

The Legislature of Rockland County



MICHAEL M. GRANT
Legislator – District 2

Chair, Budget & Finance Committee
Chair, Economic Development Committee

AGENDA ECONOMIC DEVELOPMENT COMMITTEE TUESDAY, JUNE 25, 2013 6:30 PM

ROLL CALL

ADOPTION OF MINUTES- MEETING OF APRIL 24, 2013

1. REF. #5614 - APPROVAL OF PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT BETWEEN SUFFERN CDC, LLC, RAYMOURS FURNITURE COMPANY, INC. VILLAGE OF MONTEBELLO, TOWN OF RAMAPO, RAMAPO CENTRAL SCHOOL DISTRICT, COUNTY OF ROCKLAND, AND THE COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY FOR PROPERTY LOCATED AT 22 HEMION ROAD (A/K/A 30 DUNNIGAN DRIVE) VILLAGE OF MONTEBELLO, TOWN OF RAMAPO, IN THE RAMAPO CENTRAL SCHOOL DISTRICT, TAX MAP SECTION 55.6, BLOCK 1, LOT 3.1 AND SECTION 55.6 BLOCK 1 LOT 3.2 AND AUTHORIZING ITS EXECUTION BY THE COUNTY EXECUTIVE [DEPARTMENT OF FINANCE] [PILOT] (S. DEGROAT, COMMISSIONER FINANCE) DL#2013-02191
2. REF. #9481 - DISCUSSION ITEM: OPERATIONAL REVIEW (DEPARTMENTAL FUNCTIONS) OFFICE OF THE COUNTY CLERK (HON. MICHAEL M. GRANT, LEGISLATURE)
3. REF. #9285 - DISCUSSION ITEM - MID-HUDSON REGIONAL ECONOMIC DEVELOPMENT GRANTS AND CONSOLIDATED FUNDING APPLICATIONS UPDATE (HON. MICHAEL M. GRANT AND HON. EDWIN J. DAY, LEGISLATURE)
4. REF. #9498 - DISCUSSION ITEM - TAX-FREE NEW YORK PROGRAM: TRANSFORMING UNIVERSITY COMMUNITIES INTO MAGNETS FOR NEW BUSINESSES AND INVESTMENT (HON. MICHAEL M. GRANT AND HON. ILAN S. SCHOENBERGER, LEGISLATURE)

"The Rockland County Legislature is committed to full compliance with the Americans with Disabilities Act. To that end, the Legislature is committed to creating an accessible environment for all. To request accommodations that you may require, please call Damaris Alvarez at 845-638-5248 (845-708-7899 for TTY/TDD). Please request these accommodations three (3) days in advance so that we can seek to meet your needs."

ED062513.AGASED

Referral No.

WHEREAS, The Village of Montebello, Town of Ramapo, the Ramapo Central School District and the Rockland County Industrial Development Agency have approved the agreement; and

WHEREAS, The _____ Committees of the Legislature have met, considered and _____ approved this resolution; now therefore be it

RESOLVED, That the Legislature of Rockland County hereby approves a Payment In Lieu Of Taxes (PILOT) agreement with Suffern CDC, LLC and Raymours Furniture Company, Inc., the Village of Montebello, the Town of Ramapo, the Ramapo Central School District, County of Rockland and County of Rockland Industrial Development Agency for payment of monies in lieu of taxes in the amount set forth in the attached agreement, and authorizes its execution by the County Executive, subject to the approval of the County Attorney, and only upon the agreement of all parties.

AR:dc
2013-02191
5/20/13

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of the 31st day of May, 2012, **SUFFERN CDC, LLC** ("Lessee"), a New York limited liability company with offices at 7248 Morgan Road, P.O. Box 220, Liverpool, New York 13090, **RAYMOURS FURNITURE COMPANY, INC.** ("Sublessee"), a New York corporation with offices at 7248 Morgan Road, P.O. Box 220, Liverpool, New York 13090, the **VILLAGE OF MONTEBELLO**, One Montebello Road, Montebello, New York 10901 (the "Village"), the **TOWN OF RAMAPO**, 237 Route 59, Suffern, New York 10901 (the "Town"), the **RAMAPO CENTRAL SCHOOL DISTRICT**, 45 Mountain Avenue, Hillburn, New York 10931 (the "School District"), the **COUNTY OF ROCKLAND**, 11 New Hempstead Road, New City, New York 10956 (the "County") and the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with offices at Two Blue Hill Plaza, Pearl River, New York 10965 (the "Agency").

