

Ord.

2002-0283

INTRODUCED BY: ALBERT D. LAQUE, PARISH PRESIDENT
DEPARTMENT OF ECONOMIC DEVELOPMENT & TOURISM

ORDINANCE NO. 02-8-1

An ordinance authorizing the issuance of not exceeding Eight Million Dollars (\$8,000,000) of the Parish of St. Charles, State of Louisiana Taxable Revenue Bonds (Randa Properties LLC Project) Series 2002; approving the form and authorizing the execution and delivery of a Lease Agreement and a Trust Indenture to secure the Bonds; acknowledging and accepting the benefits of a Letter of Credit and a Guaranty Agreement; authorizing the appropriate officer of said Parish to execute the aforementioned instruments and all other documents and certificates deemed necessary in connection therewith; applying to the State Bond Commission and Secretary of Economic Development for approval of the issuance of said Bonds; authorizing the publication of a Notice of Intention to Sell Bonds; authorizing the distribution of a Preliminary Official Statement and/or an Official Statement relating to said Bonds; and providing for other matters with respect to the foregoing.

WHEREAS, the Parish of St. Charles, State of Louisiana (the "Issuer"), is authorized and empowered under the laws of the State of Louisiana, including particularly Part XII of Chapter 4 of Subtitle II of Title 39, Sections 991 through 1001, inclusive, and/or Section 1430 of Title 39 of the Louisiana Revised Statutes of 1950, as amended (independently and collectively, as appropriate, the "Act") to issue revenue bonds to further its purposes of promoting and encouraging industrial and commercial redevelopment, and to stimulate the economy of the Lessor through renewed commerce and industry; and

WHEREAS, pursuant to and in accordance with the provisions of the Act and a Lease Agreement to be dated as of September 1, 2002 (the "Lease Agreement"), by and between the Issuer and Randa Properties LLC, a limited liability company (the "Company"), the Issuer will finance the cost of a project consisting of the acquisition, construction and equipping of a corporate headquarter and distribution facility (the "Project"), which facility is to be located in the Parish of St. Charles, Louisiana; and

WHEREAS, the Project has created or will create additional employment opportunities for residents of the Parish of St. Charles, Louisiana (the "Parish") and the surrounding area; and

WHEREAS, pursuant to and in accordance with the provisions of the Act and other constitutional and statutory authority, and a Trust Indenture to be dated as of September 1, 2002, by and between Hancock Bank of Louisiana, in the City of Baton Rouge, Louisiana, as trustee (the "Trustee"), and the Issuer (the "Indenture"), the Issuer proposes to issue its Taxable Revenue Bonds (Randa Properties LLC Project) Series 2002 (the "Bonds") in the aggregate principal amount of not exceeding \$8,000,000 for the purpose of financing the cost of acquiring, constructing and equipping the Project; and

WHEREAS, the Bonds will be entitled to the benefits of an irrevocable Letter of Credit (the "Front Letter of Credit"), to be issued by Hibernia National Bank (the "Credit Bank"), which Letter of Credit will initially provide additional security for the Bonds, and the Credit Bank will be entitled to reimbursement by the Company for all amounts drawn under the Letter of Credit pursuant to a Reimbursement Agreement dated as of September 1, 2002 between the Company and the Bank, a copy of which has been delivered to the Trustee; and

WHEREAS, Federal Home Loan Bank, or another bank providing credit enhancement, has confirmed the Front Letter of Credit by issuing an irrevocable transferable confirming letter of credit (the "Supporting Letter of Credit"); and

WHEREAS, under the provisions of a Guaranty Agreement dated as of September 1, 2002 (the "Guaranty Agreement") between Randa Corp. (the "Guarantor") and the Trustee, the

payment of the principal of premium, if any, and interest on the Bonds will be unconditionally guaranteed to the Trustee for the benefit of the owners of the Bonds; and

WHEREAS, in consideration of the lease of the Project by the Issuer pursuant to the Lease Agreement, the Company will agree to make payments in an amount sufficient to pay the principal of, premium, if any, interest and purchase price of the Bonds pursuant to the Lease Agreement and the Bonds shall be entitled to the benefits of the Letter of Credit, shall be payable solely from the revenues derived by the Issuer from said payments by the Company pursuant to the Lease Agreement and the Bonds shall never constitute an indebtedness or pledge of the general credit of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness or otherwise and will not be paid by the Issuer other than with respect to reductions of rent resulting from meeting certain employment levels; and

