

USE AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of this ____ day of March, 2020 by and between MONTGOMERY COUNTY, a municipal corporation with its principal offices located at 20 Park Street, Fonda, New York (the "County") and 746 custom, Amsterdam, Raming Made Productions, a partnership organized and existing under the laws of the State of New York with an office located New York (the "User").

WHEREAS, the User has expressed an interest in using a portion of the County's property to create a film; and

WHEREAS, by Resolution ____ of 2020 the Montgomery County Legislature authorized this use.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1.0 DEFINITIONS. As used herein, the following terms shall have the following meanings:

1.1. "Affiliate" means a Person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

1.2. "Person" means corporations, companies, associations, joint stock companies or associations, firms, partnerships, individuals, limited liability companies and their lessors, trustees and receivers.

1.3. "Property" means the use of the outside delivery gate at 200 Clark Drive, Fultonville NY.

2.0. USE OF PROPERTY

2.1. For the nonrefundable sum of \$ 0 (____ dollars) the County hereby grants to User, for itself and its successors and assignees, subject to the terms and conditions of this Agreement, the non-exclusive right, privilege, and authority to enter onto the Property when accompanied by County personnel for the following purpose:

To conduct one day of filming within the hours of 9-4 using the outside delivery gate at 200 Clark Drive, Fultonville NY. User agrees that their use of the Property shall not interfere in any manner with the County's use of the Property and shall be fully limited to the outside delivery gate. User shall not be permitted to do any filming inside 200 Clark Dr., Fultonville NY.

No use or rights herein granted in this Agreement shall create or vest in User any easement or any other ownership or property rights of any nature whatsoever to the Property.

User shall obtain advance notice and permission from the County prior to entry. User shall be fully responsible for all costs associated with the use of the Property.

2.2. Effect of Codes and Ordinances. User agrees to comply with any ordinance that is properly and lawfully enacted during the term of this Agreement, and nothing in this Agreement shall be deemed to waive the requirements of any applicable codes and ordinances.

2.3. No Representations. By consequence of the Agreement, or subsequent approvals authorized by the Agreement, the County makes no representation, express or implied, as to the condition of the Property.

3.0. TERM.

3.1. This Agreement shall be effective upon execution by each of the parties hereto for a term of thirty (30) days.

4.0. CONDITIONS ON USE OF THE INDUSTRIAL BUSINESS PARK.

4.1. Use Subordinate. User's use of the Property is subordinate, and non-exclusive, to the prior and continuing right of (i) the County, and (ii) other Persons authorized to use the Property.

4.2. No Adverse Impact. Except as permitted by applicable law or this Agreement, User shall not alter or impair the use of any portion of the Property or any other facilities therein, including without limitation, streets, sidewalks, sanitary sewers, storm drains, water mains, gas mains, poles, overhead or underground wires or conduits without the prior written approval of the County. If User causes any damage to the Property during the course of any such entry, then User shall promptly repair and/or restore the Property to substantially to the same condition it was prior to such entry.

4.3. No Cost to County. Upon approval of this Agreement, the use of the Property shall be accomplished without cost or expense to the County and shall be in accordance with all applicable laws, rules and regulations and such other standards as the County may from time-to-time lawfully apply generally to private users of the Property and shall be accomplished in such manner as not to endanger persons or property or unreasonably obstruct access to, travel upon or other use of Property.

4.4. User to Repair Any Damages. User shall be responsible for any alterations or damage to the Property due to its use of the Property, and shall repair, replace and restore in kind any such alteration or damage at its sole expense to the same condition as existed or better before such work commenced, to the satisfaction of the County.

4.5. Compliance with Laws and Regulations. In its use of the Property, User shall at all times comply all lawfully enacted and applicable laws and regulations.

5.0. INDEMNIFICATION AND INSURANCE.

5.1. Indemnification by User. The User hereby releases the County and its members, officers, agents and employees from, agrees that the County and its members, officers, agents and employees shall not be liable for and agrees to indemnify, defend and hold the County and its members, officers, agents 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 User's use of the Property, 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, arising by reason of or in connection with the occupation or the use thereof, (2) all claims arising from the exercise by the User of the authority conferred on it pursuant to this Agreement, and (3) 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. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the County or any of its officers, members, agents or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

5.2 Proof of Insurance. User shall provide the County with a certificate of insurance showing proof of the required coverage as set forth below. Any deductibles of self-insurance retention must be disclosed on the certificates of insurance. Such insurance shall bear the names of User as named insured and the County as an additional insured party. When umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. All such insurance policies and certificates of insurance shall stipulate that should any of the above policies or certificates of insurance be canceled or modified before the expiration of the Term hereof, the issuing company shall give thirty (30) days written notice to the County and it shall be the additional responsibility of User to notify the County of such change or cancellation. Certificates of insurance (and all subsequent insurance notices) shall be sent to the County not later than thirty (30) days after the execution by both parties of this Agreement.

5.3. Liability Insurance. User, its permitted successors or assigns, shall obtain and maintain at all times during the term of this Agreement, Commercial General Liability Insurance with a combined single limit of \$2,000,000 for bodily injury and property damage.