WITNESSETH

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the "Enabling Act") authorized and provides for the creation of industrial development agencies in the several counties, cities, and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip, furnish and dispose of one or more projects for the purpose of promoting, developing, encouraging and assisting in the acquisition, construction, reconstruction, improvement, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, civic, research, and commercial facilities, thereby advancing the job opportunities, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 564 of the 1980 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the "Act"), the County of Rockland Industrial Development Agency which has been created and established pursuant thereto for the benefit of the County of Rockland proposes to undertake the acquisition and financing of the project described below; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with Lessee for a commercial "project" within the meaning of the Act (the "Project"); and

WHEREAS, the Project will consist of the Lessee's acquisition of an existing building and renovations thereof and the Lessee's acquisition and installation thereto of certain machinery and equipment related thereto, all to be used for warehouse, distribution facility and administrative offices (the "Intended Use"), which Project is located at 22 Hemion Road (a/k/a 30 Dunnigan Drive), Village of Montebello, Town of Ramapo in the Ramapo Central School

District, being shown and designated on the Tax Map of the Town of Ramapo as Section 55.6 Block 1 Lot 3.1 and Section 55.6 Block 1 Lot 3.2 (the land and the building and site improvements, together constituting the "Project Realty") (said land being more fully described on Exhibit "A" attached); and

WHEREAS, to facilitate the Project, the Agency had entered into a "straight lease transaction" pursuant to the Agency's uniform tax exemption policy by which the Agency will acquire fee simple title to the Land and to the Project Realty ("the Deed") and the Agency will lease to Suffern CDC, LLC as Lessee, the Agency's interest in the Project Realty (the "Lease Agreement"); and

WHEREAS, Raymours Furniture Company Inc. ("Sublessee" or "Raymours") has, simultaneous with the execution of the Lease Agreement, entered into an agreement with Lessee whereby Sublessee shall lease from Lessee a portion of Lessee's interest in the Project (the "Sublease Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act and Section 412-a of the Real Property Tax Law, the Agency is exempt from the payment of taxes and assessments imposed on real property and improvements owned or leased by it; and

WHEREAS, pursuant to Section 925-1 of the Act, as amended, projects promoted, developed and assisted by the Agency shall be liable for, in lieu of real property taxes and school taxes, payment of a sum equal to the full amount thereof, or such lesser amount as agreed to among the County, Village, Town, School District (collectively, the "Affected Taxing Jurisdictions") and Lessee, which sum shall be paid by Lessee to the Affected Taxing Jurisdictions ("PILOT Payments"); and

WHEREAS, the Agency has determined that it is both necessary and desirable that this Agreement be entered into in connection with the transfer to the Agency of title to Project Realty and the Agency entering into a "straight lease" transaction (the "Straight Lease Transaction") with Lessee.

NOW, THEREFORE, in consideration of the foregoing, and the actions to be taken by the Agency, Lessee and Sublessee with respect to the Project, the County, Village, Town, School District and the Agency hereby formally agree as follows:

1. Lessee and Sublessee hereby covenant and agree to pay or have paid on their behalf, so long as the Agency is the record owner of the Project, the PILOT Payments described herein to the County, Village, Town and School District and to pay all other real property taxes owed to any other taxing entity (either on whose behalf any of the foregoing may levy and collect such real property taxes or directly to the appropriate taxing entity, as applicable), including fire districts, special benefit districts, and any other districts now or hereinafter created ("Special District Taxes"), as they now pay or would pay in accordance with the Real Property Tax Law.

2. The Project is to be assessed in the same manner as other similar properties in the Village, Town, by the Town Assessor for the Town, and/or for the School District and/or for the County in accordance with the applicable provisions of the Real Property Tax Law of the State of New York. Such assessment will or may appear upon the tax rolls under the category "Exempt Properties".

3. Lessee and Sublessee acknowledge, agree and accept the present assessed valuation of the Project Realty constituting part of the Project and shall not commence any legal proceedings whether by tax certiorari or otherwise to alter the assessed valuation of the Project Realty, provided that Lessee and Sublessee further acknowledge and agree that the assessment valuation of the Project Realty shall be adjusted pursuant to Paragraph 6 of this Agreement. For the purposes of this paragraph, a change in assessed valuation as a consequence of the Village, Town or County-wide revaluation shall not be considered a change in the assessed valuation as long as the assessed valuation of the Project Realty does not increase. Any change in assessed valuation reflecting "Additional Construction", as provided for in Paragraph 17 of this Agreement, shall not be considered a "change in assessment" for the purposes of this Paragraph.

4. Lessee and Sublessee agree to pay all amounts due hereunder in the same manner and within the same time periods as is applicable to other taxpayers in the County, Village, Town and School District subject to real property taxes and school taxes, which is currently thirty (30) days after the date such taxes are due. All Special District Taxes are to be paid which is currently the date such Special District Taxes are due pursuant to Real Property Tax Law. The County, Village, Town and School District shall notify in writing or cause Lessee or Sublessee to receive written notice from each thereof or from any one thereof acting on behalf of any of the others of the amount of any payment due and the date the same is due. In the event Lessee or Sublessee shall fail to make any PILOT Payments or Special District Taxes within the time period required, the amount or amounts so in default shall continue as an obligation of Lessee and Sublessee until fully paid and Lessee agrees to pay the same to the Affected Taxing Jurisdiction or its designee, as the case may be. PILOT Payments which are delinquent under this Agreement shall be subject to a late payment penalty and shall bear interest, in accordance with the provisions of Section 874(5) of the General Municipal Law of the State of New York.

