

MUNICIPAL LOAN AND REIMBURSEMENT AGREEMENT

This Agreement dated as of March 1, 1997 is by and between the COUNTY OF MONTGOMERY, a municipal subdivision of the State of New York, with offices at Park Street, Fonda, New York 12068 (the "County"), and the MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation, with offices at the County Annex Building, Park Street, Fonda, New York 12068 (the "IDA").

WHEREAS, the IDA was created pursuant to Section 895-d and Article 18-A of the General Municipal Law, to promote the economic welfare, recreation opportunities, and prosperity of the inhabitants of Montgomery County and to actively promote, attract, encourage and develop economically sound commerce and industry in Montgomery County; and

WHEREAS, the County is authorized, pursuant to the Local Finance Law, to contract indebtedness in connection with the planning and effectuation of any program or project, by contract with the IDA, to create, improve or expand job or business opportunities for persons within the County; and

WHEREAS, certain parcels of real property are available along State Route 5S, located in the County, which parcels (the "Property") are a desirable location for the development and construction of facilities comprising a business and office park which would enhance commerce and industry in Montgomery County; and

WHEREAS, by resolution dated June 13, 1995, the County designated the IDA to develop the Property as a business and office park; and

WHEREAS, the IDA is a party to certain option agreements (the "Option Agreements") with private individuals who collectively own the Property and the IDA seeks to exercise its options to purchase the Property, but because the Property is not developed and consequently there are no prospective occupants for the Property, the IDA has no source of funds to acquire the Property; and

WHEREAS, in order to develop the Property into a business and office park and thereby enhance commerce and industry in Montgomery County, the County desires the IDA to undertake the following project (the "Project"); and

WHEREAS, the Project consists of the (A) acquisition of the Property and (B) acquisition, construction and installation of various roadways, sewer and water lines and other site development on the Property (collectively, the "Improvements") (the Property and the Improvements hereafter collectively referred to as the "Project Facility"); and

WHEREAS, the County is concerned that the Project will not occur if the Property cannot be acquired by the IDA during the term of the Option Agreements and the Improvements cannot thereafter be timely acquired, constructed and installed; and

WHEREAS, the County desires to make available necessary funds to the IDA for the purposes of acquiring, constructing and installing the Project Facility for the successful marketing and development of the Project and to enter into a contractual agreement with the IDA for said purposes; and

WHEREAS, the IDA desires to enter into such a contract with the County by which it would acquire, construct and install the Project Facility and develop the Project Facility and repay the funds made available by the County to the IDA;

NOW, THEREFORE, the County and the IDA, on the basis of the mutual covenants and obligations hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is herein acknowledged, agree as follows:

1. The County shall make available, and the IDA shall promise to repay, any and all funds required by the IDA for the acquisition of the Property, including the purchase price set forth in each of the Option Agreements as well as all customary attendant costs including, but not limited to, title insurance, recording and filing costs, attorneys' fees, surveys, engineering and environmental reports, to the extent such loans are deemed to be in compliance with the General Municipal Law, County Law and the Local Finance Law of the State of New York, as reasonably determined by the County's legal counsel.
2. The County shall make available, and the IDA shall promise to repay, any and all funds required by the IDA for the acquisition, construction and installation of the Improvements and the development and marketing of the Project Facility, to the extent the County's provision of such funds is in compliance with the General Municipal Law, County Law and the Local Finance Law of the State of New York, as reasonably determined by the County's legal counsel.
3. The IDA shall execute and deliver to the County promissory notes, development agreements, supplemental loan agreements and any other documents reasonably required by the County or, in the opinion of legal counsel to the County and the IDA, required by applicable law.
4. The IDA and the County shall agree upon procedures to be utilized for advances of funds pursuant to this Agreement
5. The County shall provide for the following through the issuance of tax-exempt bonds (the "Bonds"): preparation of plans and specifications for the acquisition, construction and installation of the Improvements; coordination of all necessary review and approval of plans and specifications by regulatory agencies; the acquisition of the Property; all costs associated with the issuance of Bonds; and any and all other costs associated with the design, development, acquisition,

construction and installation of the Project Facility, as approved by the County and the IDA.

6. In conjunction with the sale or lease of any parcel of the Property, which shall be serviced by or connected to the Improvements or any extension thereof, the IDA shall assess such parcels, on an annual basis pursuant to lease or sale provisions acceptable to the County, and as provided by law, a pro rata share of the costs of the Bonds pursuant to a formula mutually agreeable to the County and the IDA. Upon receipt of the amounts due, the IDA shall pay such amounts to the County.

7. Subject to the provisions of Paragraph 21 herein, the IDA shall repay the County's costs set forth in Paragraphs 1, 2 and 5 by making annual payments to the County in the amount of the County's debt service on the Bonds, provided, however, that if the County is required to make payments on principal and/or interest more frequently than once a year, the IDA shall make payments on the same schedule as required under the Bonds. Any payment by the IDA required under this Paragraph shall be made by the IDA no later than five (5) days before the date the County is required to make payment on the Bonds.

