
RM11 HOLDINGS, LLC

AND

AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY

AGENT AGREEMENT

Dated as of April 1, 2013

AGENT AGREEMENT

THIS **AGENT AGREEMENT** (the "**Agreement**"), made as of the 1st day of April, 2013, by and between the **AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY**, a public benefit corporation of the State of New York, having its offices at 24 South Street, Auburn, New York 13021 (the "**Authority**") and **RM11 HOLDINGS, LLC**, a New York limited liability company with offices at 3949 Forest Parkways, Suite 100, Wheatfield, New York 14120 (the "**Company**").

W I T N E S S E T H:

WHEREAS, the Authority was created by the provisions of the Auburn Industrial Development Authority Act, Chapter 915 of the Laws of 1969 of the State of New York constituting Title 15 of Article 8 of the Public Authorities Law of the State of New York, Chapter 43-A of the Consolidated Laws of New York, as amended (hereinafter called the "**Act**") as a public benefit corporation of the State of New York; and

WHEREAS, RM11 Holdings, LLC for itself or on behalf of an entity to be formed (the "**Company**") has requested the Authority's assistance with a certain project (the "**Project**") consisting of: (i) the acquisition of approximately 14 acres of land at 136 Standard Avenue and bordering on North Lewis and Caitlin Avenue in the City of Auburn, New York (the "**Land**"); (ii) the construction thereon of a 3-story building of approximately 113,388 square feet and containing 110 senior independent living apartments and related common areas (the "**Building**"); and (iii) the installation therein of equipment for use as a senior independent living facility (the "**Equipment**", and collectively with the Land and the Building, the "**Facility**"); and

WHEREAS, the Authority desires to authorize the Company to act as its agent for the purposes of acquiring, constructing and equipping the Facility subject to the Company entering into this Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Authority. The Company hereby agrees to limit its activities as agent for the Authority under the authority of this Agreement to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Authority shall expire on April ____, 2015, unless extended.

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Authority to proceed with the Project:

(a) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement. This Agreement constitutes a valid and binding obligation of the Company in accordance with its terms.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute 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 such instrument or agreement.

(c) The Facility and the operation thereof will conform in all material respects with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Authority harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) 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 the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(e) The Company covenants that the Facility will comply in all material respects with applicable environmental laws and regulations, and further covenants that, except in compliance with and as permitted by environmental laws and regulations, (i) no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) no asbestos will be incorporated into or disposed of on the Facility, and (iv) that no underground storage tanks will be located on the Facility. The Company upon receiving any information or notice contrary to the representations contained in this subsection (e) shall promptly notify the Authority or responsible regulatory authorities in writing with full details regarding the same. To the knowledge of the Company, no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company hereby releases the Authority from liability with respect to, and agrees to defend, indemnify, and hold harmless the Authority, its directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) arising out of any violation of the covenants or failure to be accurate with respect to the representations contained in this subsection (e).

(f) The completion of the Project will not result in the removal of a commercial, industrial or manufacturing plant of the Company or any other proposed occupant of the Facility from one area of the State of New York to another area of the State of New York or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located in the State of New York.

3. Hold Harmless Provision. The Company hereby releases the Authority from, agrees that the Authority shall not be liable for, and agrees to indemnify, defend and hold the Authority and its directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement, or (ii) liability arising from or expense incurred by the Authority's financing, rehabilitating, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending 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 on the part of the Authority, or any of its respective members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Authority or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the Authority consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type (including the parent of the Company and other affiliates of the Company) paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company, or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Authority or 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 Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the

property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance.

(a) All insurance 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. 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 (including the parent of the Company and other affiliates of the Company). All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Authority as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Authority.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Authority within ten (10) days of the date hereof. Prior to expiration of any such policy, the Company shall furnish the Authority evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

6. Obligations of the Authority. The obligations and agreements of the Authority contained herein shall be deemed the obligations and agreements of the Authority, and not of any member, officer, agent or employee of the Authority in his individual capacity, and the members, officers, agents and employees of the Authority shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The obligations and agreements of the Authority contained herein shall not constitute or give rise to an obligation of the State of New York or of the City of Auburn, New York, and neither the State of New York nor the City of Auburn, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Authority, but rather shall constitute limited obligations of the Authority payable solely from the revenues of the Authority derived and to be derived from the lease, sale or other disposition of the Facility.

7. Action of the Authority. Notwithstanding any provision of this Agent Agreement to the contrary, the Authority shall not be obligated to take any action pursuant to any provision hereof unless (i) the Authority shall have been requested to do so in writing by the Company, and (ii) if compliance with such request is reasonably expected to result in the incurrence by the Authority (or any member, officer, agent or employee of the Authority) in any liability, fees, expense or other costs, the Company shall have provided sufficient indemnity therefore.

8. Counterpart Execution. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

9. Notices. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Authority:

Auburn Industrial Development Authority
Memorial City Hall
24 South Street
Auburn, New York 13021
Attn.: James A. Dacey, Chairman

With a Copy to:

Hancock Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Attn.: Richard W. Cook, Esq.