WHEREAS, the Bonds are being issued and delivered on the original issue date as taxable revenue Bonds, the interest on which is not excludable from gross income for federal income tax purposes; and

WHEREAS, all consents and approvals required to be given by public bodies in connection with the authorization, issuance and sale of the Bonds herein authorized as required by the Act have been or will be secured prior to the delivery of the Bonds; and

WHEREAS, it is now the desire of this Board of Commissioners to authorize the negotiation, execution and delivery of the Indenture and the Lease Agreement, to fix the details necessary with respect to the issuance and sale of not exceeding \$8,000,000 principal amount of said Bonds designated "Parish of St. Charles, State of Louisiana Taxable Revenue Bonds (Randa Properties LLC Project) Series 2002" for the purpose of financing the cost of acquiring, constructing and equipping the Project, paying the expenses of issuing the Bonds, and to provide for the execution of certain instruments, documents and certificates in connection therewith;

NOW, THEREFORE, BE IT ORDAINED by the Parish of St. Charles, State of Louisiana, acting as the governing authority of the Parish of St. Charles, State of Louisiana, that:

SECTION 1. The Parish President is hereby empowered, authorized and directed to execute and deliver the Lease Agreement and Indenture for, on behalf of, in the name of and under the official seal of the Issuer, in accordance with the provisions of the Act, and other constitutional and statutory authority, substantially in the forms as submitted at this meeting and filed with the official minutes of this Parish, with such additions, omissions and changes as may be approved by Bond Counsel to the Issuer and the Parish President of the Issuer. The signatures of the aforesaid officer upon the Lease Agreement and Indenture as so executed shall be deemed conclusive evidence of their due exercise of the authority vested in them hereunder.

SECTION 2. There is hereby authorized to be issued, sold and delivered not exceeding Eight Million Dollars (\$8,000,000) aggregate principal amount of "Parish of St. Charles, State of Louisiana Taxable Revenue Bonds (Randa Properties LLC Project) Series 2002" (the "Bonds"), pursuant to the provisions of the Act for the purpose of providing funds to finance the cost of acquiring, constructing and equipping the Project. The details of the Bonds and the provisions of their issuance, security and payment shall be as set forth in the Indenture, said Indenture to be

substantially in the form submitted at this meeting, with such additions, omissions and changes as may be approved by Bond Counsel to the Issuer and the Parish President. The Bonds shall be issued initially as taxable variable rate Bonds, convertible from time to time in whole or in part at the option of the Company to Bonds bearing interest at Daily, Weekly, Monthly, Flexible and Term Rates (all as defined in the Indenture upon the satisfaction of certain conditions contained in the Indenture. The Bonds issued initially in the taxable mode shall be designated "Taxable Revenue Bonds (Randa Properties LLC Project) Series 2002". The interest rate on any Bond shall not exceed 12% per annum, and such Bonds shall mature not later than thirty years from the date thereof.

SECTION 3. The Parish President is hereby further authorized and directed for, on behalf of, and in the name of the Issuer to negotiate, execute and deliver any and all additional instruments, documents and certificates in addition to the documents set forth above, including, without limitation, a purchase agreement and any conveyance of the real property to the Parish from funds provided by the State, a mortgage and/or security agreement, which may be required by or provided for in the Lease Agreement or the Indenture, or as may otherwise be required for or necessary, convenient or appropriate to the financing described in this ordinance. Upon the exercise of any option to purchase the land or any improvements under the Lease Agreement, the Parish President is hereby authorized to execute any necessary conveyance to honor such option. Said officer is hereby further authorized and directed to approve for and on behalf of and in the name of the Issuer any changes, additions or deletions in any of the documents, including, without limitation, the insertion of a mortgage and/or security agreements into any instruments or certificates referred to in this ordinance, provided that all such changes, additions or deletions, if any, shall be approved by Bond Counsel to the Issuer and consistent with and within the authority provided by the Act. The signatures of the said Parish President upon such documents set forth above, or as may be otherwise required for or necessary, convenient or appropriate to the financing described in this ordinance, are deemed to be conclusive evidence of their due exercise of the authority vested in them hereunder. The Parish President is authorized to execute and deliver for and on behalf of the Issuer any and all additional certificates, documents, opinions or other papers and perform all other acts customary to the closing of bond issues as he may deem necessary or appropriate in order to implement and carry out the intent and purposes of this ordinance and is further authorized, empowered and directed to

do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Indenture and Lease Agreement as executed.

