
COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

AND

TIVOLI PROPERTIES, L.L.C. AND M & L PROPERTIES, LLC

**SUPPLEMENTAL PAYMENT IN LIEU OF TAX
AGREEMENT**

DECEMBER 14, 2017

SUPPLEMENTAL PAYMENT IN LIEU OF TAX AGREEMENT

THIS SUPPLEMENTAL PAYMENT IN LIEU OF TAX AGREEMENT dated as of December 14, 2017 and effective as of August 30, 2016 (the "Agreement") by and between the COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at the Saratoga County Municipal Center, 50 West High Street, Ballston Spa, New York 12020 (the "Agency"), 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");

WITNESSETH:

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 Agency 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 Agency, has previously undertaken a 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 tax map parcel 240.-2-60.1-1 and located at 10 Stonebreak Road a/k/a 1 Racemark Way in the Town of Malta, New York as more particularly described on Schedule "A" attached hereto (the "Land"), (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 "2016 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 headquarter, and (3) the acquisition and installation in the 2016 Facility of certain machinery and equipment (the "Equipment" and together with the Land and the 2016 Facility, collectively, the "Existing 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 Agency and (C) the granting of "Financial Assistance" (as defined in the Act) with respect thereto in the form of exemptions from state and local sales tax, mortgage recording tax and real property taxes; and

WHEREAS, the Agency has leased the Project Facility to the Company pursuant to the terms of a lease agreement dated as of August 30, 2016 as amended by a first amendment thereto dated of even date herewith (as so amended and as such may be further amended or supplemented from time to time, the "Lease Agreement") by and between the Agency and the Company; and

WHEREAS, the Company and the Agency have executed and delivered a certain payment in lieu of tax agreement dated as of August 30, 2016 as amended and restated by an amended and restated payment in lieu of tax agreement dated as of August 14, 2017 and effective as of August 30, 2016 (the "Existing Pilot Agreement") providing for payments in lieu of taxes with respect to the Existing Project Facility; and

WHEREAS, by resolution duly adopted on September 11, 2017, the Agency authorized the undertaking of a project consisting of (A) (1) the construction on the Land of an approximately 43,780 square foot addition to the Existing Facility (the "2017 Addition") together with an approximately 7,682 square foot standalone building (the "2017 New Building" and together with the 2017 Addition, collectively, the "2017 Project Facility") and (B) the sale thereof to the Company pursuant to the Lease Agreement; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is not required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, supervision or control or upon its activities; and

WHEREAS, pursuant to the provision of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of real estate taxes with respect to the 2017 Project Facility in the amounts and in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

DEFINITION OF TERMS. All words and terms used herein and not otherwise defined herein shall have the meanings assigned to such words and terms in the Lease Agreement.

ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS AND WARRANTIES OF COMPANY. The Company represents and warrants that:

(A) Power: The entities comprising the Company are each limited liability companies duly organized, validly existing and in good standing under the laws of the State of New York, have the power to enter into this Agreement and to carry out its obligations hereunder and by proper action of its members has authorized the execution, delivery and performance of this Agreement.

(B) Authorization: Neither the execution and delivery of this Agreement, the consummation by the Company of the transactions contemplated hereby nor the fulfillment by the Company of or compliance by the Company with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the articles of organization or operating agreement of the Company, or any order, judgment, 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.

(C) Governmental Consent: To the knowledge of the Company no consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition precedent to the execution, delivery or performance of this Agreement by the Company or as a condition precedent to the consummation by the Company of the transactions contemplated hereby.

SECTION 1.02. REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency represents and warrants that:

(A) Power: The Agency is duly established under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Agreement.

(B) Authorization: Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby by the Agency nor the fulfillment by the Agency or compliance by the Agency with the provisions of this Agreement will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency, or any order, judgment, restriction, agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default by the Agency under any of the foregoing.

(C) Governmental Consent: To the knowledge of the Agency no consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Agency is required as a condition precedent to the execution, delivery or performance of this Agreement by the Agency or as a condition precedent to the consummation by the Agency of the transactions contemplated hereby.

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF 2017 PROJECT FACILITY.

(A) Assessment of 2017 Project Facility: Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto acknowledge that so long as the Agency shall own the 2017 Project Facility, the 2017 Project Facility shall be assessed by the various taxing entities having jurisdiction over the 2017 Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the 2017 Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of title to the 2017 Project Facility. The Company shall promptly, following acquisition by the Agency of title to the 2017 Project Facility, cooperate to ensure that the 2017 Project Facility is assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, and for so long thereafter as the Agency shall own the 2017 Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The Agency will cooperate with the Company and will take all action as may be necessary (subject to the provisions of Section 3.01 hereof) to preserve the tax exempt status of the 2017 Project Facility.

(B) Special Assessments: The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the

Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay to the appropriate Taxing Entity all special assessments and special ad valorem levies lawfully levied and/or assessed by the appropriate Taxing Entity against the 2017 Project Facility.

(C) Existing Pilot Agreement. The parties acknowledge and agree that this Agreement is intended to only govern payments in lieu of real property taxes with respect to the 2017 Project Facility and is not intended to override or supersede the terms, conditions and provisions of the Existing Pilot Agreement, which shall continue to govern the payments in lieu of real property taxes due and owing with respect to the Land and the Existing Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES.

(A) Agreement to Make Payments: The Company agrees that it will make annual payments in lieu of real estate taxes with respect to the 2017 Project Facility to the Agency in the amounts hereinafter provided for redistribution to the respective Taxing Entities in proportion to the amounts which said Taxing Entities would have received had not the 2017 Project Facility been acquired and owned by the Agency.

(B) Amount of Payments in Lieu of Taxes:

(1) Town and County Taxes: (a) Commencing on February 15, 2019 and continuing on February 15 of each year thereafter up to and including February 15, 2023, no payments in lieu of taxes shall be due and owing with respect to the 2017 Project Facility on account of town and county taxes.

(b) Commencing on February 15, 2024 and continuing on each February 15 of each year thereafter up to and including February 15, 2028, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency with respect to the 2017 Project Facility on account of town and county taxes with respect to each appropriate Taxing Entity equal to the product of (x) the increase in the current Assessed Value from the Initial Assessed Value attributable to the 2017 Project Facility times (y) the percentage set forth below for the date in question, with the resulting amount applied to the tax rate or rates of each such Taxing Entity applicable to the 2017 Project Facility for the current tax year of such Taxing Entity:

Date	Applicable percentage
February 15, 2024	50%
February 15, 2025	60%
February 15, 2026	70%
February 15, 2027	80%
February 15, 2028	90%

(c) Commencing February 15, 2029 and continuing on each February 15 thereafter for such time as this Agreement is in effect, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of town and county taxes with respect to each appropriate Taxing Entity in an amount to be determined by multiplying (i) the Assessed Value of the 2017 Project Facility determined pursuant to Section (B)3 of this Section 2.02 by (ii) the tax rate or rates of such Taxing Entity applicable to the 2017 Project Facility for the current tax year of such Taxing Entity.

(2) School Taxes: (a) Commencing September 15, 2018 and continuing on September 15 of each year up to and including September 15, 2022, no payments in lieu of taxes shall be due and owing with respect to the 2017 Project Facility on account of school taxes.

(b) Commencing on September 15, 2023 and continuing on each September 15 of each year thereafter up to and including September 15, 2027, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of school taxes equal to the product of (x) the increase in the current Assessed Value from the Initial Assessed Value attributable to the 2017 Project Facility times (y) the percentage set forth below for the date in question, with the resulting amount applied to the tax rate or rates of the Ballston Spa School District applicable to the 2017 Project Facility for the current tax year of the Ballston Spa School District:

Date	Applicable percentage
September 15, 2023	50%
September 15, 2024	60%
September 15, 2025	70%
September 15, 2026	80%
September 15, 2027	90%

(c) Commencing September 15, 2028 and continuing for such time as this Agreement is in effect, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of school taxes in an amount to be determined by multiplying (i) the Assessed Value of the 2017 Project Facility determined pursuant to Section 3 of this Section 2.02(B) by (ii) the tax rate or rates of the Ballston Spa School District applicable to the 2017 Project Facility for the current tax year of the Ballston Spa School District.