5. Notwithstanding any other provision of this Agreement, the Lessee and Sublessee acknowledge and agree that the County is a party to this Agreement solely for notice and collection/payment purposes. Lessee and Sublessee agree to pay the full amount of the County tax which Lessee and Sublessee would have paid if the Agency were not involved in the project. Lessee and Sublessee further agree that if the County PILOT Payment is not paid when due, it shall be subject to a late payment penalty and shall bear interest in accordance with the provisions of Paragraph 4 of this Agreement.

6. Lessee and Sublessee agree to make PILOT Payments for each applicable Tax Fiscal Year for the period commencing with the applicable tax fiscal year immediately following the first taxable status date the Agency is the owner of record of the Project Realty determined pursuant to the provisions of the Real Property Tax Law (the "PILOT Commencement Date") expiring on the PILOT Termination Date (as hereinafter defined) in the amounts and manner as

set forth herein. The period beginning on the PILOT Commencement Date and ending on the PILOT Termination Date is hereinafter referred to as the "PILOT Period".

(a) For the first year of this Agreement, Lessee and Sublessee agree to make PILOT Payments for: (i) the 2013/2014 Tax Fiscal Year for School tax, (ii) the 2014 Tax Fiscal Year for State/County/Town taxes; and (iii) the 2014 Tax Fiscal Year for Village taxes, using as a basis the current assessed value of \$4,850,000.00 for Tax Lot 55.6-1-3.1 and \$575,000.00 for Tax Lot 55.6-1-3.2, said values to be multiplied by the final tax rate per \$1,000.00 of taxable values as established by the Affected Taxing Jurisdictions for the Tax Fiscal Year 2013.

The assessed value noted in (a) will be the assessed value that is utilized on the assessment roll for Special District Taxes only and will not change unless there are physical alterations, modifications or improvements to the building located on the Project Realty that affect a change (or that are made in connection with a change) in the Intended Use of said building (such changes being referred to herein as "Additional Construction").

(b) Commencing with the: (i) 2014/2015 Tax Fiscal Year for School taxes, (ii) the 2015 Tax Fiscal Year for State/County/Town taxes, and (iii) the 2015 Tax Fiscal Year for Village taxes, the Lessee and Sublessee shall make PILOT Payments for each of the Affected Taxing Jurisdictions for a period of ten (10) consecutive years. PILOT Payments for each of the ten (10) consecutive years shall be calculated by using as a basis the assessed value of \$4,010,000.00 for Tax Lot 55.6-1-3.1 and \$475,000.00 for Tax Lot 55.6-1-3.2 multiplied by the final tax rate per \$1,000.00 of taxable value established by the Affected Taxable Jurisdictions for the Tax Fiscal Year 2013. The agreed upon assessed value of the Project Realty is subject to the provisions of Paragraph 5(a) which excludes Additional Construction.

(c) The agreed upon assessed value as set forth in Paragraph 5(b) is subject to Lessee and/or Sublessee removing (or causing to be removed) all but 32,980 square feet of the aggregate office space from the Project Realty (the "Office Space Threshold") by March 1, 2014. The Lessee and Sublessee agree that any square footage of office space remaining over 32,980 feet on or after March 1, 2014, will increase the value of the Project Realty by \$104.00 per square foot with the taxable value determined by multiplying the \$104.00 per square foot of office space in the Project Realty over the Office Space Threshold by the 2012 equalization rate of 14.95%. Notwithstanding the foregoing, if, at any time after the value of the Project Realty is increased pursuant to the immediately preceding sentence, the aggregate office space in the Project Realty is reduced below that which is existing on March 1, 2014, the value of the Project Realty shall, upon the March 1st first following the date such reduction is completed, be reduced by \$104.00 per square foot with the taxable value determined by multiplying the \$104.00 per square foot of office space in the Project Realty so reduced by the 2012 equalization rate of 14.95%; provided, however, in no event shall the value of the Project Realty ever be less than that which is set forth in Section 5(b) above. Upon prior notice to Lessee with the accompaniment of a representative from Lessee or Sublessee and a representative of the Assessor's Office, Town of Ramapo shall be permitted, no more than two (2) times per calendar year, to enter the Project Realty during normal business hours for purpose of confirming the aggregate amount of office space in the Project Realty.

7. For the purposes of this Agreement, the applicable "Tax Fiscal Year" for the State, County, Village and Town tax shall be the calendar year, January 1 through December 31, commencing January 1, 2014 and the applicable "Tax Fiscal Year" for the School tax shall be September 1 through August 31, commencing September 1, 2013. All PILOT Payments shall be applied, apportioned and prorated as if paid in annual installments in advance in the same manner as real property taxes are paid for in connection with similar properties in the Village, Town and School District.