SECTION 4. Application be and the same is hereby formally made to the State Bond Commission and Secretary of Economic Development or his successor in responsibility for approval of the Lease Agreement, the Indenture and other documents providing security for the Bonds and for consent and authority to issue, sell and deliver the Bonds herein authorized and that certified copies of this resolution and copies of said documents shall be forwarded to the State Bond Commission and Secretary of Economic Development, together with a request for prompt consideration and approval of this application.

SECTION 5. The Issuer hereby acknowledges and accepts the benefits of the Letters of Credit and the Guaranty Agreement.

SECTION 6. This Parish Council does hereby authorize the distribution of a Preliminary Official Statement and an Official Statement or similar offering materials to prospective purchasers by the underwriters, who shall be represented by Morgan Keegan & Company, Inc., describing, among other things, the Bonds, the Company and the Credit Bank; provided, however, that this authorization shall not constitute an approval of any statements in said Preliminary Official Statement and Official Statement, and the Issuer makes no representation or warranty, either express or implied, as to the accuracy or completeness of the information contained therein (other than information appearing therein under the heading "The Issuer"), as to which information it has no direct knowledge.

SECTION 7. This ordinance shall be published one time in the *St. Charles Herald Guide*, a bi-weekly newspaper of general circulation in the Parish of St. Charles, Louisiana (being the official journal of the Issuer), and that as provided by the Act, for a period of thirty (30) days from the date of such publication, any person in interest may contest the legality of this ordinance, the Bonds and any provisions therein made for the security and payment of the Bonds. After the expiration of said thirty days, no person may have any right of action to contest the regularity, formality, legality or effectiveness of this ordinance, the Bonds and any provisions made therein, for any cause whatsoever. Thereafter, it shall be conclusively presumed that every legal requirement for the issuance of the Bonds has been complied with. No court shall have authority to inquire into any of these matters after the said thirty (30) days.

SECTION 8. The publication of a notice of intent to sell the Bonds is hereby authorized and approved.

SECTION 9. This ordinance shall become effective immediately.

This Ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: RAMCHANDRAN FAUCHEUX, FABRE, ABADIE, AUTHEMENT,
BLACK, MINNICH

NAYS: NONE

ABSENT: HILAIRE, MARINO

And the Ordinance was declared adopted on this, the 5th day of August, 2002, to become effective five (5) days after publication in the official journal.

CHAIRMAN: *Clyde J. Aubrey*

SECRETARY: *Barbara J. Jacob*

DLVD/PARISH PRESIDENT: *8-6-02*

APPROVED: _____ DISAPPROVED: _____

PARISH PRESIDENT: *Albert D. Logan*

RETD/SECRETARY: *8-9-02*

AT: *9:45 AM* RECD BY: *B99*

GUARANTY AGREEMENT

This **GUARANTY AGREEMENT**, dated as of September 1, 2002 is by and between **RANDA CORP.** (herein called the "Guarantor"), a corporation duly organized and existing under the laws of the State of New Jersey, and **HANCOCK BANK OF LOUISIANA**, located in the City of Baton Rouge, Louisiana (herein, together with any successor trustee at the time serving as such under the hereinafter defined Indenture, referred to as the "Trustee").