If to the Company:

RM11 Holdings, LLC
3949 Forest Parkways, Suite 100
Wheatfield, New York 14120
Attention: Jocelyn Bos

With a Copy to:

Harold Halpern, Esq.
3949 Forest Parkways, Suite 100
Wheatfield, New York 14120

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

10. Governing Law. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Cayuga County, New York.

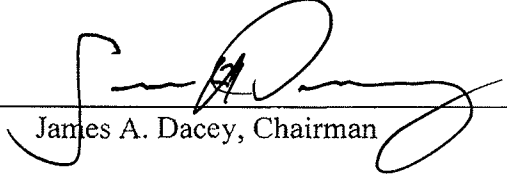
11. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all remaining terms, shall remain in full force and effect as if such invalid or unenforceable term had never been included.

12. Additional Agreements. The parties have, after any applicable public hearings, enter into a lease agreement ("**Lease Agreement**"), leaseback agreement (the "**Leaseback Agreement**") and payment-in-lieu-of-tax agreement ("**PILOT Agreement**") with the Company. The Company agrees not to take title to any real property as agent for the Authority until the Lease Agreement, Leaseback Agreement and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, the Authority can transfer title to the Company to all assets acquired by the Company as agent for the Authority. Additionally, at any time prior to execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, the Company can demand that the Authority transfer title to the Company with respect to all assets acquired by the Company as agent for the Authority, provided all amounts owed the Authority have been paid current.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY

By: 
James A. Dacey, Chairman

RM11 HOLDINGS, LLC

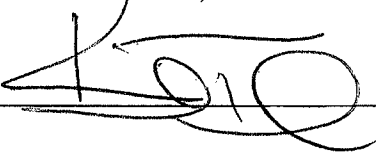
By: 

EXHIBIT "A"

LAND

Parcel 1

138 Standart Avenue, City of Auburn, New York

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Auburn, County of Cayuga and State of New York, according to a map of survey of lands of Alexander A. Elkovitch and Stella Elkovitch, his wife, made December 23, 1955 by Patrick J. Sperati, L.S., a copy of which map is filed in Book Y of Filed Maps at page 90, is bounded and described as follows:

BEGINNING at a point in the southerly line of Standart Avenue 506.88 feet west of the intersection of the southerly line of Standart Avenue with the westerly line of Grant Avenue; thence south 18° west and at right angles to the southerly line of Standart Avenue 88.11 feet to a point; thence south 72° east and at right angles to the last described course 150 feet to a point; thence north 18° east and at right angles to the last described course 88.11 feet to a point in the southerly line of Standart Avenue; thence north 72° west and along the southerly line of Standart Avenue 150 feet to the point or place of beginning.

EXCEPT ALL THAT TRACT OR PARCEL OF LAND situate on Standart Avenue in the City of Auburn, County of Cayuga and State of New York, bounded and described as follows:

BEGINNING at a point in the south line of Standart Avenue 425.38 feet westerly from the intersection of said south line with the west line of Grant Avenue; and running thence southerly at right angles to said south line of Standart Avenue 88.11 feet; thence easterly parallel with the south line of Standart Avenue 68.5 feet; thence northerly at right angles and parallel with the west line of said premises 88.11 feet to a point in the south line of said Standart Avenue; thence westerly along the south line of said Standart Avenue 68.5 feet to the place of beginning, being the easterly 68.5 feet of the first above described 150 foot parcel of land.

Parcel 2

143 Grant Avenue (triangle), City of Auburn, New York

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Auburn, County of Cayuga and State of New York, bounded and described as follows:

COMMENCING at the intersection of the southerly right-of-way of Standart Avenue with the westerly right-of-way of Grant Avenue; thence westerly along the southerly right-of-way of Standart Avenue 472± feet to a concrete monument, said monument also marks the northwest corner of lands now or formerly owned by John & Priscilla Flummerfelt (Liber 433, Page 262);

Thence S 02° 43' 43" E, a distance of 88.11 feet to the point of beginning of the parcel to be described herein;

Thence N 87° 16' 16" E, along the southerly property line of lands now or formerly owned by John & Priscilla Flummerfelt (Liber 533, Page 262), a distance of 81.50 feet to a point, said point also being the southeast corner of lands now or formerly owned by John & Priscilla Flummerfelt (Liber 533, Page 262);

Thence S 37° 41' 22" W, through lands now or formerly owned by John & Priscilla Flummerfelt (Liber 515, Page 288), a distance of 125.70 feet to the southwest corner of said lands now or formerly owned by John & Priscilla Flummerfelt (Liber 515, Page 288);

Thence N 02° 43' 44" W, along the westerly property line of lands now or formerly owned by John & Priscilla Flummerfelt (Liber 515, Page 288), a distance of 95.70 feet to the point of beginning.

Parcel 3

136 Standart Avenue, City of Auburn, New York

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Auburn, County of Cayuga and State of New York, being part of Parcel H on the map of farm lands and city lots belonging to the Estate of Charles Standart recorded in the Cayuga County Clerk's Office in Book 1 of Maps at page 91, bounded and described as follows:

BEGINNING at the southeast corner of said Parcel H; running thence westerly along the southerly line of Parcel H 300 feet; thence northerly parallel with the east line of Parcel H to Standart Avenue; thence southeasterly along Standart Avenue to the easterly line of Parcel H; thence southerly along the east line of Parcel H 183.81 feet to the place of beginning.