(3) (a) For purposes of this Section 2.02: (i) "Initial Assessed Value" shall mean \$4,400,000. Continuing for such time as this Agreement is in effect, the Initial Assessed Value shall be no greater than \$4,400,000 regardless of the number of tax map parcels the Town of Malta (or other applicable taxing authority) assigns to the Land or the 2017 Project Facility; and

(ii) the "Assessed Value" of the 2017 Project Facility or the Addition, as applicable, shall be determined by the appropriate officer or officers of the Taxing Entity responsible for assessing properties in each Taxing Entity (said officer or officers being hereinafter collectively referred to as the "Assessor"). The Assessor shall (a) appraise the Addition and/or the 2017 Project Facility, as applicable, (excluding, where permitted by law, personal property) in the same manner as other similar properties in said Taxing Entity and (b) place a value for assessment purposes upon the Addition and/or the 2017 Project Facility, as applicable, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes.

(b) If the Company is dissatisfied with the amount of Assessed Value as initially established or as changed, the Company may pursue review of the Assessed Value under Article 7 of the New York State Real Property Tax Law or any other law or ordinance then in effect relating to disputes over assessed valuation of real property in the State of New York, and may take any and all other action available to it at law or in equity, for a period of seven (7) years from the date such Assessed Value is initially established or changed. IF THE COMPANY FAILS TO PURSUE REVIEW OF (i) THE INITIALLY ESTABLISHED ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING SUCH ESTABLISHMENT, OR (ii) ANY CHANGE IN ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING ANY SUCH CHANGE, THE COMPANY SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT TO CONTEST OR DISPUTE SUCH ASSESSED VALUE

AT ANY TIME FOR A SEVEN (7) YEAR PERIOD COMMENCING MARCH 1, 2029 NOTWITHSTANDING ANYTHING IN THE NEW YORK STATE REAL PROPERTY TAX LAW TO THE CONTRARY. THIS SEVEN (7) YEAR LIMITATION SHALL APPLY TO EACH AND EVERY ASSESSMENT MADE DURING THE PERIOD THAT THE AGENCY HOLDS TITLE TO THE 2017 PROJECT FACILITY, AND SHALL BE FOR THE BENEFIT OF THE AGENCY AND THE OTHER TAXING ENTITIES. The Agency hereby irrevocably appoints the Company its attorney-in-fact and agent (coupled with an interest) for the purpose of commencing any proceeding, preparing and filing all documents and taking any and all other actions required to be taken by Agency, necessary or desirable, in the opinion of the Company, to contest or dispute any Assessed Value within such periods; provided, however, that the Agency shall incur no expense or liability in connection with any action taken or omitted to be taken by its attorney-in-fact and agent.

(c) The Company will file with the appropriate officer the filing required under Section 412-a (2) of the Real Property Tax Law of New York State on or before March 1, 2018. THE COMPANY ACKNOWLEDGES THAT THE FAILURE TO FILE SUCH FORM BY THE DATE INDICATED WILL RESULT IN A NULLIFICATION OF THE TERMS OF THIS AGREEMENT.

(4) Additional Amounts in Lieu of Taxes: Commencing on the first tax year following the date on which any structural addition shall be made to the 2017 Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities"), the Company agrees to make additional annual payments in lieu of property taxes (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if such Additional Facilities were owned by the Company and not the Agency by multiplying (a) the additional Assessed Value of such Additional Facilities determined pursuant to subsection (B)(3) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each calendar year during the term of this Agreement (commencing in the calendar year when such Additional Facilities first appear on the assessment roll of any Taxing Entity), the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such calendar year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

SECTION 2.03. INTEREST. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with late fees and interest thereon equal to the greater of (A) any late fees and interest which would be applicable with respect to each Taxing Entity were the 2017 Project Facility owned by the Company and not the Agency and (B) the late fees and interest prescribed by subsection (5) of Section 874 of the General Municipal Law of the State of New York (or any successor statute thereto).

ARTICLE III

LIMITED OBLIGATION OF THE AGENCY

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY.

(A) No Recourse: All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenants or agreement contained in this Agreement, or otherwise based upon or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement, it being expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(B) Limited Obligation: The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the County of Saratoga, New York, and neither the State of New York nor the County of Saratoga, New York shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) Further Limitation: Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company satisfactory to the Agency to defend and hold harmless the Agency against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events (hereinafter an "Event of Default") shall constitute a default under this Agreement:

(A) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement and continuance of said failure for a period of ten (10) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed by it hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period, and the Company shall have commenced action to cure the breach of such covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for a period not to exceed sixty (60) days from the date of receipt by the Company of such notice; or

(C) Any warranty or representation by the Company contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement and such falsity or incorrectness has a material adverse affect on the Company's ability to perform its obligations under this Agreement.

SECTION 4.02. REMEDIES ON DEFAULT. Whenever any Event of Default shall have occurred and be continuing with respect to this Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement including, without limitation, the exercise by the Agency of the remedy set forth in subsections (A)(3) and (A)(4) of Section 10.2 of the Lease Agreement. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of the State of New York, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If an Event of Default should occur and be continuing under this Agreement and the Agency should employ attorneys or incur other reasonable expenses for the collection of any amounts due and payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor by the Agency, reimburse the Agency for the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE.

(A) No Remedy Exclusive: Notwithstanding anything to the contrary contained herein, no remedy herein conferred upon or reserved to the Agency or the Company 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 Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay: No delay or omission in exercising any right or power accruing upon the occurrence of an Event of Default 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.

(C) Notice Not Required: In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(D) No Waiver: In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM OF AGREEMENT.

(A) General: This Agreement shall become effective and the obligations of the Company and the Agency shall arise absolutely and unconditionally upon the execution and delivery of this Agreement by the Company and the Agency. This Agreement shall continue to remain in effect until the termination of the Lease Agreement in accordance with its terms.

(B) Extended Term: In the event that (1) if title to the 2017 Project Facility shall be conveyed to the Company, (2) if on the date on which the Company obtains title to the 2017 Project Facility, the 2017 Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities solely as a result of the Agency's prior ownership of the 2017 Project Facility, and (3) if the fact of obtaining title shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of New York (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Agreement shall remain in full force and effect but only to the extent set forth in this sentence and the Company shall be obligated to make payments to the Agency in amounts equal to the Normal Tax which would be due from the Company if the 2017 Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the 2017 Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENT OF AGREEMENT. This Agreement may not be amended, changed, modified, altered, supplemented or terminated unless such amendment, change, modification, alteration or termination is in writing and unless signed by the party against which enforcement of the amendment, change, modification, alteration, supplement or termination shall be sought.

SECTION 5.05. NOTICES. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the

sender with documentary evidence of such delivery (including, but not limited to, overnight delivery) or (B) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery. The address to which notices, certificates and other communications hereunder shall be delivered are as follows:

TO THE AGENCY:

County of Saratoga Industrial Development Agency
Saratoga County Municipal Center
50 West High Street
Ballston Spa, New York 12020
Attention: Chairman

WITH A COPY TO:

Snyder, Kiley, Toohey & Corbett LLP
P.O. Box 4367
160 West Avenue
Saratoga Springs, New York 12866
Attention: Michael J. Toohey, Esq.

IF TO THE COMPANY:

Tivoli Properties, L.L.C.
M & L Properties, LLC
1282 Dutchess Turnpike
Poughkeepsie, New York 12603
Attention: Michael Arnoff

WITH A COPY TO:

Couch White, LLP
P.O. Box 22222
540 Broadway
Albany, New York 1220
Attention: John R. Vero, Esq.

provided, that the Agency and the Company may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.06. BINDING EFFECT. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance.

SECTION 5.09. ASSIGNMENT. This Agreement may not be assigned by the Company absent the prior written consent of the Agency.

SECTION 5.10 JOINT AND SEVERAL LIABILITY. In the event that this Agreement is executed by more than one entity comprising the Company, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each such entity, whether or not action is brought against any other person or whether or not any other person is joined in such action or actions.

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names, all being done the date 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 11th day of December, 2017, 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, 2018

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

On this 14th 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/ 2018

COMMITMENT FOR TITLE INSURANCE

No: 6586.18606

LEGAL DESCRIPTION

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate in the Town of Malta, County of Saratoga, State of New York, lying Southeast of Stonebreak Road Extension as shown on a map entitled "Subdivision Map Lands Now Or Formerly Of Bob Bailey And Ada C. Bailey To Be Conveyed To Luther Forest Technology Campus Economic Development Corporation," Town of Malta, Saratoga County, New York, prepared by C.T. Male Associates P.C., dated February 21, 2006, last revised October 19, 2006, and filed in the Saratoga County Clerk's Office on February 1, 2007 as Map No. L697, and being more particularly bounded and described as follows:

BEGINNING at the point of intersection of the common division line between Lot 3 Stonebreak Road Extension lands now or formerly of Yellowstone Holdings, LLC as described in Book 1768 of Deeds at Page 352 (Instrument No. 200700821) on the East and the lands now or formerly of Chawla Kumar as described in Book 1550 of Deeds at Page 718, lands now or formerly of Charbonneau Properties, LLC as described in Book 1655 of Deeds at Page 80, lands now or formerly Thomas Bena, as Trustee of the John Bena Family Trust as described in Instrument No. 2009014307, lands now or formerly of Dianne M. Clouse, as Trustee of the Dianne Mary Clouse Revocable Trust as described in Instrument No. 2015005326, lands now or formerly of Pierce Hardy Limited Partnership as described in Book 1721 of Deeds at Page 99 and other lands now or formerly of Pierce Hardy Limited Partnership as described in Instrument No. 2014026613 on the West with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the South and Stonebreak Road and Utility Corridor No. 1 lands now or formerly of the County of Saratoga as described in Instrument No. 2015038929 as shown on a map entitled "Road And Utility Corridor Consolidation Map Lands Now Or Formerly Of The Town Of Malta To Be Conveyed To The County Of Saratoga," Town of Malta, Saratoga County, New York, prepared by C.T. Male Associates, Engineering, Surveying, Architecture & Landscape Architecture, D.P.C., dated December 16, 2015 and filed in the Saratoga County Clerk's Office on December 29, 2015 as Map No. M2015256 on the North and runs thence from said point of beginning along the last mentioned division line North 84 deg. 23 min. 12 sec. East, 446.91 feet to its point of intersection with the Southerly road boundary of Stonebreak Road Extension; thence along the Southerly and Southwesterly road boundary of Stonebreak Road Extension the following three (3) courses:

- 1) South 72 deg. 00 min. 15 sec. East, 223.63 feet to a point;
- 2) in a Southeasterly direction along a non-tangent curve to the right having a radius of 2,980.00 feet, an arc length of 782.07 feet and a chord bearing of South 63 deg. 51 min. 18 sec. East, 779.83 feet to a point; and
- 3) South 56 deg. 20 min. 16 sec. East 27.09, feet to its point of intersection with the Northwesterly road boundary of Stonebreak Road Extension;

thence along said Northwesterly road boundary South 32 deg. 21 min. 50 sec. West, 53.01 feet to its point of intersection with the Southwesterly road boundary of Stonebreak Road Extension; thence along said Southwesterly road boundary the following three (3) courses:

- 1) South 56 deg. 20 min. 12 sec. East, 82.30 feet to a point of curvature;
- 2) in a Southeasterly direction along a curve to the left having a radius of 873.00 feet, an arc length of 316.99 feet and a chord bearing of South 66 deg. 44 min. 20 sec. East, 315.25 feet to a point; and
- 3) South 42 deg. 15 min. 51 sec. East, 154.99 feet to its point of intersection with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the North and the lands now or formerly of Fox Wander East Neighborhood Association, Inc., as described in Book 1248 of Deeds at Page 300, as shown on a map entitled "The Luther Forest Residential Subdivision No. 3 Town Of Malta, Saratoga County, Lot Summary Common Area No. 19," prepared by Peter E. Kent Engineers, dated October 26, 1979 and filed in the Saratoga County Clerk's Office on May 7, 1981 as Map No. L-105M on the South;

thence along said division line the following two (2) courses:

- 1) North 78 deg. 16 min. 38 sec. West 132.74 feet to a point; and
- 2) South 81 deg. 21 min. 03 sec. West 112.53 feet to its point of intersection with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the Northwest and the said lands now or formerly of Fox Wander East Neighborhood Association, Inc. on the Southeast;

thence along said division line the following three (3) courses:

- 1) South 59 deg. 58 min. 52 sec. West, 187.39 feet to a point;
- 2) South 68 deg. 16 min. 30 sec. West 150.61 feet to a point; and
- 3) South 40 deg. 16 min. 24 sec. West 199.36 feet to its point of intersection with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the West and the said lands now or formerly of Fox Wander East Neighborhood Association, Inc. on the East;

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LEGAL DESCRIPTION - CONTINUED

thence along said division line South 07 deg. 50 min. 02 sec. West 136.32 feet to its point of intersection with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the Southwest and the said lands now or formerly of Fox Wander East Neighborhood Association, Inc. on the Northeast; thence along said division line the following two (2) courses:

- 1) South 39 deg. 27 min. 51 sec. East 108.08 feet to a point; and
- 2) South 65 deg. 07 min. 08 sec. East 106.62 feet to its point of intersection with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the South and the said lands now or formerly of Fox Wander East Neighborhood Association, Inc. on the North; thence North 82 deg. 17 min. 04 sec. East along the last mentioned division line 194.52 feet to its point of intersection with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the Southwest and the said lands now or formerly of Fox Wander East Neighborhood Association, Inc. on the Northeast; thence South 62 deg. 17 min. 05 sec. East along the last mentioned division line 22.79 feet to its point of intersection with the division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the West and the said lands now or formerly of Fox Wander East Neighborhood Association, Inc. on the East; thence South 11 deg. 09 min. 07 sec. East along the last mentioned division line 135.42 feet to its point of intersection with the common division line between said Lot 3 lands now or formerly of Yellowstone Holdings, LLC on the North and Lot Nos. 10, 9, 8, 7, 6, 5, 4, 3 and 2 Springfield Drive and Open Space No. 2 as shown on a map entitled "Amendment To Woodfield PDD," Town of Malta, Saratoga County, New York, prepared by Ingalls Smart Associates in Engineering and Surveying, dated November 4, 1996 and filed in the Saratoga County Clerk's Office on January 29, 1997 as Map Nos. W-307A and W-307D on the South; thence South 83 deg. 28 min. 07 sec. West along the last mentioned common division line 1,291.55 feet to its point of intersection with the above first mentioned common division line; thence along said above first mentioned common division line North 09 deg. 03 min. 57 sec. West, 1,552.18 feet to the point or place of beginning and containing 39.81 acres of land, more or less.

TOGETHER WITH AN EASEMENT over additional lands of Yellowstone Holdings, LLC, authorized to conduct business in the State of New York as Yellowstone Holdings of Maryland, LLC (collectively, "Yellowstone") located on the northerly side of Stonebreak Road Extension being the remaining portion of the lands conveyed by the above-referenced Deed recorded in Book 1768 of Deeds at Page 352, for ingress, egress and the use, installation, maintenance and repair (collectively, the "Use") of certain existing waterlines (the "Waterlines") running from the northerly line of Stonebreak Road Extension to the southerly line of Fox Wander Road (the "Easement Area"), which Tivoli Properties, LLC ("Tivoli") and M & L Properties, LLC ("M & L") may require now and from time to time for the transmission and distribution of water in, upon, over, under, through and across the above-described premises and passing and repassing along the Easement Area and passing and repassing water in, upon, over, under, through and across the above-described premises to and from the Easement Area. This easement shall terminate upon Tivoli and M & L acquiring an alternative means of providing water service to the premises hereinabove conveyed, in the discretion of Tivoli and M & L, evidencing the said alternative means as an agreement and/or easement and, if appropriate, recording the same in Saratoga County Clerk's Office (collectively, "Alternative Service Means"). Upon the recording of said agreement and/or easement for Alternative Service Means, Tivoli and M & L, their successors and/or assigns, shall execute and deliver to Yellowstone, its successors and/or assigns, a termination for the easement herein conveyed in, upon, over, under, through and across the Easement Area. The general location of the Easement Area and the Waterlines is northeast of the shaded area depicted on Exhibit 3 of that certain Warranty Deed, dated February 28, 2007, and recorded in the Saratoga County Clerk's Office on March 5, 2007 as Instrument No. 2007008955, from Yellowstone to Luther Forest Technology Campus Economic Development Corporation.

TOGETHER with a license and permission, in consideration of One and 00/100 DOLLARS (\$1.00) lawful money of the United States, and other good and valuable consideration paid by Tivoli and M & L, until that time as Tivoli and M & L establish Alternative Service Means, for the Use of the Waterlines, which license and permission shall be personal Tivoli and M & L and their successors and assigns. Yellowstone agrees to hold Tivoli and M & L harmless from and indemnify Tivoli and M & L from and against any claim, liability, loss, expense and/or damages arising out of, related to or in connection with this license and permission.

TOGETHER, in common with Yellowstone, to those portions of the waterlines and/or sewer lines within the boundaries of Road and Utility Corridor No. 1, including those portions underlying Stonebreak Road Extension, which said rights were reserved, with the rights of ingress and egress, to Yellowstone in that certain Warranty Deed, dated February 28, 2007, and recorded in the Saratoga County Clerk's Office on March 5, 2007 as Instrument No. 2007008955, from Yellowstone to Luther Forest Technology Campus Economic Development Corporation.