8. The parties hereto respectively represent and warrant that:

(a) They are a municipal corporation and public benefit corporation of the State of New York which, pursuant to the Constitution and the laws of the State of New York, and have the authority to enter into agreements to undertake the Project.

(b) The Parties have full power and authority to enter into this Agreement and perform the transactions described in and contemplated by this Agreement. The execution and delivery of this Agreement, and all other agreements, documents, and instruments executed and delivered pursuant to any thereof, the incurrence of the obligations set forth herein and therein and the consummation and performance of the transactions contemplated herein and therein have been duly approved by the Parties by all necessary action.

(c) This Agreement and all agreements, documents and instruments executed and delivered pursuant thereto, executed and delivered in accordance with the Agreement, shall or do constitute legal, valid and binding obligations of the Parties enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement nor any agreement, instrument or document executed and delivered pursuant thereto, nor the incurrence of obligations set forth herein or therein, nor the consummation or performance of the transactions contemplated herein or therein will (i) conflict with or violate the terms of the governing documents of the Parties as presently in existence, (ii) conflict with or violate the terms of or constitute a default under any law, rule, regulation, order, writ, injunction, judgment or decree of any court, governmental or regulatory authority or arbitrator or any other legal requirement applicable to the Parties, which conflict, violation or default could have a material adverse effect on the Parties' ability to enter into the transactions contemplated by this Agreement.

(d) Except as provided herein, no consent or approval of any person or governmental regulatory authority, and no approval, order, license, permit, declaration, filing, or notification of any nature is required as a result of or in connection with the execution or delivery of this Agreement or any agreement, instrument or document executed and delivered pursuant to any thereof, the incurrence of the obligations set forth herein or therein, or the consummation or performance by the Parties, or their obligations under this Agreement, or any agreement, instrument or document executed and delivered pursuant to any thereof, and all such consents and approvals have been or shall have been obtained, and all such filings, declarations and notifications have been made.

(e) There is no litigation, action, suit, claim, proceeding, investigation, arbitration or dispute pending or, to the knowledge of the Parties, threatened against or relating to the Parties before any Federal, State, Municipal or other governmental department, commission, board, bureau, agency, authority, in which an adverse decision could have a material adverse effect on the Parties or could materially and adversely affect either Party's ability to comply with or perform its obligations under this Agreement.

9. The IDA shall afford to the County, and to the County's accountants, counsel and other representatives, reasonable access upon reasonable notice during normal hours to all of its books, contracts, commitments and records pertaining to the Project.

10. Subject to the terms and conditions herein, each of the Parties hereto agree to use its best efforts consistent with prudent judgment to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable law to consummate and to make effective the transactions contemplated by this Agreement, including using its best efforts consistent with prudent judgment to lift or rescind any injunction, restraining order or other order adversely affecting the ability of the Parties to consummate the transactions contemplated herein, to obtain all necessary waivers, consents, approvals and authorizations and to effect all necessary filings. In case at any time after the execution of this Agreement any further action is necessary or desirable to carry out the purposes of this Agreement, the Parties shall take all such necessary action.

11. Each party shall promptly notify the other of any claims, actions, proceedings, investigations or inquiries commenced or to the best of its knowledge, threatened involving or affecting the Party or in any way relating to this transaction which might reasonably be expected to (a) make any representation or warranty of either untrue or inaccurate in any material respect or (b) materially and adversely affect the consummation of the transaction.

12. The respective obligations of each Party shall be subject to the fulfillment at or prior to the date of execution of this Agreement, the following conditions:

(a) An order, decree or injunction of a Court or agency of competent jurisdiction which enjoins or prohibits the transaction, provided, however, that the provisions of this subsection shall not modify the agreement of each Party to use its best efforts for a reasonable period of time

to have any such injunction lifted or any such order, statute, decree, ruling or regulation reversed;

(b) No statute, rule, regulation, order, injunction or decree shall have been enacted, entered, promulgated or enforced by any governmental agency which prohibits, restricts or makes illegal the consummation of this Agreement.

(c) Except as disclosed herein, no material adverse change in business, operations or financial condition of either Party shall have occurred.

13. The IDA shall release the County and its members, officers and employees now and forever and the County and its respective members, officers and employees, now and forever, shall not be liable for, and the IDA shall defend, indemnify and hold the County and its members, officers and employees, now and forever, harmless from and against any loss or damage to property or any injury to or death of any person occurring or resulting from the construction of the Project and prior to the sale on any parcel of the Property, except such loss or damage caused by the negligence of the County, its members, officers or employees.

14. In the event that the IDA shall fail to make any of the payments required within thirty (30) calendar days from the date when it has been notified in writing that it is due, in addition to the other remedies provided herein or otherwise available to the County, the payment so in default shall continue as an obligation of the IDA until the amount in default shall have been fully paid, and the IDA will pay the same with interest thereon until paid at the rate per annum which is one percentage point greater than the rate at which the County must make short term borrowings. The County shall have the right to resort to any legal remedy to enforce the obligation of the IDA. In the event the County is required to obtain legal counsel to enforce its rights the IDA shall agree to pay for any reasonable attorney fees, court costs and disbursements the County shall incur.

