

CLOSING ITEM NO.: A-1

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GERALD W. TRACEY,  
AS LANDLORD

AND

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY,  
AS TENANT

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UNDERLYING LEASE TO AGENCY

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DATED AS OF DECEMBER 1, 2020

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RELATING TO PREMISES LOCATED IN THE TOWN OF  
DEWITT, ONONDAGA COUNTY, NEW YORK.

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(This Table of Contents is not part of the Underlying Lease  
and is for convenience of reference only.)

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## UNDERLYING LEASE

THIS UNDERLYING LEASE TO AGENCY dated as of December 1, 2020 (the “Underlying Lease”) by and between GERALD W. TRACEY, an individual residing at 6082 Hiller Drive, Cicero, New York 13039 (the “Real Estate Owner”), as landlord, and ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (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 or industrial 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, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 435 of the Laws of 1970 of the State and Chapter 676 of the Laws of 1975 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 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 determined to accept an application (the “Application”) from Tracey Road Equipment, Inc. (the “Operating Company”) and Tracey Holdings, LLC (the “Holding Company”), on behalf of themselves and/or entities to be formed on behalf of the foregoing, and the Agency further agreed, subject to numerous conditions, to consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of a leasehold interest in approximately 2.75 acres of land located at 6803 Manlius Center Drive (tax map no. 014.-01-05.1) and in approximately 7 acres of land located on Claymaster Drive (tax map nos. 14.-1-7.2, 14.-1-7.4 and 14.-1-7.6) in the Town of Dewitt, Onondaga County, New York (collectively, the “Land”) and the existing building thereon (the “Existing Building”); (2) the construction on the Land of an

approximately 27,692 square foot expansion to the Existing Building (the “Expansion” and, collectively, with the Existing Building, the “Facility”) and the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property not part of the Equipment (as such term is defined herein) (collectively, the “Facility Equipment”) (the Land, the Facility and the Facility Equipment being collectively referred to as the “Real Estate Owner Project Facility”), which Real Estate Owner Project Facility is to be leased and subleased by the Agency to the Holding Company and further subleased by the Holding Company to the Operating Company; and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment,” and together with the Real Estate Owner Project Facility, the “Project Facility”), such Project Facility to be used as commercial truck repair facilities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (subject to certain statutory limitations) (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Holding Company or such other person as may be designated by the Holding Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, on August 11, 2020, the members of the Agency duly adopted a resolution (the “Public Hearing Resolution”) authorizing the Executive Director of the Agency, after consultation with the members of the Agency and the Agency’s Counsel, to (A) establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project (the “Public Hearing”); (B) cause the Public Hearing to be held in a city, town or village where the Project Facility is located, and cause notice of such Public Hearing to be given to the public by publishing a notice or notices of such Public Hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is located, such notice or notices to comply with the requirements of Section 859-a of the Act; (C) cause notice of the Public Hearing to be given to the chief executive officer of the County of Onondaga (the “County”) and of each city, town, village and school district in which the Project Facility is located, such notice or notices to comply with the requirements of Section 859-a of the Act; and (D) conduct such Public Hearing; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on August 19, 2020 to the chief executive officers of the county and of each city, town, village and school district (collectively the “Affected Tax Jurisdictions”) in which the Project Facility is or is to be located, (B) caused notice of the Public Hearing to be published on August 23, 2020 in The Post-Standard, a newspaper of general circulation available to the residents of the Town of Dewitt, Onondaga County, New York, (C) conducted the Public Hearing on September 3, 2020 at 10:00 a.m., local time, held remotely by conference call or similar service pursuant to New York Governor Andrew Cuomo’s Executive Order 202.1, as extended, and (D) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, on or about November 30, 2020, the Holding Company informed the Agency that the Land is owned by the Real Estate Owner, an individual owning One Hundred Percent (100%) of the membership interests of the Holding Company either outright or in trust, and would be taking the place of the Holding Company with respect to the Project; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Real Estate Owner that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Real Estate Owner to undertake the Project in Onondaga County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area in the State and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State; and

WHEREAS, the Agency desires to encourage the Real Estate Owner to advance the job opportunities, health, general prosperity and economic welfare of the people of Onondaga County, New York by undertaking the Project in Onondaga County, New York; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “SEQRA”), the Project had been subject to an environmental review resulting in the issuance of a Negative Declaration by the Agency by resolution dated September 15, 2020; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Agency on September 15, 2020 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of December 1, 2020 (the “Lease Agreement”) by and between the Real Estate Owner and the Agency and certain other documents related to the Financial Assistance to the Project (collectively with the Lease Agreement, the “Basic Documents”); and