8. For the purposes of this Agreement, the term PILOT Termination Date shall mean the earlier of (i) the occurrence of an Event of Default (as hereinafter defined) after the expiration of any applicable cure period, or (ii) the date immediately preceding the date that is the eleventh (11th) anniversary of the payment of the PILOT Payments pursuant to Section 6(b) above.

9. For the purposes of this Agreement, any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of Lessee to make any PILOT Payments or any other payments required hereunder as and when due pursuant to this Agreement; or

(b) Failure of Lessee to maintain the PILOT Letter of Credit pursuant to Paragraph 20 of this Agreement; or

(c) An Event of Default under the Lease Agreement or any other agreement executed by Lessee and/or Sublessee in connection with the Straight Lease Transaction, which such default continues beyond any applicable grace and cure period.

10. If the PILOT Termination Date is a date other than the last day of the applicable Tax Fiscal Year then, prior to the PILOT Termination Date, the PILOT Escrow Agent (as hereinafter defined) shall notify the parties to this Agreement in writing of the date upon which the PILOT Period is scheduled to terminate (the "PILOT Termination Notice"). The PILOT Escrow Agent shall, in the PILOT Termination Notice, calculate and apply that portion of the PILOT Payments for the period prior to the PILOT Termination Date to each of the Affected Taxing Jurisdictions (State, County, Village, Town and School District) and then shall apportion and adjust the PILOT Payments to be paid with respect to the balance of Tax Fiscal Year in which the PILOT Termination Date occurs to each of the Affected Taxing Jurisdictions in an amount equal to the full real property and school taxes that Lessee and/or Sublessee would have been required to pay as the owner of the Project Realty in the absence of this PILOT Agreement. After the PILOT Termination Date and until such time as the Project Realty is recorded on the tax rolls of the Town as no longer being the property of the Agency, Lessee and Sublessee agree to make PILOT Payments in such amounts and at such times as would be due if the Project Realty were privately owned by a for-profit entity with no Agency participation. If this Agreement is terminated prior to the eleventh (11th) anniversary of the PILOT Commencement Date, Lessee and Sublessee shall receive a credit from the appropriate taxing authority toward the amount due in such year equal to that portion of the PILOT Payments allocable to the period of time following the PILOT Termination Date. Notwithstanding anything to the contrary

contained in this Paragraph 10, there shall exist no period of time for which Lessee or Sublessee is obligated to make PILOT Payments in addition to actual tax payments to which the Project Realty is subject under current law.

11. The parties agree that the Agency shall have the authority to appoint a PILOT Escrow Agent to perform the duties and obligations contained herein. The Agency hereby appoints the **Director of Finance, Town of Ramapo**, to act as the PILOT Escrow Agent. Lessee agrees to pay the PILOT Payments when due to the PILOT Escrow Agent, by check or bank draft payable at a bank in Rockland County, New York. The County, Village, Town and School District consent to and agree that the **Director of Finance, Town of Ramapo**, shall act as their PILOT Escrow Agent pursuant to this Agreement, and shall allocate and pay to the School District, County, Village and Town their respective payments as and when received.

12. Lessee shall also make payments to the PILOT Escrow Agent in respect of Special District Taxes from the date the Agency becomes the owner of record of in the Project Realty as required by the Affected Taxing Jurisdiction or Special District. Nothing contained herein shall exempt Lessee or Sublessee from paying all fire district taxes, special district benefits assessments or user charges, including sewer and water rents relating to the Project, solid waste charges, and other assessments or fees imposed on the Project Realty or similar fees which may subsequently be imposed on the Project Realty in the future.

13. It is agreed that Lessee and Sublessee shall receive notice in advance in the same manner as any other taxpayer for any change in assessment and shall be entitled to protest administratively and judicially, any change in assessment or any other matter relating to the Project Realty as if the taxes were levied against Lessee and Sublessee as a property owner not exempt from taxation, subject, however, to the provisions of Paragraph 3 and Paragraph 6. Lessee and Sublessee shall in all other respects have the same administrative and legal rights and remedies with respect to the amounts they hereby obligate themselves to pay in lieu of taxes, including judicial appeal thereof, as if they were a property owner not exempt from taxation. The Agency shall join in any proceeding for obtaining relief under this paragraph to the extent that the Agency's consent is required for Lessee to undertake such procedure provided, however, that Lessee shall continue to make PILOT Payments required hereunder.

14. The benefits and obligations of Lessee and Sublessee under this Agreement shall not be assigned without the written consent of the County, Village, Town, School District and the Agency.

15. In the event any part of the Agency's interest in the Project Realty is transferred from the Agency to Lessee, Sublessee or another party, the provisions of New York State Real Property Tax Law §520 shall apply.

