

## MORTGAGE RECORDING TAX EXEMPTION AFFIDAVIT

STATE OF NEW YORK )

COUNTY OF ORANGE ) SS:

RUSSELL E. GAENZLE, being duly sworn, deposes and says:

1. That he resides in Monroe County, New York, and is a member of Harris Beach PLLC, bond counsel to THE ORANGE COUNTY FUNDING CORPORATION (the "OCFC").

2. That the OCFC is a not-for-profit local development corporation formed pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, with offices at Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553.

3. That the OCFC and the Orange County Industrial Development Agency (the "Agency") have entered a certain Lease Agreement, dated as of June 1, 2016, as amended by a certain First Amendment to Lease Agreement, dated as of October 1, 2016 (as so amended, the "Lease Agreement"), with **MATRIX NEWBURGH I, LLC** (the "Company"), pursuant to which the OCFC and Agency have received a leasehold interest in the property described in **Schedule A** attached hereto, and the OCFC, the Agency and the Company thereafter entered into a certain Leaseback Agreement, dated as of June 1, 2016, as amended by a certain First Amendment to Leaseback Agreement, dated as of October 1, 2016 (as so amended, the "Leaseback Agreement"), pursuant to which the OCFC and the Agency leased their respective interests in said property back to the Company.

4. That the Company has entered into certain agreements concerning a loan to be made to the Company by Wells Fargo Bank, National Association (the "Mortgagee"). As collateral for said debt, the OCFC, the Agency and the Company have executed (i) a certain Fee and Leasehold Building Loan Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated November 9, 2016 (the "Building Loan Mortgage") in favor of the Mortgagee in the principal sum of **THIRTY MILLION NINE HUNDRED EIGHTY-ONE THOUSAND TWENTY-SEVEN AND 00/100 DOLLARS (\$30,981,027.00)**; (ii) a certain Fee and Leasehold Project Loan Mortgage with Absolute Assignment of Leases, Rents, Income and Profits, dated November 9, 2016 (the "Project Loan Mortgage"; and, together with the Building Loan Mortgage, the "Mortgages") in favor of the Mortgagee in the principal sum of **THREE MILLION ONE HUNDRED EIGHTEEN THOUSAND NINE HUNDRED SEVENTY-THREE AND 00/100 DOLLARS (\$3,118,973.00)**; and (iii) an Absolute Assignment of Leases, Rents, Income and Profits, dated November 9, 2016 (the "Assignment of Leases"). By resolution duly adopted on October 20, 2016, the OCFC approved the execution and delivery of the Lease Agreement, the Leaseback Agreement, the Mortgages and the Assignment of Leases.

5. That the OCFC has covenanted that it will cause the Mortgages and the Assignment of Leases to be recorded in all offices where recordation thereof is necessary.

6. That, in the opinion of your deponent, while the Mortgagor would ordinarily pay the mortgage recording tax with respect to the Mortgages and the Assignment of Leases, deponent respectfully submits that no mortgage recording tax should be imposed with respect to the Mortgages and the Assignment of Leases because (i) each of the same are being executed and delivered by a not-for-profit local development corporation incorporated under Section 1411 of Not-For-Profit Corporation Law of the State of New York; (ii) the use by the OCFC of its powers is deemed by Section 1411 of Not-For-Profit Corporation Law of the State of New York to be a public purpose essential to the public interest; and (iii) based on Section 1411(f) of Not-For-Profit Corporation Law of the State of New York, the Commissioner of the Tax Department has indicated in several advisory opinions that the involvement of a not-for-profit local development corporation in the construction and/or finance aspects of a qualifying project may allow for an exemption from mortgage recording tax imposed by Article 11 of the Tax Law of the State of New York. (See, TSB-A-09-R, TSB-A-93(13)-R, TSB-A-95(16)-R, TSB-A-97(7)-R, and TSB-A-97(54)-S).


7. That, therefore, I request that the Orange County Clerk record the Mortgages and the Assignment of Leases as exempt from mortgage recording tax.

*[Remainder of Page Intentionally Left Blank]*

8. That this affidavit exempts the Mortgages and the Assignment of Leases from mortgage recording tax.

  
\_\_\_\_\_  
RUSSELL E. GAENZLE

Subscribed and sworn to before me  
this 27<sup>th</sup> day of October, 2016.