WITNESSETH:

WHEREAS, arrangements have been made for the issuance and sale pursuant to the Trust Indenture dated as of September 1, 2002 (the "Indenture") between the Trustee and the Parish of St. Charles, State of Louisiana (the "Issuer") of the Issuer's Taxable Revenue Bonds (Randa Properties LLC Project) Series 2002 in the aggregate principal amount of \$7,500,000 (the "Bonds") for the purpose of acquiring, constructing and equipping a corporate headquarters and distribution facility in James Business Park in St. Rose, St. Charles Parish, Louisiana, leased to the Randa Properties LLC (the "Lessee"); and

WHEREAS, the Guarantor desires that the Issuer issue and sell the Bonds and apply the proceeds for the purpose described above and, in order to provide an inducement to the Issuer to issue and sell the Bonds and an inducement to the purchase of the Bonds by all who shall at any time become holders thereof, the Guarantor is willing to enter into this Guaranty Agreement;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the Guarantor does hereby covenant and agree with the Trustee as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 1.1. The Guarantor hereby represents and warrants that it is a corporation duly organized and existing and in good standing under the laws of the State of New Jersey and is qualified to do business in the State of Louisiana and in good standing under the laws of the State of Louisiana and has full power and authority to enter into and perform this Guaranty, has duly authorized the execution and delivery of this Guaranty Agreement by proper corporate action and that such execution and delivery and compliance with the terms hereof will not contravene or constitute a default under its Articles of Incorporation or By-Laws or any indenture, commitment, agreement or other instrument to which the Guarantor is a party or by which it is bound or any existing law, rule, regulation, judgment, order or decree to which it is subject.

ARTICLE II

GUARANTY

SECTION 2.1. The Guarantor hereby unconditionally and irrevocably guarantees to the Trustee for the benefit of the holders from time to time of the Bonds (a) the full and prompt payment of the principal of and premium, if any, on each Bond when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise, and (b) the full and prompt payment of interest on each Bond when and as the same shall become due, and agrees, in the event of any failure of the Issuer to make such payments of principal, interest and premium, if any, when due, to make such payments to the Trustee for the benefit of the holders from time to time of the Bonds. All payments by the Guarantor under this Guaranty Agreement shall be made in lawful money of the United States of America.

SECTION 2.2. The obligations of the Guarantor under this Guaranty Agreement shall be absolute and unconditional and shall remain in full force and effect until the entire principal of, premium, if any, and interest on the Bonds not theretofore cancelled or delivered to the Trustee for cancellation shall have been paid in full or shall have become due and payable and the Trustee shall hold sufficient moneys for the purpose of such payment. Such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following, whether or not such event shall occur with notice to, or the consent of, the Guarantor:

- (a) the waiver, surrender, compromise, settlement, discharge, release or termination of any or all of the obligations, covenants or agreements of the Issuer contained in the Indenture or in the bonds or of payment, performance or observance thereof;

(b) the failure to give notice to the Guarantor of the occurrence of a default under this Guaranty Agreement or of any event of default under the terms and provisions of the Indenture or the Lease Agreement dated as of September 1, 2002 between the Issuer and the Lessee (the "Lease Agreement");

(c) the transfer, assignment, or mortgaging or the purported transfer, assignment or mortgaging of all or any part of the interest of the Issuer in the Project (as defined in the Indenture);

(d) the waiver, surrender, compromise, settlement, release or termination of the Issuer's obligations, covenants or agreements contained in the Indenture or the Lease Agreement or of payment, performance or observance thereof;

(e) the extension of the time for payment of any principal of, premium, if any, or interest owing or payable on any Bond or of the time of performance of any obligation, covenant or agreement under or arising out of the Indenture, the Lease Agreement or this Guaranty Agreement or any extension or renewal thereof;

(f) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Bonds, the Indenture or the Lease Agreement;

(g) the taking or the omission of any action referred to in the Indenture or the Lease Agreement or of any action under this Guaranty Agreement;

(h) any failure, omission, delay or lack of diligence on the part of the Issuer or the Trustee in the enforcement, assertion or exercise of any right, power or remedy conferred on the Issuer or the Trustee in the Indenture, the Lease Agreement or this Guaranty Agreement, or the inability of the Issuer or the Trustee to enforce any provision of the Indenture, the Lease Agreement or this Guaranty Agreement for any other reason, or any other act or omission on the part of the Issuer, the Trustee or any of the holders from time to time of the Bonds;

(i) to the extent permitted by law, the dissolution, sale or other disposition of all or substantially all the assets, liquidation, the marshalling of assets and liabilities, receivership, insolvency, assignment for the benefit of creditors, bankruptcy, reorganization, arrangement, adjustment, composition or other similar proceedings affecting the Issuer, the Guarantor or any of the assets of either of them, or any allegation or contest of the validity of this Guaranty Agreement;

(j) to the extent permitted by law, any event or action that would in the absence of this clause, result in the release or discharge by operation of law of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty Agreement; or

(k) the default or failure of the Guarantor fully to perform any of its obligations set forth in this Guaranty Agreement.

