



SARATOGA COUNTY – STATE OF NEW YORK  
SARATOGA COUNTY CLERK  
CRAIG A. HAYNER  
40 MCMASTER STREET, BALLSTON SPA, NY 12020

COUNTY CLERK'S RECORDING PAGE

\*\*\*THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH\*\*\*



INSTRUMENT #: 2021047647

Receipt#: 2021212410625

Clerk: GB

Rec Date: 12/30/2021 02:15:01 PM

Doc Grp: R

Descrip: LEASE AGREEMENT W/TP 584

Num Pgs: 6

Party1: SARATOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

Party2: TIVOLI PROPERTIES LLC

Town: MALTA

Recording:

Pages	25.00
Cover Sheet Fee	5.00
Recording Fee	20.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
Names	0.50
Markoffs	0.50
TP 584	5.00

Sub Total: 76.00

Transfer Tax  
Transfer Tax 0.00

Sub Total: 0.00

Total: 76.00

\*\*\*\* NOTICE: THIS IS NOT A BILL \*\*\*\*

\*\*\*\*\* Transfer Tax \*\*\*\*\*

Transfer Tax #: 3716

Transfer Tax

Total: 0.00

Record and Return To:

LEMERY GREISLER LLC  
60 RAILROAD PLACE STE 502  
SARATOGA SPRINGS, NY 12866

This page constitutes the Clerk's endorsement, required by section 316-a (5) & 319 of the Real Property Law of the State of New York with a stamped signature underneath.

Saratoga County Clerk

**SECOND AMENDMENT TO LEASE AGREEMENT**

THIS SECOND AMENDMENT TO LEASE AGREEMENT dated as of December 29, 2021 (this "Amendment") by and between the COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at Saratoga County Municipal Center, Ballston Spa, New York 12020 (the "Lessor"), as landlord, and TIVOLI PROPERTIES, L.L.C., a limited liability company organized and existing under the laws of the State of New York having an address of 1282 Dutchess Turnpike, Poughkeepsie, New York 12603 and M & L PROPERTIES, LLC, a limited liability company organized and existing under the laws of the State of New York having an address of 1282 Dutchess Turnpike, Poughkeepsie, New York 12603 (collectively, the "Company"), as tenants;

**W I T N E S S E T H:**

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24, of the Consolidated Laws of the State of New York, as amended (the "Enabling Act"), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Lessor was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 855 of the Laws of 1971 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, the Lessor, by resolution adopted on August 17, 2016 (the "Resolution"), resolved to undertake a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 39 acre parcel of land constituting tax map parcel 240.-2-60.1 and located at 1 Racemark Way a/k/a 10 Stonebreak Road in the Town of Malta, New York, (2) the construction of a 20,000 square foot addition (the "Addition") to an existing 72,640 square foot facility (the "Existing Facility" and together with the Addition, collectively, the "Facility") located on the Land to be leased by the Company to Arnoff Moving & Storage of Albany, Inc. (the "Tenant") for use by the Tenant in its manufacturing, warehousing and shipping operations and for its corporate headquarters and (3) the acquisition and installation in the Facility of certain machinery and equipment (the "Equipment" and together with the Land and the Facility, collectively, the "Project Facility"), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the company and agreed upon by the Lessor and (C) the providing by the Lessor of certain "financial assistance" (as defined in the Act) in the form of exemptions from mortgage recording tax, real property taxes and state and local sales tax; and;

WHEREAS, by resolution duly adopted on September 11, 2017, the Lessor agreed to undertake a project (the "2017 Project") consisting of (A) (1) the construction on the Land of (i) a 43,780 square foot addition (the "Addition") to the Facility and (ii) an approximately 7,682 square foot building (the "New



Building” and together with the Addition, the “2017 Facility”), to be leased by the Company to the Tenant for use by the Tenant in its manufacturing, warehousing and shipping operations and for its corporate headquarters and (2) the acquisition and installation therein of certain machinery and equipment (the “2017 Equipment” and together with the 2017 Facility, collectively, the “2017 Project Facility”), (B) the lease (with the obligation to purchase) or the sale of the 2017 Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Lessor ; and (C) the granting of “Financial Assistance” (as such term is defined in the Act) with respect thereto in the form of exemptions from sales tax, mortgage recording tax and real property taxes; and

WHEREAS, the Project Facility and the 2017 Project Facility was leased by the Company to the Lessor pursuant to the terms of an Underlying Lease dated as of August 30, 2016 by and between the Company, as landlord, and the Lessor, as tenant and recorded in the office of the Saratoga County Clerk on September 15, 2016 as Instrument #2016028874 as amended by a first amendment thereto dated December 14, 2017 and recorded in the office of the Saratoga County Clerk on December 21, 2017 as Instrument #2017040453 (hereinafter the “Underlying Lease”) (all capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Underlying Lease); and ✓

WHEREAS, the Lessor has leased the Project Facility and the 2017 Project Facility to the Company pursuant to the terms of that certain Lease Agreement dated as of August 30, 2016 by and between the Lessor, as lessor, and the Company , as lessee, and recorded in the office of the Saratoga County Clerk on September 15, 2016 as Instrument #2016028875 as amended by a first amendment thereto dated December 14, 2017 and recorded in the office of the Saratoga County Clerk on December 21, 2017 as Instrument #2017040454 (the “Lease Agreement”); and ✕