15. Except as otherwise provided herein, the annual payments for debt service to be made by the IDA under shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of setoff, counterclaim or recoupment arising out of any breach by the County of any obligation to the IDA or liability at any time owing to the IDA by the County or anyone else.

16. This Agreement may be terminated at any time prior to the execution and delivery of this Agreement, whether before or after approval of this Agreement by the parties' Legislative Bodies by the mutual written consent of the County and the IDA, properly authorized by the respective Legislative Bodies.

17. In the event of the termination of this Agreement, this Agreement shall become void and there shall be no liability on the part of any party hereto except that any such termination shall be without prejudice to the rights of any party hereto arising out of the willful breach by any other party of any covenant or agreement contained in this Agreement.

18. This Agreement may not be amended except by an instrument in writing signed by or on behalf of each Party executing this Agreement. No waiver of any term of this Agreement by any Party shall be effective unless such waiver complies with Paragraph 19.

19. Subject to the provisions of Paragraph 18, at any time prior to the Closing Date, the parties hereto by action taken by or as authorized by their respective Legislative Bodies, may:

(a) extend the time for the performance of any of the obligations or other acts of the other parties hereto,

(b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and

(c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto granting any such extension or waiver shall be valid if set forth in an instrument in writing, signed on behalf of such party.

20. Representations and Warranties in this Agreement shall survive the execution and delivery of this Agreement.

21. (a) The obligations and agreements of the IDA contained herein and in any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the IDA, and not of any member, officer, director, agent or employee of the IDA in his individual capacity, and the members, officers, directors, agents and employees of the IDA 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 IDA contained herein and therein shall not constitute or give rise to a general obligation of the IDA, but rather shall constitute limited obligations of the IDA payable solely from the revenues of the IDA 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 IDA hereunder shall be sought or enforced against the IDA unless (i) the party seeking such order or decree shall first have requested the IDA 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 IDA 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 within such ten (10) day period) or failed to respond within such notice period; (ii) if the IDA refuses to comply with such request and the IDA'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

IDA an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if he IDA refuses to comply with such request and the IDA's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (x) agree to indemnify, hold harmless and defend the IDA and its members, officers, directors, agents and employees against any liability incurred as a result of its compliance with such demand, and (y) if requested by the IDA, furnish to the IDA satisfactory security to protect the IDA and its members, officers, directors, agents and employees against all liability expected to be incurred as a result of compliance with such request.

22. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if served by any of the means set forth in the Civil Practice Law and Rules ("CPLR") Rule 2103 (b) (1) (2) (5) or (6) - except that if mailed, such notice shall be mailed by certified mail return receipt requested - on the respective parties at the following addresses or at such other addresses as shall be specified by like notice:

If to the County to:

County Administrator
County Annex Building
Park Street P.O. Box 1500
Fonda, New York 12068

If to the IDA to:

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

23. The time any such notice shall be considered served shall be the time set forth in CPLR 2104.

24. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provisions shall be interpreted to be only so broad as it is enforceable.

25. This Agreement constitutes the entire agreement, it supersedes all prior agreements and undertakings, both written or oral, among the parties, or any of them, with respect to the subject

matter hereof.

26. This Agreement may be executed in two or more counterparts each of which shall be deemed to constitute, an original and shall become effective when one or more counterparts shall have been signed by each of the parties hereto and delivered to the other parties.

27. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

28. This Agreement may not be assigned, by operation of law or otherwise without the prior written consent of the Parties hereto provided and any assignment made without written consent shall be void.

29. None of the terms or provisions of this Agreement shall require any of the parties hereto to take any action prohibited by, or contrary to applicable law.

IN WITNESS WHEREOF, the County and the IDA have caused this Agreement to be executed in their respective names by their respective authorized representatives and sealed where appropriate, all as of the day and year first above written.

Date: March 19th, 1997

THE COUNTY OF MONTGOMERY

BY: James D. Keller

Chairman, Board of Supervisors

Date: March 26th, 1997

THE MONTGOMERY COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

BY: Albert F. Heck

(Vice) Chairman

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

On this 19th day of March, 1997, before me personally appeared Gerald D. Keller, to me personally known, who, being by me duly sworn, did depose and say that he resides in the Town of Glen in the County of Montgomery, New York; that he is the duly elected Chairman of the Board of Supervisors of Montgomery County, the municipal corporation described in and which executed the within instrument, and he knows the seal of said municipal corporation, the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Supervisors of the County of Montgomery and that he signed his name thereto by like order.



NOTARY PUBLIC

JOHN R. MINEAUX
Notary Public, State of New York
Qualified in Albany County
Commission Expires March 30, 1997

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

On this 26th day of MARCH, 1997, before me personally appeared ALBERT F. HECK, to me known, who being by me duly sworn, did depose and say that he resides at AMSTERDAM, NEW YORK, that he is the VICE-CHAIRMAN of the MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the members of said public benefit corporation.



NOTARY PUBLIC

PAUL L. WOLLMAN
Notary Public, State of New York
No 9730185
Qualified in Montgomery County
Commission Expires July 31, 1998

mineaux/montgo/county and ida loan agreement