SECTION 2.3. The Guarantor waives notice of the issuance of the Bonds and notice from the Trustee or the holders from time to time of any of the Bonds of their acceptance and reliance on this Guaranty Agreement. The Guarantor also waives pleas of discussion, presentment, demand for payment, protest and notice of nonpayment or dishonor and all other notices and demands whatsoever relating to the Bonds.

SECTION 2.4. No set-off, counterclaim, reduction or diminution of any obligation or any defense of any kind or nature which the Guarantor may have or assert against the Issuer or the Trustee or any holder of any Bond shall be available hereunder to the Guarantor against the Trustee.

ARTICLE III

DEFAULT AND REMEDIES

SECTION 3.1. The Trustee shall have the right, power and authority to do all things it deems necessary or advisable to enforce the provisions of this Guaranty Agreement and protect the interest of the holders of the Bonds and, in the event of default in the payment of any interest on any Bond when and as the same shall become due, the Trustee may institute or appear in such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of its rights and the rights of the Bondholders, whether for the specific enforcement of any covenant or agreement in this Guaranty Agreement or the Indenture or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy. Without limiting the generality of the foregoing, in the event of a default in payment of the principal of, premium, if any, or interest on any Bond when due, the Trustee may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Guarantor and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Guarantor, wherever situated.

SECTION 3.2. No remedy conferred upon or reserved to the Trustee herein is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty Agreement or now or hereafter existing at law or in equity.

SECTION 3.3. Each and every default in payment of the principal of, premium, if any, or interest on any Bond shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. In the event of such a default, the Trustee shall have the right to proceed first and directly against the Guarantor hereunder this Guaranty Agreement without proceeding against any other person, without exhausting any other remedies which it may have and without resorting to any other security held by the Issuer or the Trustee.

SECTION 3.4. The Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Trustee in enforcing or attempting to enforce this Guaranty Agreement or protecting the rights of the Trustee or the holders of Bonds hereunder following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

SECTION 3.5. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

SECTION 3.6. This Guaranty Agreement is entered into by the Guarantor with the Trustee for the benefit of the holders from time to time of the Bonds all of whom shall be entitled to enforce performance and observance of this Guaranty Agreement to the same extent the enforcement of remedies is provided in the Indenture.

ARTICLE IV

GENERAL

SECTION 4.1. The obligations of the Guarantor under this Guaranty Agreement shall arise absolutely and unconditionally upon the issue, sale and delivery of the Bonds.

SECTION 4.2. All moneys recovered by the Trustee pursuant to this Guaranty Agreement (other than those provided for in Section 3.4 hereof) shall be deposited in the Bond Fund and applied to the payment of the principal of, premium, if any, and interest on, the Bonds as provided in the Indenture. This Guaranty Agreement shall not be deemed to create any right, in or to be in whole or in part for the benefit of, any person other than the Trustee, the Guarantor, the holders from time to time of the Bonds and their permitted successors and assigns.

SECTION 4.3. This Guaranty Agreement (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; (c) may be modified only in accordance with the provisions of the Indenture; and (d) shall be governed in all respects, including validity, interpretation and effect, by, and shall be enforceable in accordance with, the laws of the State of Louisiana. If any provision of this Guaranty Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions.

SECTION 4.4. The Guarantor designates and appoints, without power of revocation except in conjunction with a substitute appointment, the Secretary of State of the State of Louisiana and _____, as the agent of the Guarantor upon whom may be served all notices,

process, pleadings or other papers which may be served upon the Guarantor as a result of any of its obligations, covenants or agreements contained in this Guaranty Agreement.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty Agreement to be executed in its name and behalf and its corporate seal to be affixed hereto and attested by its duly authorized officers, and the Trustee has accepted the same, as of the date first above written.

RANDA CORP.

By: _____
Title:

(SEAL)

WITNESSES:

Accepted this _____ day of _____, 2002.

HANCOCK BANK OF LOUISIANA,
as Trustee

By: _____
Title:

(SEAL)

WITNESSES:
