



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

COUNTY CLERK'S RECORDING PAGE  
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INSTRUMENT #: 2016002804  
 Receipt#: 2016212019674  
 Clerk: DS  
 Rec Date: 01/27/2016 10:33:21 AM  
 Doc Grp: R  
 Descrip: LEASE AGREEMENT W/TP 584  
 Num Pgs: 14

Party1: MGROVE HOLDINGS LLC  
 Party2: COUNTY OF SARATOGA INDUSTRIAL  
 DEVELOPMENT AGENCY  
 Town: SARATOGA SPRINGS

Recording:	
Pages	65.00
Cover Sheet Fee	5.00
Recording Fee	20.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
Names	0.00
TP 584	5.00
Sub Total:	<u>115.00</u>
Transfer Tax	
Transfer Tax	0.00
Sub Total:	<u>0.00</u>
Total:	<u>115.00</u>
**** NOTICE: THIS IS NOT A BILL ****	
***** Transfer Tax *****	
Transfer Tax #: 3749	
Transfer Tax	
Consideration: 0.00	
Total:	0.00

Record and Return To:

LEMERY GREISLER LLC  
 60 RAILROAD PLACE; STE 502  
 SARATOGA SPRINGS, NY 12866-3033

**2016002804**  
01/27/2016 10:33:21 AM  
14 Pages RECORDED  
LEASE AGREEMENT W/TP 584  
Saratoga County Clerk

**RECORD AND RETURN TO:  
LEMERY GREISLER LLC  
60 Railroad PL STE 502  
Saratoga Springs, NY  
12866-3033**

MGROVE HOLDINGS, LLC  
AS LANDLORD

AND

COUNTY OF SARATOGA  
INDUSTRIAL DEVELOPMENT AGENCY,  
AS TENANT

---

UNDERLYING LEASE

---

DATED AS OF JANUARY 12, 2016

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RELATING TO A CERTAIN PARCEL OF LAND LOCATED AT 25  
FREEDOM WAY IN THE CITY OF SARATOGA SPRINGS,  
SARATOGA COUNTY, NEW YORK.

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and is for convenience of reference only.)

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## UNDERLYING LEASE

THIS UNDERLYING LEASE dated as of JANUARY 12, 2016 (the "Underlying Lease") by and between MGROVE HOLDINGS, LLC, a limited liability company organized and existing under the laws of the State of New York having an address of 49 Geysers Road, Saratoga Springs, New York 12866 (the "Company"), as landlord, and COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at Saratoga County Municipal Center, Ballston Spa, New York 12020 (the "Agency"), as tenant;

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, 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 (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, 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 manufacturing, warehousing, research, commercial, industrial or civic facility purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities and to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; 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, as amended (collectively, with the Enabling Act, 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 and improve their standard of living; and

WHEREAS, the Agency, by resolution adopted on December 14, 2015 (the "Resolution"), resolved to undertake a project (the "Project") consisting of (A) (1) the acquisition of an approximately 5 acre parcel of land constituting a portion of tax map parcel 177-1-62 and located in the Grande Industrial Park in the City of Saratoga Springs, New York (the "Land"), (2) the construction on the Land of an approximately 33,000 square foot facility located thereon to be occupied by Greenfield Manufacturing, Inc. and utilized in its chemical manufacturing operations as well as for ancillary purposes (the "Facility") and (3) the acquisition and installation therein 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 Agency and (C) the providing by the Agency 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, in connection therewith, the Company desires to lease the Land and the Facility to the Agency on the terms and conditions set forth in this Underlying Lease, and it is the intention of the parties hereto that the Company's leasehold interest in the Land and the Facility under the Lease Agreement (as hereinafter defined) and the Company's fee interest in the Land shall not merge; and

WHEREAS, all things necessary to constitute this Underlying Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Underlying Lease have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

## ARTICLE I

### DEFINITIONS

SECTION 1.1. DEFINITIONS. Capitalized terms in this Underlying Lease but not defined herein shall have the meaning set forth in the Lease Agreement of even date herewith by and between the Agency, as landlord, and the Company, as tenant (the "Lease Agreement").