5.4 Insurance Companies. Insurance companies from which User obtains coverage must be admitted in New York, and rated at least B+IX in the current *Best's Insurance Guide*.

5.6 Blanket Policies. Nothing in this Agreement shall prevent User from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies of insurance that meet or exceed the requirements of this Article.



6.0 EVENTS OF DEFAULT.

6.1. Each of the following events shall constitute an Event of Default, if such Event of Default (other than the case of default in the payments due hereunder) is not cured within thirty (30) days of receipt of notice of such event of default to the defaulting party: (i) the failure of User to carry and maintain insurance in compliance with this Agreement; and (ii) the failure of either party to perform or observe any material covenant of this Agreement.

7.0. REMEDIES.

7.1. Upon the occurrence and during the continuance of any Event of Default, the non-defaulting party may, at its option, declare this Agreement to be in default and may, in addition to any other remedies provided herein, terminate this Agreement. No remedy is intended to be exclusive, but each shall be cumulative and in addition to a remedy at law or in equity.

7.2. Notwithstanding any other provision of this Agreement, in no event shall either party be liable for special, consequential, exemplary or punitive damages as a result of the performance or non-performance of its obligations under this Agreement.

8.0. TERMINATION. This Agreement may be terminated by the County at any time.

9.0. NOTICES.

9.1. Notices Hereunder. All Notices permitted or required hereunder shall be in writing and shall be transmitted via certified United States Mail, return receipt requested, or by private same day or overnight delivery service and shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

To the County: Montgomery County Executive
 20 Park Street
 Fonda, New York 12068

To User:



10.0. MISCELLANEOUS.

10.1. Lawful Compliance. The County and User shall at all times observe and comply with the provisions of this Agreement, and its provisions are subject to all laws, ordinances, contracts and regulations which in any manner affect the rights and obligations of the parties herein.

10.2. No Waiver. The County and User agree that any waiver by either party at any time of any right relating to this Agreement shall not be deemed a waiver of the same or similar right at a subsequent time. The failure of either party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of any original violation.

10.3. Force Majeure. Any failure of either party to perform its obligations under this Agreement shall not be a breach of this Agreement to the extent such failure results from Acts of God (including fires, hurricanes, earthquakes, tornadoes, flooding, snow storms, severe thunderstorms or similar natural occurrences), war, riots and civil insurrection, outbreaks of hostilities, states of emergency, governmental action, delay or inaction that did not result from wrongdoing by the party involved in such governmental action, supply shortages (including power, gasoline and other fuel shortages), omissions of third parties when such omissions did not occur due to action or inaction of the third party failing to perform, labor disputes, shortages, strikes or walkouts or transportation delays, or similar occurrences beyond the reasonable controls of the other party.

10.4. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and to their permitted successors and assigns.

10.5. Assignment. User shall not transfer or assign this Agreement, or any rights hereunder, to any other entity without the express written consent of the County.

10.6. Controlling Law. This Agreement shall be governed by and interpreted pursuant to the laws of the State of New York. User and the County shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances or regulations remain in effect. No claim, demand, action, proceeding, arbitration, litigation, hearing, motion or lawsuit arising from or relating to this Agreement in any respect shall be commenced or prosecuted in any jurisdiction other than New York, with venue in Montgomery County, and any judgment, determination, finding or conclusion reached or rendered in any other jurisdiction shall be null and void between the parties to this Agreement.

10.8. Entire Agreement. This Agreement sets forth the entire Agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings, except as otherwise provided herein. This Agreement can be amended, supplemented, modified, or changed only by a written document executed by both parties.

10.9. Modification. This Agreement may not be amended, changed, or otherwise modified unless by written amendment of this Agreement.

10.10. Severability. Any provisions or part of this Agreement held to be void or unenforceable under any federal or New York law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties who hereby agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.11. Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to sue on any or all other remedies. Said rights and remedies are given in addition to any other rights such party may have by law, statute, ordinance or otherwise, except as such remedies are expressly limited in this Agreement.

10.12. Construction. The section, paragraph and other subpart headings in this Agreement are for convenience of reference only and shall neither be deemed to be a part of this Agreement nor modify, define, expand or limit any of the terms or provisions hereof. Words and definitions in the masculine, neuter or feminine gender shall also be read as though in either of the other genders.

10.13. Acts in Furtherance of Agreement. The parties each agree to execute and deliver such additional instruments and documents, not creating any obligations or imposing any expenses additional to those otherwise created or imposed by this Agreement, as either party may reasonably request from time to time at or after the execution of this Agreement in furtherance of the express provisions of this Agreement.

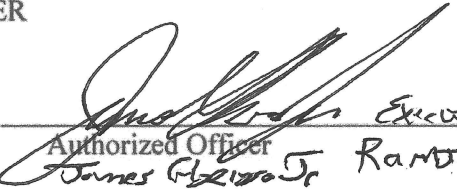
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IN WITNESS WHEREOF, the County and User have caused this Agreement to be executed and delivered as of the date and year first above written.

MONTGOMERY COUNTY

By: _____
Authorized Officer

USER

By:  Executive Producer
Authorized Officer
James Blinn Jr. Ramtray Made Productions