ALSO, ALL THAT TRACT OR PARCEL OF LAND situate in the City of Auburn, County of Cayuga and State of New York, bounded and described as follows:

BEGINNING at the southwest corner of Parcel H as laid down on a map of farm lands and city lots on Great Lots Nos. 37, 38 and 47 belonging to the estate of Charles Standart, deceased, recorded in the Cayuga County Clerk's Office March 22, 1901 in Book 1 of Maps at page 91; running thence northerly along the west line of Parcel H 426.18 feet to a stake at the southwest corner of land now or formerly of George A. Sullivan; running thence easterly along a line parallel with the south line of Standart Avenue and 150 feet southerly therefrom a distance of 400 feet, more or less, to its intersection with the west line of land of Beecher D. Flummerfelt; thence southerly along the west line of said Beecher D. Flummerfelt's land 400 feet, more or less, to the south line of Parcel H; thence westerly along the south line of said Parcel H 399.6 feet to the place of beginning, containing 4 acres of land, more or less.

EXCEPTING from the above 2 parcels of land the following:

1. Lands conveyed to Lewis R. Beauchine and Ann Beauchine, his wife by Warranty Deed recorded September 26, 1949 in Book 89 of City Deeds at page 390.
2. Lands conveyed to James C. Hamrick and Lois G. Hamrick, his wife by Warranty Deed recorded November 15, 1951 in Book 92 of City Deeds at page 400.
3. Lands conveyed to Milford Hedges and Rozalia Hedges, his wife by Warranty Deed recorded July 28, 1952 in Book 93 of City Deeds at page 421.
4. Lands conveyed to Gordon J. Ward and Alice A. Ward, his wife by Warranty Deed recorded September 14, 1954 in Book 96 of City Deeds at page 306.
5. Lands conveyed to Gordon J. Ward and Alice A. Ward, his wife by Warranty Deed recorded April 18, 1956 in Book 98 of City Deeds at page 326.

Parcel 4

102 North Lewis Street, City of Auburn, New York

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Auburn, County of Cayuga and State of New York, bounded and described as follows:

BEGINNING at a point located in the east line of North Lewis Street, said point being northerly 239.37 feet, more or less, as measured along said east line, from its intersection with the north line of Catlin Street; thence running northerly along said east line, 60.00 feet to a point and iron pipe; thence easterly, at an interior angle of $90^{\circ} 32' 20''$ with the last described line, 441.67 feet to a point and iron pipe; thence northerly, at an interior angle of $271^{\circ} 11' 55''$ with the last described line, 319.36 feet to a point; thence easterly, at an interior angle of $88^{\circ} 02' 25''$ with the last described line, 474.70 feet to a point; thence southerly, at an interior angle of $91^{\circ} 43' 10''$ with the last described line, 504.00 feet to a point and iron pin; thence westerly, at an interior angle of $88^{\circ} 12' 40''$ with the last described line, 472.61 feet to a point and iron pin; thence westerly, at an interior angle of $180^{\circ} 48' 05''$ with the last described line, 200.00 feet to a point and iron pin; thence northerly, at an interior angle of $91^{\circ} 13' 40''$ with the last described line, 124.02 feet to a point; thence westerly, at an interior angle of $268^{\circ} 48' 05''$ with the last described line, 243.49 feet to the point of beginning, containing 6.654 acres of land, the last described line forming an interior angle of $89^{\circ} 27' 40''$ with the first line herein described.

Said premises are shown as Parcel 1 on a Subdivision Map of Lands of Florence C. Potter, prepared by Dan M. Anderson, P.L.S. #49723, which Map was filed in the Cayuga County Clerk's Office as Map #08-116.

Parcel 5

9 Catlin Street, City of Auburn, New York

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Auburn, County of Cayuga and State of New York, on the north side of Catlin Street, more particularly bounded and described as follows:

BEGINNING at a point in the north line of Catlin Street marked by an iron pipe 803.01 feet easterly along said north line of Catlin Street from its intersection with the east line of North Lewis Street, per Filed Map C-118; thence northerly a distance of 115.50 feet to a point marked by an iron pipe; thence easterly at an interior angle of $90^{\circ} 24'$ a distance of 66.00 feet to a point marked by a fence post; thence southerly at an interior angle of $89^{\circ} 36'$ a distance of 115.50 feet to the north line of Catlin Street and a point marked by an iron pipe; thence westerly along the north line of Catlin Street at an interior angle of $90^{\circ} 24'$ a distance of 66.00 feet to the point and place of beginning, the first and last courses forming an interior angle of $89^{\circ} 36'$.

BEING the same premises as conveyed to John F. Bouck by Warranty Deed from Carolyn J. Nepstad dated November 23, 2011, and recorded November 30, 2011, in the Cayuga County Clerk's Office in Book 1462 of Deeds at Page 208.