SECTION 1.2. INTERPRETATION. In this Underlying Lease, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Underlying Lease, refer to this Underlying Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Underlying Lease.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the texts of the several Articles and Sections of this Underlying Lease, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Underlying Lease nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Underlying Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Underlying Lease.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Underlying Lease and to carry out its obligations hereunder.

(B) Neither the execution and delivery of this Underlying Lease nor the consummation of the transactions contemplated hereby 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, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized validly existing and in good standing under the laws of the State of New York, and has the power to enter into this Underlying Lease and carry out its obligations hereunder and has executed this Underlying Lease. This Underlying Lease and the transactions contemplated hereby have been duly authorized by all necessary member action on behalf of the Company.

(B) Neither the execution and delivery of this Underlying Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Underlying Lease will (1) conflict with or result in a breach of any of the terms, conditions or provisions of any (i) the articles of organization or operating agreement of the Company or (ii) any order, judgment, agreement or instrument to which the Company is a party or by which the Company is bound, or constitute a default under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Company other than pursuant to the Leasing Documents, or (3) require consent (which has not been heretofore received) under any agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent (which has not been heretofore received) under, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

### ARTICLE III

#### LEASE PROVISIONS

SECTION 3.1. LEASE. The Company hereby demises and leases to the Agency, and the Agency hereby hires and leases from the Company, the Land, as said Land is more particularly described on Exhibit A attached hereto, for the term set forth in Section 3.2 hereof together with the Facility. The foregoing conveyance is intended to include (1) any strips or gores of land adjoining the Land, (2) any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (3) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Company by reason of the Company's ownership of the Land.

SECTION 3.2. TERM. (A) The term of this Underlying Lease (the "Lease Term") shall commence as of the dated date hereof and shall expire on the earliest to occur of (1) the date requested by the Company, or (2) January 12, 2026, or (3) so long as neither the Lease Agreement nor the Company's right of possession as purchaser thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the term of the Lease Agreement.

(B) So long as neither the Lease Agreement nor the Company's right of possession thereunder shall have been terminated by the Agency pursuant to Article X thereof, upon any termination of this Underlying Lease, the Company shall prepare and the Agency will execute and deliver to the Company such instruments as the Company shall deem appropriate to evidence the release and discharge of this Underlying Lease.

SECTION 3.3. RENT. The rent payable by the Agency under this Underlying Lease shall be one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.

SECTION 3.4. USE; LEASE AGREEMENT; NON-MERGER. (A) So long as neither the Lease Agreement nor the Company's right of possession as purchaser thereunder have been terminated by the Agency pursuant to Article X thereof, the Agency shall (1) hold and use the Premises only for lease and sale to the Company under the Lease Agreement and (2) shall not mortgage, encumber, sell, assign, transfer, convey, pledge, or subject voluntarily or involuntarily, directly or indirectly, to any lien or other similar claim, or permit to be further mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien without the prior written consent of the Company, its rights hereunder nor the leasehold estate hereby created, except as provided in the Lease Agreement.

(B) Contemporaneously with the execution and delivery of this Underlying Lease, the Agency is entering into the Lease Agreement, pursuant to which the Company as agent of the Agency agrees to undertake and complete the Project and the Agency agrees, upon completion of the Project, to lease and sell the Project Facility to the Company. Pursuant to the Lease Agreement, the Company, as purchaser of the Project Facility under the Lease Agreement, is required to perform all of the Agency's obligations under this Underlying Lease. Accordingly, and notwithstanding anything to the contrary contained in this Underlying Lease, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency hereunder relates to a failure by the Company, as purchaser of the Project Facility under the Lease Agreement, to perform its corresponding obligations under the Lease Agreement.