16. It is understood and agreed by the parties to this Agreement that the Agency, the County, Village, Town and School District are entering into this Agreement in order to provide financial assistance to Lessee and Sublessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, Lessee and Sublessee hereby agrees that if there shall occur a Recapture Event (as defined below) prior to the expiration of the PILOT Period,

Lessee and Sublessee shall pay to the PILOT Escrow Agent as a return of public benefits conferred by the Agency as follows ("Recapture of Benefits"):

- (a) one hundred percent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first two (2) years after the PILOT Commencement Date;
- (b) eighty percent (80%) of the Benefits if the Recapture Event occurs during the 3rd and 4th year after the PILOT Commencement Date;
- (c) sixty percent (60%) of the Benefits if the Recapture Event occurs during the 5th and 6th year after the PILOT Commencement Date;
- (d) forty percent (40%) of the Benefits if the Recapture Event occurs during the 7th and 8th year after the PILOT Commencement Date; and
- (e) twenty percent (20%) of the Benefits if the Recapture Event occurs during the 9th and 10th year after the PILOT Commencement Date; and
- (f) zero percent (0%) of the Benefits if the Recapture Event occurs after the 10th year after the PILOT Commencement Date.

The PILOT Escrow Agent shall then allocate and pay to the County, Village, Town and School District their respective share of the Benefits when received.

The term "Benefits" shall mean, all Real Estate Tax Benefits which have accrued to the benefit of the Lessee during such time as the Agency was the owner of the Project Realty, such "Real Estate Tax Benefits" shall mean and be computed by subtracting the PILOT Payments paid under and pursuant to the terms of this PILOT Agreement from and any other assessments or payments which the Lessee and Sublessee would have been required to pay if they had been the owner of the Project Realty in the absence of this PILOT Agreement, .

The term "Recapture Event" shall mean any of the following events:

- (a) Lessee or Sublessee shall have liquidated more than 51% of its operations and/or assets at the Project Realty (absent a showing of extreme hardship, as determined by the Agency in its sole reasonable discretion);
- (b) Lessee or Sublessee shall have ceased all or substantially all of its operations at the Project Realty (whether by relocation to another facility, or otherwise or whether to another location, either within or outside of the County);
- (c) Intentionally Omitted.
- (d) Lessee or Sublessee shall have effected a substantial change in the scope and the nature of the operations of Lessee at the Project Realty, as determined by the Agency in its sole reasonable discretion;

(e) Lessee or Sublessee shall have subleased all or any portion portion of the Project Realty in breach of the terms of the Lease Agreement without the prior written consent of the Agency, except in connection with a sublease or sub-sublease to any corporation or other entity which shall be an affiliate, subsidiary or parent of Lessee;

(f) Lessee or Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Project Realty, except in connection with a transfer or other disposition to any corporation or other entity into or with which Lessee or Sublessee may be merged or consolidated or to any corporation or other entity which shall be an affiliate, subsidiary, parent or successor of Lessee or Sublessee;

(g) Lessee shall have defaulted under the terms of the Lease Agreement or under any document executed by Lessee and/or Sublessee in connection with the Straight Lease Transaction, and such default shall have continued beyond any applicable grace and/or cure period; or

(h) An Event of Default shall have occurred pursuant to the provisions of Paragraph 9.

(i) Lessee or Sublessee fails to make PILOT Payments and Special District Taxes as required.

For purposes of subparagraphs (e) and (f), an affiliate, subsidiary or parent shall mean any corporation or other entity which, directly or indirectly, controls or is controlled by or is under common control with Lessee or Sublessee. A successor of Lessee and/or Sublessee shall mean (i) a corporation or other entity into which or with which Lessee or Sublessee, its corporate successors or assigns, is merged or consolidated, provided that by operation of law or by effective provisions contained in the instruments of merger or consolidation, the liabilities of the entities participating in such merger or consolidation are assumed by the entities surviving such merger or created by such consolidation, or (ii) a corporation or other entity which acquires all or substantially all of the property and assets of Lessee or Sublessee and assumes all the obligations and liabilities of Lessee or Sublessee under any promissory notes issued in connection with the Project and under the Lease Agreement.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Project Realty, or (ii) during the pendency of any Loss Event; or (iii) the inability at law of Lessee and/or Sublessee to rebuild, repair, restore or replace the Project Realty after the occurrence of a Loss Event (as that term is defined in the "Lease Agreement") to substantially the same condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of Lessee, Sublessee or any affiliate.

Lessee and Sublessee covenant and agree to furnish the Agency with written notification upon any Recapture Event or disposition of the Project Realty or any portion thereof, which notification shall set forth the terms of such Recapture Event and/or disposition.

In the event a Recapture of Benefits event shall occur, the Lessee or Sublessee shall pay to the Agency, together with the amounts owed pursuant to this Section 16, a sum equal to: (A) a late fee of five (5%) percent of the amount of any PILOT Payments owed hereunder and not timely paid; plus (B) interest of one percent (1%) per month of the Benefits recaptured. Additionally, Lessee or Sublessee shall pay to the Agency the expenses, costs and disbursements and reasonable attorneys' fees necessary to collect the amounts due under this Section 16.

The provisions of this Paragraph 16 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

17. Lessee and Sublessee specifically understand and agree that the benefits provided in this Agreement apply to the Project. Any Additional Construction by Lessee, any sublessee or any third party upon the Project Realty shall not be entitled to the benefits of this Agreement and upon the happening of such event without the prior written consent of the Agency, School District, Village, Town and County, the Additional Construction on the Project Realty shall no longer be entitled to the Benefits provided in Paragraph 6 of this Agreement and Lessee and Sublessee shall thereafter make PILOT Payments for the additional construction in the manner and amounts as provided for hereinafter. Commencing on January 31 of the first taxable year following completion of any Additional Construction, the Company agrees to make annual additional PILOT Payments ("Additional Payments") to the Agency with respect to such Additional Construction. The amount of such Additional Payments shall be equal the product of (i) the assessed value attributable to the Additional Construction and (ii) the tax rates for the respective Affected Taxing Jurisdictions in effect on the date the Additional Payments are made. The provisions of this subsection shall not apply to any Additional Construction in the event the Agency and the Affected Taxing Jurisdictions enter into a separate payment in lieu of tax agreement with respect to such Additional Construction.

18. The County, Village, Town and School District will provide all services to the Project which they would provide if the Project were subject to the payment of full taxes and all assessments and not exempt from any thereof.

19. Obligations arising out of this Agreement are solely the responsibility of Lessee and Sublessee and not the Agency and are payable out of receipts, funds or other monies of Lessee or Sublessee.

20. As security for the PILOT Payments or other payments required pursuant to this Agreement, Lessee and Sublessee shall deliver to the Director of Finance, as beneficiary, the PILOT Letter of Credit, in an amount of \$915,428.40.

"PILOT Letter of Credit" shall mean a nontransferable, standby letter of credit in favor of the PILOT Escrow Agent that (i) is issued by a bank authorized to do business in the State and whose long-term unsecured obligations are rated at least A- by Standard & Poor's Rating

Services ("S&P") or A3 by Moody's Investors Service ("Moody's"), (ii) having at the time of delivery, a term of at least one year, (iii) authorizes the PILOT Escrow Agent to draw up to the full amount thereof upon receipt by the issuing bank (the "Issuing Bank") of a written certification signed by the PILOT Escrow Agent that amounts payable by Lessee or Sublessee under this Agreement have not been paid on or prior to the date due and such failure has continued for more than ten (10) days following notice thereof from the applicable Affected Taxing Jurisdiction, (iv) authorizes the PILOT Escrow Agent to draw up to the full amount thereof at any time during the fifteen-day period prior to the expiration thereof if the then-existing PILOT Letter of Credit has not been extended for a term of one year or replaced by a substitute PILOT Letter of Credit reasonably satisfactory to the PILOT Escrow Agent on or prior to such fifteen-day period and (v) authorizes the PILOT Escrow Agent to draw up to the full amount thereof if, within thirty (30) days following receipt by Lessee of notice from the PILOT Escrow Agent that the long-term unsecured obligations of the issuer of the PILOT Letter of Credit have fallen below A- by S&P or A3 by Moody's and Lessee shall not have delivered to the PILOT Escrow Agent a replacement PILOT Letter of Credit reasonably satisfactory to the PILOT Escrow Agent and the Agency.

The PILOT Escrow Agent's recourse against the PILOT Letter of Credit shall neither limit nor preclude the Agency, County, Village, Town and School District from exercising any and all remedies available under this Agreement by reason of Lessee's failure to make any payments due under Paragraph 6 or as elsewhere required in this Agreement. The PILOT Letter of Credit shall be in a form and provide for terms reasonably customarily provided in similar letters of credit and in a form reasonably satisfactory to the PILOT Escrow Agent and the Agency

(a) Lessee and Sublessee shall at all times protect and hold the Agency, the County, Village, Town and School District, and any director, member, officer, employee, servant or agent thereof and persons under the control or supervision of the Agency, County, Village, Town and School District (collectively, the "Indemnified Parties" and each "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury, liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses arising from the negligence or willful misconduct of such Indemnified Party, resulting from, arising out of, or in any way connected with the execution and delivery of this Agreement by the Indemnified Party or Lessee, or performance by the Indemnified Party or Lessee of any of its duties and obligations under this Agreement, or the enforcement of any of the terms hereof or the transactions contemplated hereby.

(b) Lessee and Sublessee agree to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in this Agreement, including enforcement of any of the provisions of this Agreement.

21. This Agreement may not be modified, amended, supplanted or changed without the written consent of Lessee, the County, Village, Town, School District and the Agency.

