; and (2) a bill of sale dated as of June 1, 2016 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency filed with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, Section 875 of the Act, as added by the provisions of Chapter 59 of the Laws of 2013 of the State, requires, among other things, that (A) the Agency recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity state sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized by the Act, (B) the Agency include within its resolutions and basic documents establishing any project or appointing an agent or project operator for any project the terms and conditions in Section 875 of the Act, and (C) every agent, project operator or other person or entity that shall enjoy state sales and use tax exemption benefits provided by the Agency agree to such terms as a condition precedent to receiving or benefiting from such state sales and use exemptions benefits; and

WHEREAS, in order to comply with the provisions of Section 875 of the Act and thus gain the benefits of such Financial Assistance from the Agency to the Company under the Act, the Company is willing to enter into this Recapture Agreement and to grant to the Agency certain security therefor as described herein;

NOW THEREFORE, in consideration of the grant of the Financial Assistance by the Agency with respect to the Project and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Company, the Company hereby represents, warrants, covenants and agrees with the Agency, as follows:

**SECTION 1. DEFINITIONS.** The following words and terms used in this Recapture Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

"Commissioner" means the Commissioner of Taxation and Finance of the State.

"Completion Date" shall have the meaning assigned to such term in the Basic Documents.

"State Sales and Use Tax" means any sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the Tax Law of the State, but excluding such taxes imposed in a city by Section 1107 or Section 1107 of such Article 28.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Basic Documents or the Project Documents.

**SECTION 2. REPRESENTATIONS AND WARRANTIES.** (A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is qualified and authorized to do business in the State of New York and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Recapture Agreement and the other Basic Documents and Project Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its Members, the Company has been duly authorized to execute, deliver and perform this Recapture Agreement and the other Project Documents to which the Company is a party.

(B) Except as has been heretofore disclosed to the Agency, neither the execution and delivery of this Recapture Agreement or the other Project Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Recapture Agreement or the other Project Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Organization or Operating Agreement of the Company or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than pursuant to the Basic Documents and "Permitted Encumbrances" (as defined in the Basic Documents), or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected, or (4) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project by the Agency, providing of the Project Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility 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 Company or any other proposed occupant of the Project Facility located in the State.

(D) This Recapture Agreement and the other Project Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(E) To the best of the Company's knowledge, there is no action or proceeding pending or threatened by or against the Company by or before any court or administrative agency that would materially adversely affect the ability of the Company to perform its obligations under this Recapture Agreement, and all authorizations, consents and approvals of governmental bodies or agencies, if any, required to be obtained by the Company as of the date hereof in connection with the execution and

delivery of this Recapture Agreement or in connection with the performance of the obligations of the Company hereunder have been obtained.

(F) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(G) The Company understands that:

(1) Pursuant to Section 874 of the Act, the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State.

(2) Pursuant to Section 874 of the Act, the Project may be exempted from certain of those taxes due to the involvement of the Agency in the Project.

(3) The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes.

(4) Any exemption from the payment of certain sales taxes and use taxes imposed by the State and local governments in the State resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date.

(5) No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax.

(6) Pursuant to Section 874(9) of the Act, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Agency must file, within thirty days of any appointment of the Company as agent of the Agency for purposes of claiming any sales tax or use tax exemption, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(7) Pursuant to Section 875(5) of the Act, the Company acknowledges that (a) the Thirty-Day Sales Tax Report shall not be considered an exemption or other certificate or document under Article 28 or Article 29 of the Tax Law, (b) the Agency does not represent to the Company or any other agent, consultant, contractor, subcontractor or other person or entity taking or enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project that a copy of such Thirty-Day Sales Tax Report may serve as a sales or use tax exemption certificate or document, (c) no agent or project operator may tender a copy of such statement to any person required to collect sales or use taxes as the basis to make any purchase exempt from tax, (d) no



such person required to collect sales or use taxes may accept such a statement in lieu of collecting any tax required to be collected, (e) the civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax shall be as provided in the Tax Law, and (f) the use of such Thirty-Day Sales Tax Report, or the recommendation of the use or tendering of such Thirty-Day Sales Tax Report, as such an exemption certificate or document shall be deemed to be, under Article 28 and Article 37 of the Tax Law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax.