(C) Notwithstanding the sale of the Project Facility by the Agency to the Company pursuant to the Lease Agreement, during the term of this Underlying Lease, there shall be no merger of this Underlying Lease nor of the leasehold estate created by this Underlying Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Underlying Lease or the leasehold estate created by this Underlying Lease or any interest in this Underlying Lease or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including the Company and any mortgagee having any interest in (a) this Underlying Lease or the leasehold estate created by this Underlying Lease and (b) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5. ADDITIONS, ALTERATIONS AND IMPROVEMENTS. Subject to the provisions of the Lease Agreement, the Company, as agent of the Agency pursuant to the Lease Agreement, shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Premises as the Company shall deem necessary or desirable. Title to improvements now located or hereafter constructed upon the Premises, and any modifications, additions, restrictions, repairs and replacements thereof, shall be in the Agency during the term of this Underlying Lease, except as otherwise provided in the Lease Agreement.

SECTION 3.6. ASSIGNMENT. Except as otherwise provided in the Leasing Documents, neither the Agency nor the Company shall assign or transfer this Underlying Lease, nor sublease the whole or any part of the Property leased hereby, except that the Agency may sell the leasehold interest created hereunder to the Company pursuant to the Lease Agreement. The Agency may enter into the Lease Agreement on the terms provided therein.

SECTION 3.7. POSSESSION; QUIET ENJOYMENT. (A) Pursuant to the terms of the Lease Agreement, except as otherwise provided therein after the occurrence of an Event of Default thereunder, the Company has the exclusive right to possess and make improvements to the Premises leased hereby.

(B) The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Underlying Lease on the Agency's part to be kept, shall quietly have, hold and enjoy the Premises during the Lease Term.

SECTION 3.8. LIENS. Except as otherwise provided in the Leasing Documents, the Agency shall not, directly, or indirectly, create or authorize to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Premises or the Agency's interest therein (except for Permitted Encumbrances), without the Company's prior written consent.

SECTION 3.9 TAXES. (A) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision. Pursuant to the Lease Agreement, the Company has agreed to pay certain payments in lieu of taxes.

(C) In the event that (1) title to the Agency's interest in the Premises shall be conveyed to the Company, (2) on the date on which the Company obtains title to the Agency's interest in the Premises, the Premises shall be assessed as exempt upon the assessment roll of any one or more of any taxing entities, and (3) the fact of obtaining title to the Agency's interest in the Premises shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), the Company shall be obligated to make payments in lieu of taxes to the respective receivers of taxes in amounts equal to those amounts which would be due from the Company as real property taxes with respect to the Premises if the Premises were owned by the Company and until the first tax year in which the Company shall appear on the tax rolls of the various taxing entities having jurisdiction over the Premises as the legal owner of record of the Agency's interest in the Premises.

SECTION 3.10. MAINTENANCE. Pursuant to the Lease Agreement, during the term of this Underlying Lease, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained the Project Facility (including the Premises and all improvements now or hereafter located thereon) in good order and condition and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

SECTION 3.11. CONDEMNATION. Subject to the provisions of the Lease Agreement and the other Leasing Documents, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Premises (including any unpaid amounts due pursuant to the Leasing Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.



## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

SECTION 4.1 DEFAULT. (A) Any one or more of the following events shall constitute an "Event of Default" under this Underlying Lease:

(1) The failure of the Agency (or the Company on behalf of the Agency) to pay the rent due pursuant to this Underlying Lease within fifteen (15) days after written notice to the Agency specifying the nature of such default; or

(2) The failure of the Agency (or the Company on behalf of the Agency) to observe and perform any covenant, condition or agreement on its part to be performed (other than as referred to in paragraph (1) above) and continuance of such failure for a period of thirty (30) days after notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Company on behalf of the Agency) to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(B) Notwithstanding the provisions of Section 4.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Underlying Lease and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Underlying Lease of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an event of default under this Section. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public, enemies, orders of any kind of government authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 4.2 REMEDIES ON DEFAULT. Whenever any Event of Default hereunder by one party hereto shall have occurred and be continuing for more than fifteen (15) days after written notice of default by the other party, the other party may enforce the provisions of this Underlying Lease and may enforce and protect its right by a suit or suits in equity or at law for (1) the specific performance of any covenant or agreement contained herein or (2) any other appropriate legal or equitable remedy.