  
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Notary Public

Lori A. Palmer  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires May 31, 2019

## SCHEDULE A

### **Legal Description of the Premises**

All that certain plot, piece or parcel of land, situate, lying and being in the Town of Newburgh, County of Orange and State of New York and being bounded and described as follows:

Beginning at a concrete monument found on the northerly line of New York State Route 17K (width varies), said point being distant 1048.97 feet westerly, along various courses, from the intersection of said northerly line of New York State Route 17K and the westerly line of the New York State Thruway Route 87 (width varies) as shown on a certain map entitled "Lot Line Change of Section 95, Block 1 Lot 4.12, Lot 54.1, Lot 69.25 and Lot 49.12" prepared by Langan Engineering, Environmental, Surveying and Landscape Architecture, DPC, dated 17 July 2015, last revised 27 October 2015, Sheet CB-101 and running; thence:

1. Along the aforementioned northerly line of New York State Route 17K (width varies), South  $78^{\circ}25'10''$  West, a distance of 58.39 feet to a point; thence
2. Still along same, North  $63^{\circ}17'43''$  West, a distance of 173.15 feet to a point; thence
3. Still along same, North  $78^{\circ}32'43''$  West, a distance of 30.15 feet to a point on the easterly line of lands now or formerly of Biss Realty, Inc. (recorded in Liber 13042 Page 252); thence
4. Along said easterly line of said lands, North  $02^{\circ}53'14''$  East, a distance of 781.78 feet to a point; thence
5. Still along same, North  $09^{\circ}53'59''$  East, a distance of 424.87 feet to point on the northerly line of lands now or formerly of Biss Realty, Inc.; thence
6. Along said lands, North  $86^{\circ}42'06''$  West, a distance of 362.17 feet to a point on the easterly line of lands now or formerly of A Duie Pyle, Inc. (recorded in Liber 12841 Page 857); thence
7. Along said lands, North  $07^{\circ}19'34''$  West, a distance of 377.72 feet to a point on the northerly line of said lands; thence
8. Along said northerly line of said lands, North  $74^{\circ}38'17''$  West, a distance of 349.64 feet to a point; thence
9. Still along the same, North  $34^{\circ}59'36''$  West, a distance of 53.18 feet to a point on a non-tangent curve being the southeasterly line of Corporate Boulevard; thence
10. Along said southeasterly line, northerly along a curve to the left, having an arc distance of 160.21 feet, a radius of 150.00 feet and a central angle of  $61^{\circ}11'47''$  and being subtended by a chord which bears North  $26^{\circ}45'22''$  East, a distance of 152.70 feet to a point on a non-tangent curve on the southerly line of lands now or formerly of Northeast Distribution Center Associates (recorded in Liber 4030 Page 24); thence
11. said lands, easterly along a curve to the right, having an arc distance of 193.12 feet, a radius of 656.82 feet and a central angle of  $16^{\circ}50'45''$  and being subtended by a chord which bears North  $83^{\circ}35'24''$  East, a distance of 192.42 feet to a point of tangency; thence
12. Still along same, South  $87^{\circ}59'13''$  East, a distance of 443.11 feet to a point; thence
13. Still along same, North  $71^{\circ}00'05''$ , East, a distance of 154.84 feet to a point on the easterly line of lands now or formerly of said Northeast Distribution Center Associates; thence
14. Along said lands North  $18^{\circ}59'55''$  West, a distance of 50.00 feet to a point; thence
15. Still along same, North  $07^{\circ}12'24''$  East, a distance of 850.87 feet to a point on the southerly line of Interstate Route 84; thence

Along said southerly line of Interstate Route 84 the following five course and distances:

16. South  $68^{\circ}26'58''$  East, a distance of 504.07 feet to a rebar found; thence

17. North 86°38'12" East, a distance of 335.91 feet to a point; thence
18. North 87°00'05" East, a distance of 295.38 feet to a stone monument found; thence
19. North 86°43'58" East, a distance of 153.29 feet to a point; thence
20. South 72°29'50" East, a distance of 176.00 feet to a stone monument found on the westerly line of New York State Thruway Route 87; thence

Along said westerly line of New York State Thruway Route 87 the following eight courses and distances:

21. South 02°18'41" West, a distance of 79.18 feet to a point; thence
22. South 05°34'49" West, a distance of 131.08 feet to a point; thence
23. South 06°43'07" West, a distance of 1251.02 feet to a monument found; thence
24. North 74°02'52" West, a distance of 109.10 feet to a point on a non-tangent curve; thence
25. Southwesterly along a curve to the left, having an arc distance of 361.03, a radius of 832.18 feet and a central angle of 24°51'25" and being subtended by a chord which bears South 87°36'51" West, a distance of 358.21 feet to a point on a non-tangent curve; thence
26. Southwesterly along a curve to the left, having an arc distance of 271.91 feet, a radius of 832.18 feet and a central angle of 18°43'15" and being subtended by a chord which bears South 61°46'35" West, a distance of 270.70 feet to a point of non-tangency; thence
27. South 46°25'05" West, a distance of 23.85 feet to a point on a non-tangent curve; thence
28. Southwesterly along a curve to the left, having an arc distance of 214.91 feet, a radius of 212.03 feet and a central angle of 58°04'25" and being subtended by a chord which bears South 18°09' 12" West, a distance of 205.83 feet to a point of non-tangency; thence
29. Along a new line through lands now or formerly of Matrix Newburgh I, LLC (recorded in Liber 12528 Page 629) South 46°23'18" West, a distance of 475.04 feet to an iron pipe found; thence
30. Along a new line through lands now or formerly of DiBrizzi (recorded in Liber 12848 Page 1116) South 15°36'22" West, a distance of 610.86 feet to a concrete monument found on the aforementioned northerly line of New York Route 17K being the point of Beginning.

Encompassing an area of 3,124,332 square feet or 71.725 acres, more or less.

This description is prepared in accordance with a plan entitled "Lot Line Change of Section 95, Block 1 Lot 4.12, Lot 54.1, Lot 69.25 and Lot 49.12, Matrix Newburgh I, LLC, Town Of Newburgh, Orange County, New York", prepared by Langan Engineering, Environmental, Surveying and Landscape Architecture, DPC, Sheet No. CB-101 dated 17 July 2015 and last revised on 27 October 2015 filed in the Orange County Clerk's Office on November 10, 2015 as Map No. 262-15.

Together with the benefits of the Cross-Grading Easement Agreement made by and between Matrix Newburgh I, LLC, COS17, LLC, Angela DiBrizzi, Elisa DiBrizzi, Nicholas C. DiBrizzi and Serena DiBrizzi, f/k/a Serena Russo, as Trustees under the Trust created pursuant to Article Third under the Last Will and Testament of Cosimo DiBrizzi, Deceased, dated March 7, 1994 and Angela DiBrizzi, Elisa DiBrizzi, Nicholas C. DiBrizzi and Serena D. DiBrizzi, f/k/a Serena Russo, as Trustees under the Trust created pursuant to Article Fourth under the Last Will and Testament of Cosimo DiBrizzi, Deceased dated March 7, 1994, dated as of November 2, 2015

and recorded in the Orange County Clerk's Office on November 12, 2015 in Liber 13970 at Page 589.

Together with the benefits of the Grading Easement Agreement made by and between Matrix Newburgh I, LLC, COS17, LLC, Angela DiBrizzi, Elisa DiBrizzi, Nicholas C. DiBrizzi and Serena DiBrizzi, f/k/a Serena Russo, as Trustees under the Trust created pursuant to Article Third under the Last Will and Testament of Cosimo DiBrizzi, deceased dated March 7, 1994 and Angela DiBrizzi, Elisa DiBrizzi, Nicholas C. DiBrizzi and Serene DiBrizzi, f/k/a Serene Russo, as Trustees under the Trust created pursuant to Article Fourth under the Last Will and Testament of Cosimo DiBrizzi, Deceased dated March 7, 1994, dated as of May 17, 2016 and recorded in the Orange County Clerk's Office on May 27, 2016 in Liber 14056 at Page 1571.

Together with the benefits of the Access Road Easement Agreement dated April 8, 1994 by and among Northeast Distribution Center Associates, Northeast Distribution Center Associates – 10 and Northeast Business Center Associates – 52.5 recorded in Liber 4030 Page 116.

Together with the benefits of the Drainage Easement Agreement B dated April 8, 1994 by and between Northeast Distribution Center Associates – 10 and Northeast Distribution Center Associates and Northeast Business Center Associates – 52.5 and Northeast Distribution Center Associates -50 recorded in Liber 4030 Page 141.

Together with the benefits of the Utility Easement Agreement B dated April 8, 1994 by and among Northeast Distribution Center Associates – 10, Northeast Distribution Center Associates, Northeast Business Center Associates – 52.5 and Northeast Business Center Associates -50 recorded in Liber 4030 Page 168.

Together with the benefits of the Utility Easement Agreement C dated April 8, 1994 by and among Northeast Distribution Center Associates, Northeast Distribution Center Associates-10 and Northeast Business Center Associates – 52.5 and Northeast Distribution Center Associates - 50 recorded in Liber 4030 Page 193.

Together with the benefits of the Declaration in Liber 3159 Page 129 as amended in Liber 4279 Page 1, Liber 4279 Page 22 and Liber 4279 Page 44.