(8) Pursuant to Section 875(2) of the Act, the Agency must further, within thirty days of providing Financial Assistance to a project that includes any amount of State Sales and Use Tax exemption benefits, report to the Commissioner the amount of such benefits for such project, the project to which they are being provided, together with such other information and such specificity and detail as the Commissioner may prescribe. This additional report (the "Additional Thirty-Day Project Report") may be made in conjunction with the Thirty-Day Sales Tax Report or it may be made as a separate report, at the discretion of the commissioner.

(9) Pursuant to Section 874(8) of the Act, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of the Lease Agreement.

(10) Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this Section 2, the Company shall immediately cease to be the agent of the Agency in connection with the Project.

(11) Pursuant to Section 875(6) of the Act, (a) the Commissioner is authorized to audit the records, actions, and proceedings of the Agency and of its agents and project operators to ensure that the Agency and its agents and project operators comply with all the requirements of Section 875 of the Act, and (b) any information that the Commissioner finds in the course of such audit may be used by the Commissioner to assess and determine state and local taxes of the Agency's agents or project operators.

(12) Pursuant to Section 875(6) of the Act, (a) the Agency is required to report and make available on the internet copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes and (b) the Agency is further required to provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person.

**SECTION 3. TERM.** This Recapture Agreement shall commence as of the dated date hereof and shall remain in full force and effect until terminated by the Agency.

**SECTION 4. FURNISHING OF INFORMATION TO THE AGENCY.** (A) If the Company desires to claim any sales tax exemption by virtue of the Agency's involvement in the Project, the Company shall notify the Agency in writing of such desire, and shall furnish to the Agency a completed Thirty Day Sales

Tax Report relating to such request. If the Agency determines to grant such request by the Company, the Company agrees to assist the Agency in filing such Thirty-Day Sales Tax Report with the State.

(B) If the request by the Company includes any amount of State Sales and Use Tax exemption benefits, the Company shall notify the Agency in writing of such fact, and shall furnish to the Agency a completed Additional Thirty-Day Project Report relating to the Project. If the Agency determines to grant such State Sales and Use Tax exemption benefits with respect to the Project, the Company agrees to assist the Agency in filing such Additional Thirty-Day Project Report with the State.

(C) Pursuant to the requirements of Section 874(8) of the Act, the Company agrees to file an Annual Sales Tax Report with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner, regarding the value of sales tax exemptions the Company, its agents, consultants, contractors or subcontractors have claimed pursuant to, or as part of, the Financial Assistance provided by the Agency in connection with the Project or otherwise relating to the Project Facility.

(D) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

**SECTION 5. COMPLIANCE WITH THE PROVISIONS OF SECTION 875 OF THE ACT; RECAPTURE.** (A) If the Project includes any amount of State Sales and Use Tax exemption benefits, the Company agrees (1) to comply with the requirements of Section 875 of the Act applicable to the Project and (2) to cause any other agent, consultant, contractor, subcontractor or other person or entity enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project to agree to such terms as a condition precedent to receiving or benefiting from such State Sales and Use Tax exemption benefits.

(B) If the Company or any other agent, consultant, contractor, subcontractor or other person or entity taking or enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project shall have taken or enjoyed any benefits (1) to which such person or entity is not entitled or (2) which are in excess of the amounts authorized by both the Act and the Agency or (3) which are for property or services not authorized by both the Act and the Agency or (4) taken in cases where such person or entity failed to comply with a material term or condition to use property or services in the manner required by this Recapture Agreement and the other Project Agreements and any agreement between the Agency and such person or entity, the Company shall (a) pay, or cause such person or entity to pay, to the Agency the amounts requested by the Agency pursuant to Section 875 of the Act (the "Recapture Amounts") and (b) cooperate, and cause such person or entity to cooperate, with the Agency in the Agency's efforts to recover, recapture, receive, or otherwise obtain such Recapture Amounts.

(C) In connection with the Project, the Company agrees to (A) comply with any rules, regulations, publications or other guidance issued by the Commissioner or the commissioner of economic development implementing the provisions of Section 875 of the Act and of the other sections of the Act relating to any state or local tax or fee, or exemption or exclusion therefrom, that the Commissioner administers and that may be affected by any provision of the Act (the "Required Provisions") and (B) provide to the Agency any information reasonably requested by the Agency to enable the Agency to comply with the Required Provisions.

(D) In the event that the Company or any other agent, consultant, contractor, subcontractor or other person or entity taking or enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project shall be determined by the Agency or the Commissioner to have violated the requirements of the Act, the Tax Law or the Required Provisions, and, as a result of such failure, the



Agency (1) determines that Section 875 of the Act and the provisions of this Recapture Agreement authorize the Agency to seek Recapture Amounts relating thereto from the Company, and (2) demands that the Company pay a Repayment Amount, the Company shall promptly pay such Repayment Amount to the Agency, together with interest thereon at the rate of twelve percent (12%) per annum from the date and with respect to the dollar amount for which each such event which precipitated the need to make such Recapture Amount.

**SECTION 6. EVENTS OF DEFAULT.** Any one or more of the following events shall constitute an event of default under this Recapture Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Recapture Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any Recapture Amount due and payable by the Company pursuant to the provisions of Section 5(D) of this Recapture Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to pay when due any other amount due and payable by the Company pursuant to the provisions of this Recapture Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(C) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) or paragraph (B) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(D) Any warranty, representation or other statement by or on behalf of the Company contained in this Recapture Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Recapture Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

**SECTION 7. REMEDIES ON DEFAULT.** (A) General. Whenever any Event of Default shall have occurred with respect to this Recapture Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Recapture Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under the Basic Documents and/or Project Documents. Upon the occurrence of an Event of

Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Basic Documents and/or Project Documents, among other remedies, the right to terminate the Basic Documents and/or Project Documents and convey the Agency's interest in the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Repayment Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

**SECTION 8. PAYMENT OF ATTORNEY'S FEES AND EXPENSES.** If the Company should default in performing any of its obligations, covenants or agreements under this Recapture Agreement and the Agency or the Commissioner should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or the Commissioner, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

**SECTION 9. REMEDIES; WAIVER AND NOTICE.** (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or the Commissioner is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Recapture Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Recapture Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Recapture Agreement.

(D) No Waiver. In the event any provision contained in this Recapture Agreement should be breached by the Company and thereafter duly waived by the Agency, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Recapture Agreement shall be established by conduct, custom or course of dealing.

**SECTION 10. BURDENS TO RUN WITH LAND.** It is contemplated by the Company and the Agency that the obligations imposed by this Recapture Agreement shall run with the Land and, to that end, this Recapture Agreement may be filed against the Land and the Company in the official records of the County Clerk of Montgomery County, New York.

SECTION 11 SECURITY. (A) Guaranty. For value received and in order to induce the Agency to enter into the Basic Documents, the Company unconditionally guarantees to the Agency the due and prompt payment of rent and the performance of all obligations of the Company under the terms and provisions of the Basic Documents (the "Company's Obligations"). The Company agrees that no act or thing, except for payment and performance in full or written release of this Recapture Agreement, shall in any way affect or impair the Company's Obligations.

(B) Mortgage. As security for the Company's obligations under this Recapture Agreement, the Company agrees to execute a mortgage against the Project Facility (the "Recapture Agreement Mortgage") from the Company to the Agency if requested by the Agency, which Recapture Agreement Mortgage would secure payment of past due and unpaid Recapture Amounts under this Recapture Agreement.

SECTION 12. NOTICES. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

IF TO THE COMPANY:

Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010  
Attention: Ramon Rodriguez

WITH A COPY TO:

Schwartz Law Firm  
191 Guy Park Avenue  
Amsterdam, New York 12010  
Attention: Charles R. Schwartz, Esq.

IF TO THE AGENCY:

Montgomery County Industrial Development Agency  
9 Park Street  
Fonda, New York 12068  
Attention: Chairman

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: Christopher M. Martell, Esq.

SECTION 13. BINDING EFFECT. This Recapture Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and permitted assigns.

SECTION 14. SEVERABILITY. In the event any provision of this Recapture 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 15. AMENDMENTS, CHANGES AND MODIFICATIONS. This Recapture Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

SECTION 16. EXECUTION OF COUNTERPARTS. This Recapture 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 17. APPLICABLE LAW. This Recapture Agreement shall be governed exclusively by the applicable laws of the State of New York.

SECTION 18. SURVIVAL OF OBLIGATIONS. This Recapture Agreement shall survive the performance of the obligations of the Company to make payments required by the other Basic Documents and/or the Project Documents and all indemnities shall survive any termination or expiration of the Basic Documents and/or the Project Documents as to matters occurring during the period of the Company's occupancy of the Project Facility.

SECTION 19. SECTION HEADINGS NOT CONTROLLING. The headings of the several sections in this Recapture Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Recapture Agreement.

SECTION 20. MERGER OF THE AGENCY. (A) Nothing contained in this Recapture Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and political and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Recapture Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.

SECTION 21. NO ASSIGNMENT. This Recapture Agreement may not be assigned.

SECTION 22. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Recapture Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

SECTION 23. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver

shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 24. SUCCESSORS AND ASSIGNS. The rights and obligations of the Company hereunder shall be binding upon and inure to the benefit of its respective successors and assigns.

[signature page follows]

IN WITNESS WHEREOF, the Company and the Agency have caused this Recapture Agreement to be executed and delivered in their respective names by their respective duly authorized officers as of the day and year first above written.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
(Vice) Chairman

RAMA REAL PROPERTIES LLC

BY:   
Authorized Member



EXHIBIT A  
LEGAL DESCRIPTION  
---SEE ATTACHED---

June 21, 2016

Montgomery County Industrial Development Agency  
Old County Courthouse  
Fonda, New York 12068

Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010

Re: Montgomery County Industrial Development Agency  
Lease/Leaseback Transaction  
Rama Real Properties LLC Project

Ladies and Gentlemen:

We have acted as counsel to Montgomery County Industrial Development Agency (the "Agency"), a public benefit corporation organized and existing pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), in connection with the preparation, execution and delivery by the Agency of the following documents (the "Agency Documents"):

(1) a certain resolution adopted by the members of the Agency on February 11, 2016 (the "Approving Resolution") authorizing the execution and delivery by the Agency of the Agency Documents in connection with a project (the "Project") undertaken by the Agency for the benefit of Rama Real Properties LLC (the "Company") consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Company and the Agency; and

(2) the Lease Agreement;

Montgomery County Industrial Development Agency  
Rama Real Properties LLC  
June 21, 2016  
Page 2

(3) a certain lease to Agency dated as of June 1, 2016 (the "Underlying Lease") from the Company, as landlord to the Agency, as tenant;

(4) a certain payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility;

(5) a certain recapture agreement dated as of June 1, 2016 (the "Section 875 GML Recapture Agreement") by and between the Agency and the Company, required by the Act, regarding the recovery or recapture of certain sales and use taxes;

(6) a certain project benefits agreement dated as of June 1, 2016 (the "Project Benefits Agreement") by and between the Agency and the Company, required by the Act, regarding the recovery or recapture of certain Financial Assistance; and

(7) a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption.

We have, as counsel to the Agency, examined original or certified copies of the proceedings of the Agency taken with respect to the Project, as well as certificates of the Agency's officers, a certified copy of the Approving Resolution and executed counterparts of the Agency Documents. We have also examined such statutes, court decisions, proceedings and other documents as we have considered necessary or appropriate in the circumstances to render the following opinions. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease Agreement.

Based upon our examination of the foregoing, and in reliance upon the matters and subject to the limitations contained in the concluding paragraphs of this opinion, we are of the opinion (except that no opinion is given with respect to any federal or state securities law or any law concerning zoning or subdivision matters or as to the law of any jurisdiction other than the State of New York) that:

1. The Agency is a corporate governmental agency constituting a public benefit corporation duly established under the Act.

2. Under the Act, it is the purpose of the Agency to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing, manufacturing and commercial facilities, among others, and the Agency has the power to acquire, hold and dispose of real and personal property for its corporate purposes. In accordance with the Act, the Agency has determined to undertake the acquisition, construction and installation of the Project Facility, and to lease the Project Facility to the Company pursuant to the Lease Agreement.

3. The members and officers of the Agency identified in the Agency's general certificate delivered on this date have been duly appointed as such members (and duly elected by the members as such officers) and are qualified to serve as such.

4. The Agency has power and lawful authority under the Act to execute and deliver the Agency Documents; to undertake the acquisition, construction and installation of the Project Facility pursuant to the Lease Agreement; to appoint the Company as agent of the Agency for the purpose of the acquisition, construction and installation of the Project Facility; and to perform and observe the provisions of the Agency Documents on its part to be performed and observed.

5. The Approving Resolution has been duly adopted by the members of the Agency, complies with the procedural rules of the Agency and the requirements of the laws of the State of New York, and the Approving Resolution has not been supplemented, amended, or repealed and remains in full force and effect on the date hereof.

6. By the Approving Resolution, the Agency has duly authorized the acquisition, construction and installation of the Project Facility, the lease of its interest in the Project Facility to the Company and the execution and delivery by the Agency of the Agency Documents.

7. The making and performance by the Agency of the Agency Documents and the consummation of the transactions on the part of the Agency therein contemplated will not violate any applicable provision of any applicable law (including the Act), regulation, decree, writ, order or injunction, or any applicable provision of the Act, and will not contravene the provisions of or constitute a default under any material term of any agreement, indenture, bond resolution or other instrument to which the Agency is a party or by which the Agency is bound; provided, however, that no opinion is expressed as to the terms of laws, regulations, rules, judgments or orders with respect to the physical acquisition, construction, installation, equipping, occupancy or operation of the Project Facility.

8. The Agency Documents have been duly authorized by all necessary action on the part of the Agency, have been duly executed and delivered by authorized officers of the Agency, and, assuming the due authorization, execution and delivery of same by the other parties thereto, constitute legal, valid and binding special obligations of the Agency.

9. No additional or further consent, authorization or approval of, or filing or registration with, any governmental or regulatory body not already obtained is required for the making and performance by the Agency of the Agency Documents or for the performance by the Agency of the transactions contemplated thereby; provided, however, that no opinion is expressed as to the terms of laws, regulations, rules, judgments or orders with respect to the physical acquisition, construction, equipping, occupancy or operation of the Project Facility.

10. The Agency has not been served with a summons in any action and, to the best of our knowledge, there is no litigation pending or threatened in any court, either state or federal, calling into question the creation, organization or existence of the Agency, the validity of the Agency Documents, or the authority of the Agency to acquire, construct and install the Project Facility or to enter into or perform the Agency Documents.

Any opinion concerning the validity, binding effect or enforceability of any document (A) means that (1) such document constitutes an effective contract under applicable law, (2) such document is not

Montgomery County Industrial Development Agency  
Rama Real Properties LLC  
June 21, 2016  
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invalid in its entirety under applicable law because of a specific statutory prohibition or public policy, and is not subject in its entirety to a contractual defense under applicable law and (3) subject to the following sentence, some remedy is available under applicable law, if the person concerning whom such opinion is given is in material default under such document but (B) does not mean that (1) any particular remedy is available under applicable law upon such material default or (2) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law. Furthermore, the validity, binding effect or enforceability of any document may be limited to or otherwise affected by (A) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (B) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or at law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability or good faith.

We express no opinion with respect to (A) title to all or any portion of the Project Facility, (B) the priority of any liens, charges, security interests or encumbrances affecting the Project Facility or any part thereof (or the effectiveness of any remedy which is dependent upon the existence of title to the Project Facility or the priority of any such lien, charge, security interest or encumbrance), (C) any laws, regulations, judgments, permits or orders with respect to zoning, subdivision matters or requirements for the physical commencement and continuance of the acquisition, construction, installation, use or operation of the Project Facility or with respect to the requirement of filing or recording of any of the Basic Documents, or (D) the laws of any jurisdiction other than the State of New York.

Insofar as the foregoing opinions express or involve conclusions as to compliance by the Agency with the provisions of Article Eight of the Environmental Conservation Law of the State of New York, we have relied upon the accuracy of the conclusions contained in the resolution adopted by the members of the Agency on February 11, 2016 (the "SEQR Resolution") in which the Agency determined that the Project constitutes a "Type II Action" (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Project was required under SEQRA; provided, however, that we are not passing upon nor do we assume any responsibility for the accuracy, completeness, or fairness of the statements, information or conclusions contained in the foregoing and we make no representation that we have independently verified the accuracy, completeness, or fairness of any such statements, information or conclusions.

Montgomery County Industrial Development Agency  
Rama Real Properties LLC  
June 21, 2016  
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This opinion is rendered as of the date hereof, and no opinion is expressed as to matters referred to herein on any subsequent date.

Very truly yours,

HODGSON RUSS LLP

BY

A handwritten signature in black ink, appearing to be "C. Russ", written over a horizontal line.



# SCHWARTZ LAW FIRM

*A General Practice and Civil Litigation Law Firm*

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Of Counsel:  
Emily G. Muller, Esq.  
Robert Kelly, Esq.

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June 21, 2016

Montgomery County Industrial Development Agency  
Old County Courthouse  
Fonda, New York 12068

Rama Real Properties LLC  
8 Brown Street  
Amsterdam, New York 12010

Re: Montgomery County Industrial Development Agency  
Lease/Leaseback Transaction  
Rama Real Properties LLC Project

Ladies and Gentlemen:

We have acted as counsel to Rama Real Properties LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company"), in connection with the preparation, execution and delivery by the Company and Montgomery County Industrial Development Agency (the "Agency"), a public benefit corporation organized and existing pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), of the following documents (collectively, the "Company Documents"): (1) a bill of sale dated as of June 1, 2016 (the "Bill of Sale to Agency") from the Company to the Agency; (2) a lease to Agency dated as of June 1, 2016 (the "Underlying Lease") from the Company to the Agency; (3) a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company; (4) a payment in lieu of tax agreement dated as of June 1, 2016 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company; and (5) various other closing documents required to be executed by the Company, all in connection with the undertaking by the Agency of a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 34 acre parcel of land located at 46 Pawling Street in the Village of Hagaman, Montgomery County, New York (the "Land") together with an approximately 17,000 square foot building located thereon (the "Facility"), (2) the renovation and reconstruction of the Facility, (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a facility that provides professional

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\* not for service of papers

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administrative office space; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of the Lease Agreement.

We have examined the original or certified copies of the proceedings of the Company taken with respect to the Project, as well as certificates of the Company's officers, a certified copy of the resolution of the Company's Board authorizing the execution and delivery by the Company of the Company Documents (the "Company Resolution"), and executed counterparts of all of the Company Documents. We have also examined such statutes, court decisions, proceedings and other documents as we have considered necessary or appropriate in the circumstances to render the following opinions. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease Agreement.

Based on the foregoing, it is our opinion that:

1. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is authorized to do business in the State of New York, and possesses full power and authority to own its Property, to conduct its business and to execute and deliver the Company Documents and to carry out and perform its obligations thereunder.

2. The Company Resolution has been duly adopted by the Company's members, complies with the procedural rules of the Company and the requirements of the laws of the State of New York, and the Company Resolution has not been supplemented, amended or repealed and remains in full force and effect on the date hereof.

3. The execution and delivery by the Company of the Company Documents have been duly authorized by all necessary action of the Company. Each of the Company Documents has been duly executed and delivered by an Authorized Representative of the Company and is a legal and valid binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforcement of the Company Documents may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws relating to fraudulent conveyances or affecting the enforcement of rights of creditors of the Company generally and equitable principles of general applicability.

4. The execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not conflict with or constitute on the part of the Company a breach of or default under the Company's articles of organization, operating agreement or any indenture, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected (of which the Company has made me aware and has provided me with copies of the same) for which a valid consent has not been secured; nor is any approval or any action by any

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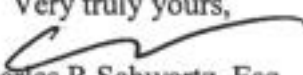
Governmental Authority or agency required in connection with the execution, delivery or performance thereof by the Company.

5. There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting, the Company, wherein an unfavorable decision, ruling or finding would in any way adversely affect, in a material fashion, the Project Facility or the validity or enforceability of the Company Documents.

6. The Project Facility, as proposed, will be in compliance with the applicable local laws and ordinances and all state and federal environmental laws (including but not limited to Article Eight of the New York State Environmental Conservation Law), rules and ordinances.

Any opinion concerning the validity, binding effect or enforceability of any document (A) means that (1) such document constitutes an effective contract under applicable law, (2) such document is not invalid in its entirety under applicable law because of a specific statutory prohibition or public policy, and is not subject in its entirety to a contractual defense under applicable law and (3) subject to the following sentence, some remedy is available under applicable law if the person concerning whom such opinion is given is in material default under such document, but (B) does not mean that (1) any particular remedy is available under applicable law upon such material default or (2) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law. Furthermore, the validity, binding effect or enforceability of any document may be limited to or otherwise affected by (A) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (B) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability or good faith.

Very truly yours,

  
Charles R. Schwartz, Esq