SECTION 4.3. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Underlying Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article IV, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 4.4. INTENTIONALLY OMITTED.

SECTION 4.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE V

MISCELLANEOUS

SECTION 5.1. SURRENDER. (A) The Agency shall, on the last day of the Lease Term or on the last day of any earlier termination of the Lease Term, surrender and deliver the Premises and all buildings, Improvements, alterations, equipment and fixtures located thereon to the possession and use of the Company without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Lease Term or on the last day of any earlier termination of the Lease Term, title to all buildings, Improvements, alterations, equipment located on the Premises shall automatically, and without the need of any further or additional instrument, vest in the Company. Notwithstanding the foregoing, upon the reasonable request of the Company, the Agency shall execute and deliver to the Company the Termination of Underlying Lease to be recorded to confirm this vesting of title.

SECTION 5.2. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) 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, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

If to the Company:

MGrove Holdings, LLC  
49 Geyser Road  
Saratoga Springs, New York 12866  
Attention: Duane Palmateer

With a Copy to:

Sciocchetti & Abbott, PLLC  
12 Century Hill Drive  
Latham, New York 12110  
Attention: Paul V. Sciocchetti, Esq.

If to the Agency:

County of Saratoga Industrial Development Agency  
Saratoga County Municipal Center  
50 West High Street

Ballston Spa, New York 12020  
Attention: Executive Director

With a copy to:

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

If to the Lender:

TD Bank, N.A.  
One Old Loudon Road  
Latham, New York 12110  
Attention: Pier-Luca Bruno, VP and Senior Relationship Manager

With a copy to:

Phillips Lytle LLP  
28 East Main Street, Suite 1400  
Rochester, New York 14614  
Attention: Raymond L. Ruff, Esq.

(C) The Agency and the Company and the Lender may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communications shall be sent.

SECTION 5.3. APPLICABLE LAW. This Underlying Lease shall be governed exclusively by the applicable laws of the State.

SECTION 5.4. BINDING EFFECT. This Underlying Lease shall inure to the benefit of, and shall be binding upon the Agency and the Company and their respective successors and assigns permitted hereunder; provided, that, except as provided elsewhere herein or in the other Leasing Documents, the interest of the Agency in this Underlying Lease may not be mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien or otherwise transferred without the prior written consent of the Company.

SECTION 5.5. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of the other provisions of this Underlying Lease.

SECTION 5.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Underlying Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 5.7. EXECUTION OF COUNTERPARTS. This Underlying Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.8. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Underlying Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Underlying Lease.

SECTION 5.9. NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Leasing Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall not constitute or give rise to an obligation of the State of New York or Saratoga County, New York, and neither the State of New York nor Saratoga County, New York shall be liable hereon or 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.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Leasing Documents shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

SECTION 5.10. RECORDING. The Agency and the Company agree that this Underlying Lease (or a memorandum thereof) shall be recorded by the Agency at the expense of the Company in the appropriate office of the County Clerk of Saratoga County, New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

By: [Signature]  
Rodney Sutton, Secretary

MGROVE HOLDINGS, LLC

By: [Signature]  
Duane Palmateer, Sole Member

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

On this 6<sup>th</sup> day of January, 2016, 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.

[Signature]  
Notary Public

**THERESA C. PRIEST**  
Notary Public, State of New York  
Washington County #01PR4921971  
Commission Expires Feb. 28, 2018

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

On this 12<sup>th</sup> day of January, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared **Duane Palmateer**, 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.

[Signature]  
Notary Public

**JAMES A. CARMINUCCI**  
Notary Public, State of New York  
Reg. No. 4864025-Saratoga County  
Commission Expires 6/9/2018

## EXHIBIT A

### DESCRIPTION OF THE LAND

ALL that certain tract, piece or parcel of land, situate in the City of Saratoga Springs, County of Saratoga, State of New York, lying along the southerly line of Duplainville Road (County Route 46) and the westerly line of Freedom Way, being designated as Lot 5A (Street Address 25), as shown on a map entitled, "Subdivision of Lot 3B - W. J. Grande Industrial Park Subdivision" dated July 8, 2014, last revised December 19, 2014 (Sheet 1), prepared by Gilbert VanGuilder Land Surveyor, PLLC and filed in The Saratoga County Clerk's Office on February 3, 2015 as Map M2015010 and being further bounded and described as follows:

Beginning at the point of intersection of the common lot line of Lot 5A (Realty Subdivision Lot Number Typ.), as shown on said map to the West and Freedom Way (A 60' wide ingress/egress & utility easement), as shown on said map to the East, with the southerly line of Duplainville Road, thence from said point of beginning, along the westerly line of said Freedom Way and the westerly, northerly, easterly and southeasterly lines of Lot 3B (remaining lands of Munter Land Holdings, LLC as described by Instrument Number 2010000719) the following five (5) courses: 1.) South 15° 04' 30" East, 639.99 feet to a point, thence 2.) South 74° 55' 30" West, 360.00 feet to a point, thence 3.) North 15° 04' 30" West, 444.16 feet to a point, thence 4.) North 20° 29' 40" East, 185.42 feet to a point, thence 5.) North 15° 04' 30" West, 45.00 feet to a point in the southerly line of Duplainville Road, thence along said southerly line, North 74° 55' 30" East, 252.14 feet to the point of beginning and containing 4.99± acres of land.

Subject to an easement to build and operate a rail line for properties to the West to be granted to Saratoga Economic Development Corporation & Munter Land Holdings, LLC, said easement lying along the southerly line of Duplainville Road and being further bounded and described as follows:

Beginning at the point of intersection of the common lot line of Lot 5A (Realty Subdivision Lot Number Typ.), as shown on said map to the West and Freedom Way (A 60' wide ingress/egress & utility easement), as shown on said map to the East, with the southerly line of Duplainville Road, thence from said point of beginning, along said westerly line, South 15° 04' 30" East, 70.00 feet to a point, thence through Lot 5A, South 74° 55' 30" West, 270.02 feet to a point in the southeasterly line of Lot 3B (remaining lands of Munter Land Holdings, LLC as described by Instrument Number 2010000719), thence along said southeasterly and easterly lines of said Lot 3B the following two (2) courses: 1.) North 20° 29' 40" East, 30.74 feet to a point, thence 2.) North 15° 04' 30" West, 45.00 feet to a point in the southerly line of Duplainville Road, thence along said southerly line, North 74° 55' 30" East, 252.14 feet to the point of beginning.

Together with a 60' wide ingress/egress & utility easement, (Freedom Way), lying along the southerly line of Duplainville Road and the easterly line of the above described parcel and being further bounded and described as follows:

Beginning at the point of intersection of Freedom Way (a portion of Lot 3B, remaining lands of Munter Land Holdings, LLC), as shown on said map to the West and Lot 3A, as shown on said map to the East, with the southerly line of Duplainville Road, thence from said point of beginning, along the westerly line of said Lot 3A, South 15° 04' 30" East, 482.47 feet to a point, thence through aforesaid Lot 3B, South 74° 55' 30" West, 60.00 feet to a point in the easterly line of Lot 5A, thence along said easterly line, North 15° 04' 30" West, 482.47 feet to a point in the southerly line of Duplainville Road, thence along said southerly line, North 74° 55' 30" East, 60.00 feet to the point of beginning.