22. This Agreement may be executed by one or more parties in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

23. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

- (a) if to the Agency, County of Rockland Industrial Development Agency, Two Blue Hill Plaza, Pearl River, New York 10965, Attention: Chairperson, with a copy to the Executive Director of the Agency at the same address, and
- (b) if to Lessee, to Suffern CDC, LLC, 7248 Morgan Road, P.O.Box 220, Liverpool, New York 13090, Attention: Legal Department,
- (c) if to Sublessee, to Raymours Furniture Company, Inc., 7248 Morgan Road, P.O. Box 220, Liverpool, New York 13090, Attention: Legal Department.
- (c) if to School District, to Ramapo Central School District, 45 Mountain Avenue, Hillburn, New York 10931, Attention: Superintendent
- (d) if to Village, to Village of Montebello, One Montebello Road, Montebello, New York 10901, Attention: Tax Assessor.
- (e) if to Town, to Town of Ramapo, 237 Route 59, Suffern, New York 10901, Attention: Supervisor.
- (f) if to County, to County Office Building, 11 New Hempstead Road, New City, New York 10956, Attention: County Executive.
- (g) if to PILOT Escrow Agent, to the Director of Finance, Town of Ramapo, 237 Route 59, Suffern, New York 10901.

The Agency, County, Village, Town, School District, Lessee and Sublessee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) five (5) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery; provided that refusal by an Authorized Representative

of the intended recipient party to accept delivery of a notice given as prescribed above shall constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

24. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard of giving effect to the principles of conflicts of law thereof.

25. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of, or in any way connected, with this Agreement and the venue for any such action shall be the Supreme Court of the State of New York, County of Rockland.

(Signature Pages to Follow)

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

ATTEST/WITNESS

Ellen L. Sivalia

SUFFERN CDC, LLC

By: 
Name: Neil Rube
Title: Vice President

ATTEST/WITNESS

Ellen L. Sivalia

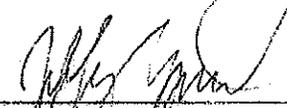
RAYMOURS FURNITURE COMPANY, INC.

By: 
Name: Neil Rube
Title: Senior Vice President

ATTEST/WITNESS

Debra Mastrosani

VILLAGE OF MONTEBELLO

By: 
Name: Margaret
Title: Mayor

ATTEST/WITNESS

Judy L. Carretti

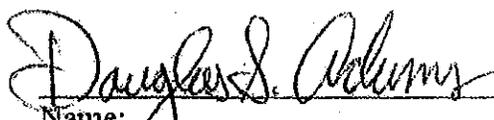
TOWN OF RAMAPO

By: 
Name: Christopher P. St. Lawrence
Title: Supervisor

ATTEST WITNESS:

Jean M. Nugent-Napley

RAMAPO CENTRAL SCHOOL DISTRICT

By: 
Name: Douglas S. Adams
Title: Superintendent

ATTEST/WITNESS

COUNTY OF ROCKLAND

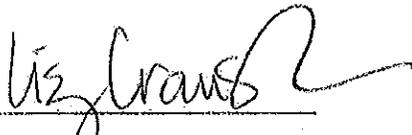
, Clerk to the
Rockland County Legislature

By:

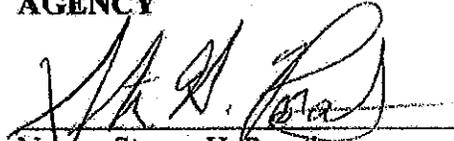
Name: C. Scott Vanderhoef
Title: County Executive

ATTEST WITNESS:

COUNTY OF ROCKLAND
INDUSTRIAL DEVELOPMENT
AGENCY



By:

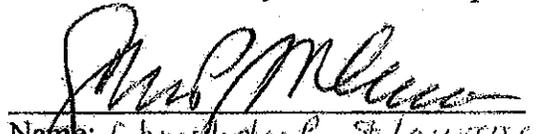


Name: Steven H. Porath
Title: Executive Director

ACCEPTED AND CONSENTED TO:
PILOT ESCROW AGENT

Director of Finance, Town of Ramapo

By:



Name: Christopher P. St. Lawrence
Title: Director of Finance

LESSEE AND SUBLESSEE

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

On the 15th day of January in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared **NEIL RUBE**, 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.

Ellen L. Swalia
Notary Public

ELLEN L. SWALIA
Notary Public, State of New York
Qualified in Onca. Co. No. 2926455
My Commission Expires 6/30/15

VILLAGE OF MONTEBELLO

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

On the 25th day of January in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared Jeffrey Oppenheim, 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.

DEBRA MASTROENI
Notary Public, State of New York
No. 01MA5045748
Qualified in Rockland County
Commission Expires June 26, 2015

Debra Mastroeni
Notary Public

TOWN OF RAMAPO - SUPERVISOR

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

On the 26th day of February in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared Christopher P. St. Lawrence, 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.

JUDY L. CANETTI
Notary Public, State of New York
No. 01CAS162715
Qualified in Rockland County
Commission Expires 3/19/2015

Judy L. Canetti
Notary Public

RAMAPO CENTRAL SCHOOL DISTRICT - SUPERINTENDENT

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

On the 7th day of MARCH in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared DOUGLAS S. ASHAMS, 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.

Jane M. Nugent Murphy
Notary Public exp. 01. Dec. 2013

COUNTY OF ROCKLAND – COUNTY EXECUTIVE

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

On the ____ day of _____ in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared **C. SCOTT VANDERHOEF**, 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

COUNTY OF ROCKLAND
INDUSTRIAL DEVELOPMENT AGENCY

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

On the 18 day of March in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared **STEVEN H. PORATH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JAYNE M NICHOLS
Notary Public, State of New York
ID No. 01N16205222
Qualified in Rockland County
Commission Expires May 4, 2013

Jayne M Nichols
Notary Public

**TOWN OF RAMAPO
DIRECTOR OF FINANCE**

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

On the 28th day of March in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared Christopher P. St. Lawrence, 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.

Judy L. Canetti
Notary Public

JUDY L. CANETTI
Notary Public, State of New York
No. 010-AD162715
Qualified in Rockland County
Commission Expires 3/19/2015

EXHIBIT A

LEGAL DESCRIPTION

(See Attached)

EXHIBIT A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Montebello, Town of Ramapo, County of Rockland and State of New York, being more particularly described as follows:

BEGINNING at a point on the easterly side of Hemion Road, where the same is intersected by the division line of premises being described herein and lands of Piermont Branch Erie Lackawanna Railroad;

RUNNING THENCE northerly along the easterly side of Hemion Road the following five (5) courses and distances:

1. North 05 degrees 05 minutes 03 seconds East, 531.34 feet to a point of curve;
2. On a curve to the right with a radius of 1,800.00 feet and a chord bearing North 08 degrees 06 minutes 16 seconds East a distance of 189.69 feet, a distance along said curve of 189.78 feet;
3. South 71 degrees 43 minutes 37 seconds East, 5.00 feet to a point;
4. North 14 degrees 18 minutes 24 seconds East, 221.38 feet to a point; and
5. North 21 degrees 22 minutes 29 seconds East, 48.51 feet to a point;

THENCE turning and running North 89 degrees 15 minutes 44 seconds East, 119.82 feet;

THENCE turning and running North 25 degrees 34 minutes 08 seconds East, 49.28 feet;

THENCE turning and running South 85 degrees 43 minutes 25 seconds East, 93.97 feet;

THENCE turning and running North 26 degrees 30 minutes 01 second East, 82.53 feet;

THENCE turning and running South 89 degrees 36 minutes 52 seconds East, 43.12 feet to a point;

THENCE turning and running North 32 degrees 51 minutes 05 seconds East, 61.00 feet to a point;

THENCE turning and running North 57 degrees 08 minutes 55 seconds West, 143.00 feet to a point;

THENCE turning and running South 32 degrees 51 minutes 05 seconds West, 31.00 feet to a point;

THENCE turning and running North 59 degrees 08 minutes 55 seconds West, 111.87 feet to the easterly side of Hemion Road;

RUNNING THENCE northeasterly along the easterly side of Hemion Road the following six (6) courses and distances:

1. North 28 degrees 55 minutes 35 seconds East, 154.79 feet to a point;
2. South 76 degrees 00 minutes 14 seconds East, 18.64 feet to a point;

EXHIBIT A

(Continued)

3. North 28 degrees 23 minutes 32 seconds East, 95.26 feet to a point;
4. North 41 degrees 08 minutes 25 seconds East, 213.26 feet to a point;
5. North 50 degrees 25 minutes 55 seconds West, 15.00 feet to a point; and
6. North 45 degrees 34 minutes 00 seconds East, 67.26 feet to the southerly side of the New York State Thruway;

THENCE turning and running southeasterly along the southerly side of the New York State Thruway the following three (3) courses and distances:

1. South 60 degrees 51 minutes 54 seconds East, 457.70 feet;
2. South 77 degrees 33 minutes 54 seconds East, 276.15 feet; and
3. South 66 degrees 10 minutes 18 seconds East, 1,112.56 feet to a point;

THENCE turning and running South 01 degree 02 minutes 34 seconds West, 972.73 feet to a point being the intersection of the southwesterly corner of the terminus of Dunnigan Drive and lands of Piermont Branch Erie Lackawanna Railroad;

THENCE turning and running along said lands the following four (4) courses and distances:

1. North 88 degrees 52 minutes 11 seconds West, 1,630.51 feet;
2. North 89 degrees 04 minutes 29 seconds West, 195.44 feet;
3. South 89 degrees 10 minutes 27 seconds West, 105.38 feet; and
4. South 88 degrees 19 minutes 28 seconds West, 319.47 feet to the point and place of **BEGINNING**.

**Also known on Tax Map of the Town of Ramapo
as Section 55.6 Block 1 Lot 3.1 and Section 55.6 Block 1 Lot 3.2**