WHEREAS, by resolution duly adopted on December 21, 2021, the Lessor agreed to undertake a project (the “2021 Project”) consisting of (A) (1) the construction on the Land of an approximately 120,000 square foot building (the “2021 Facility”), to be leased by the Company to the Tenant for use by the Tenant and potentially other third party tenants (the “Third Party Tenants”) in manufacturing, warehousing and shipping operations and (2) the acquisition and installation therein of certain machinery and equipment (the “2021 Equipment” and together with the 2021 Facility, collectively, the “2021 Project Facility”), (B) the lease (with the obligation to purchase) or the sale of the 2021 Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Lessor ; and (C) the granting of “Financial Assistance” (as such term is defined in the Act) with respect thereto in the form of exemptions from sales tax, mortgage recording tax and real property taxes; and

WHEREAS, in connection therewith, the parties desire to modify the Lease Agreement in the manner hereinafter set forth;

NOW, THEREFORE, THE LESSOR AND THE COMPANY HEREBY AGREE AS FOLLOWS:

1. Section 1.1 of the Lease Agreement is hereby amended to include the following defined terms to appear in their proper alphabetical position within said Section

“2021 Equipment” means that portion of the Equipment installed into the 2021 Facility.

“2021 Facility” means the approximately 120,000 square foot standalone structure to be constructed on the Land.

“2021 Project” means the construction of the 2021 Facility and the installation of the 2021 Equipment.

2. The following defined terms set forth in Section 1.1 of the Lease Agreement are hereby amended and restated in their entirety to read as follows:

“Completion Date” means the date which is certified by an Authorized Representative of the Company as the dates of completion of the 2016 Project and the 2017 Project and the 2021 Project, respectively, pursuant to this Lease Agreement.

“Facility” means collectively the Existing Facility, the Addition, the 2017 Facility and the 2021 Facility.

“Lender” means collectively, KeyBank National Association (successor to First Niagara Bank, N.A.) and Empire State Certified Development Corporation/U.S. Small Business Administration and their respective successors and assigns.

“Loan” means the loan or loans from the Lender to the Company the proceeds of which were or will be used to finance the Project.

“Mortgage” means the mortgage or mortgages from the Company and the Lessor in favor of the Lender, as said mortgage or mortgages may be modified, supplemented, consolidated or amended from time to time.

“Note” means the promissory note or notes executed and delivered by the Company to the Lender and evidencing the Loan, as said promissory notes may be amended, modified, supplemented, consolidated or extended.

“PILOT Agreement” means collectively (i) the amended and restated payment in lieu of tax agreement with an effective date of August 30, 2016 by and between the Lessor and the Company, (ii) the supplemental payment in lieu of tax agreement dated December 14, 2017 by and between the Lessor and the Company and (iii) the supplemental payment in lieu of tax agreement dated December 29, 2021 by and between the Lessor and the Company, as each of said payment in lieu of tax agreements may be amended or supplemented from time to time.

“Project” means collectively the 2016 Project, the 2017 Project and the 2021 Project.

“Project Agreement” means collectively, (i) that certain uniform agency project agreement dated as of August 30, 2016 by and between the Company and the Lessor, (ii) that certain uniform agency project agreement dated December 14, 2017 by and between the Company and the Lessor and (iii) that certain uniform agency project agreement dated as of December 29, 2021 by and between the Company and the Lessor as each of said uniform agency project agreements may be amended or supplemented from time to time in accordance with the terms thereof.

“Resolution” means the resolutions duly adopted by the Lessor on August 17, 2016, September 11, 2017 and December 21, 2021 authorizing the execution and delivery of the Leasing Documents to which the Lessor is a party.

3. Section 5.2 of the Lease Agreement is hereby amended and restated in its entirety to read as follows:

SECTION 5.2. DURATION OF TERM. The term of this Lease Agreement shall become effective upon its delivery and shall expire on December 31, 2032, or such earlier date as this Lease Agreement may be terminated as hereinafter provided (the “Lease Term”). The Lessor shall deliver to the Company and the Company shall accept sole and exclusive possession of the Project Facility simultaneously with the execution of this Lease Agreement.

4. This Amendment shall be governed exclusively by the applicable laws of the State.
5. This Amendment may be executed in several counterparts, each of which shall constitute an original but when taken together shall constitute but one instrument.

IN WITNESS WHEREOF, the Lessor and the Company have caused this Amendment to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

COUNTY OF SARATOGA INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Rodney Sutton, Chairman

TIVOLI PROPERTIES, L.L.C.


By:   
Michael Arnoff, Managing Member

M & L PROPERTIES, LLC

By:   
Michael Arnoff, Managing Member


STATE OF NEW YORK            )  
  )SS.:  
COUNTY OF SARATOGA        )

On this 29<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **Rodney Sutton**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public  
JAMES A. CARMINUCCI  
NOTARY PUBLIC STATE OF NEW YORK  
REG. NO. 02CA4864025  
QUALIFIED IN SARATOGA COUNTY  
COMMISSION EXPIRES JUN 9, 2022

STATE OF NEW YORK            )  
  )SS.:  
COUNTY OF SARATOGA        )

On this 29<sup>th</sup> day of December, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **Michael Arnoff**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public  
JAMES A. CARMINUCCI  
Notary Public State of New York  
Reg. No. 02CA4864025 - Saratoga County  
Commission Expires 6/9/2022