WHEREAS, simultaneously with the execution and delivery of this Underlying Lease (the “Closing”), (A) the Agency and the Real Estate Owner will execute and deliver the Lease Agreement, dated as of December 1, 2020 pursuant to which the Agency will lease to the Real Estate Owner the Land and all improvements now or hereafter located on the Land, (B) the Real Estate Owner will execute and deliver to the Agency a bill of sale dated as of December 1, 2020 (the “Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Real Estate Owner in the Facility Equipment, (C) the Operating Company will execute and deliver to the Agency a bill of sale dated as of December 1, 2020 (the “Equipment Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Operating Company in the Equipment, (D) the Agency and the Operating Company will execute and deliver an equipment lease agreement dated as of December 1, 2020 (the “Equipment Lease Agreement”) pursuant to which the Agency will lease the Equipment to the Operating Company, (E) the Agency, the Real Estate Owner and the Operating Agreement will execute and deliver a project agreement dated as of December 1, 2020 (the “Project Agreement”), which sets forth the terms and conditions under which the Financial Assistance shall be provided to the Real Estate Owner and the Operating Company, (F) the Agency will file with the

New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be file pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) for each of the Real Estate Owner and the Operating Company, and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales and use tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”), (G) the Real Estate Owner and the Operating Company will execute and deliver to the Agency a payment in lieu of tax agreement dated as of December 1, 2020 (the “Payment in Lieu of Tax Agreement”) pursuant to which the Real Estate Owner and the Operating Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, and (H) the Agency will file with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement; and

WHEREAS, the Real Estate Owner proposes to sub-sublease the Real Estate Owner Project Facility to the Operating Company and the Operating Company desires to rent the Real Estate Owner Project Facility from the Real Estate Owner (the “Project Facility”), upon the terms and conditions set forth in a certain amended & restated lease agreement, dated as of December 1, 2020 (the “Sublease Agreement”), by and between the Real Estate Owner and the Operating Company; and

WHEREAS, the Real Estate Owner desires to convey a leasehold interest in the Land and the Facility to the Agency pursuant to the terms of this Underlying Lease; 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 Real Estate Owner;

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. All of the capitalized terms used in this Underlying Lease and the preamble hereto not otherwise defined shall have the meanings assigned thereto in the Lease Agreement and between the Agency and the Real Estate Owner.

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 in 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 REAL ESTATE OWNER. The Real Estate Owner makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Real Estate Owner is qualified and authorized to do business in the State of New York and all other jurisdictions in which his operations or ownership of Properties so require, and has the power to enter into this Underlying Lease and carry out his obligations hereunder.

(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 order, judgment, agreement or instrument to which the Real Estate Owner is a party or by which the Real Estate Owner 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 Real Estate Owner, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Real Estate Owner is a party or by which the Real Estate Owner or any of his 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 Real Estate Owner or any of the Property of the Real Estate Owner.

## ARTICLE III

### LEASE PROVISIONS

SECTION 3.1. LEASE. (A) The Real Estate Owner hereby demises and leases to the Agency, and the Agency hereby hires and leases from the Real Estate Owner, the Land, as said Land is more particularly described on Exhibit A attached hereto, and the improvements now and hereafter located thereon, including the Facility (the Land and the Facility being sometimes collectively referred to as the “Premises”) for the term set forth in Section 3.2 hereof. The Premises are intended to include (1) all buildings and improvements now or hereafter located on the Land, (2) any strips or gores of land adjoining the Land, (3) any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (4) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Real Estate Owner by reason of the Real Estate Owner’s ownership of the Land.

(B) It is the intention of the Real Estate Owner and the Agency that the Agency shall hold leasehold title to the entire Premises. Accordingly, leasehold title to the Premises and to any other improvements hereinafter constructed by the Real Estate Owner on the Land shall vest in the Agency or its successors and assigns and, upon completion of the Project, to lease the Project Facility when the same is constructed thereon.

SECTION 3.2. TERM. (A) The term of this Underlying Lease (the “Term”) shall commence as of December 1, 2020 (the “Commencement Date”) and shall expire on the earlier to occur of (i) February 29, 2032, and (ii) so long as neither of the Lease Agreement nor the Real Estate Owner’s right of possession as lessee 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 Real Estate Owner’s right, of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, upon any termination of this Underlying Lease, the Real Estate Owner shall prepare and the Agency will execute and deliver to the Real Estate Owner such instruments as the Real Estate Owner 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 Real Estate Owner.

SECTION 3.4. ASSIGNMENT; LEASE AGREEMENT; NON-MERGER. (A) Except as provided in the Lease Agreement, the Agency shall not sell, assign or lease (other than pursuant to the Lease Agreement) its rights hereunder or the leasehold estate hereby created, except with the express written consent of the Real Estate Owner.

(B) Contemporaneously with the execution and delivery of this Underlying Lease, the Agency shall enter into the Lease Agreement, pursuant to which the Real Estate Owner as agent of the Agency agrees to undertake and complete the Project and the Agency agrees to lease the Premises

to the Real Estate Owner. Pursuant to the Lease Agreement, the Real Estate Owner, as sublessee of the Premises 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 Real Estate Owner 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 Real Estate Owner, as sublessee of the Premises under the Lease Agreement, to perform its corresponding obligations under the Lease Agreement.

(C) Notwithstanding the lease of the Premises by the Agency to the Real Estate Owner pursuant to the Lease Agreement and this Section 3.4, 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, (A) 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, (B) the Lease Agreement or the leasehold estate created by the Lease Agreement or any interest in the Lease Agreement or in any such leasehold estate and (C) 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 any mortgagee having any interest in (1) this Underlying Lease or the leasehold estate created by this Underlying Lease, (2) the Lease Agreement or the leasehold estate created by the Lease Agreement and (3) 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.** The Real Estate Owner 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 Real Estate Owner shall deem necessary or desirable. The Agency shall have a leasehold interest in any improvements now located or hereafter constructed upon the Premises, and in any modifications, additions, restrictions, repairs and replacements thereof during the term of this Underlying Lease, except as provided in the Lease Agreement.

**SECTION 3.6. ASSIGNMENT.** (A) So long as neither the Lease Agreement nor the Real Estate Owner's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, neither the Agency nor the Real Estate Owner shall assign or transfer this Underlying Lease, nor sublease the whole or any part of the Property leased hereby, except that the Agency may lease the leasehold interest created hereunder to the Real Estate Owner pursuant to the Lease Agreement and the Real Estate Owner may sublease the Real Estate Owner Project Facility to the Operating Company as described in the recitals in the Lease Agreement. The Agency may enter into the Lease Agreement on the terms provided therein.

(B) Upon the occurrence and continuance of an Event of Default under the Lease Agreement, the Agency shall have the unrestricted right to assign and sublet, from time to time, all or any part of this Underlying Lease and the leasehold estate hereby created, to any one or more Persons. Upon such assignment, the assignee shall thereupon be subrogated to all the rights of the former lessee under this Underlying Lease, whereupon (1) the former lessee shall have no further

rights or obligations hereunder and (2) such assignee shall forthwith be obligated to assume and perform each and all of the former lessee's obligations and covenants hereunder.

**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 Real Estate Owner 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 Term.

**SECTION 3.8. LIENS.** So long as neither the Lease Agreement nor the Real Estate Owner's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the Agency shall not, directly, or indirectly, create or permit to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Premises or the Agency's interest therein without the Real Estate Owner'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. The Real Estate Owner has agreed to pay all taxes levied against the Premises to the extent set forth in the Lease Agreement and the Payment in Lieu of Taxes Agreement.

(B) Pursuant to the Lease Agreement and the Payment in Lieu of Tax Agreement, the Agency has agreed to apply for the tax exemptions respecting the Premises to which the Agency may be entitled pursuant to the Act, upon the condition that the Real Estate Owner make certain payments in lieu of taxes respecting the Premises, as more fully set forth in the Lease Agreement and the Payment in Lieu of Tax Agreement. The Agency agrees to apply for any tax exemptions to which the Agency may be entitled with respect to the Premises.

(C) In the event that (1) the Agency's interest in the Premises shall be conveyed to the Real Estate Owner, (2) on the date on which the Real Estate Owner obtains 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 Real Estate Owner 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 Real Estate Owner 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 Real Estate Owner as real property taxes with respect to the Premises if the Agency did not have a leasehold interest in the Premises until the first tax year in which the Premises shall appear on the tax rolls of the various taxing entities having jurisdiction over the Premises as a taxable parcel.

SECTION 3.10. MAINTENANCE. Pursuant to the Lease Agreement, during the term of this Underlying Lease, the Real Estate Owner has agreed, at the Real Estate Owner'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 nonstructural, 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, 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 Basic Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

SECTION 3.12. SUBORDINATION OF UNDERLYING LEASE. This Underlying Lease and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate (except with respect to the Unassigned Rights) to any mortgage or mortgages which may be granted by the Real Estate Owner (and the Agency if applicable) on the Project Facility or any portion thereof and to any and all refinancings, modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

## 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 Real Estate Owner 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 Real Estate Owner 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 written 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 Real Estate Owner 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 their 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, and 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. Notwithstanding anything to the contrary contained herein, “force majeure” shall not include any acts or events caused by the negligence of the Real Estate Owner.

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 Real Estate Owner 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.

**SECTION 4.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event either party should default under any of the provisions of this Underlying Lease and the other party should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the defaulting party herein contained, the defaulting party shall, on demand therefor, pay to the other party the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

**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 Term or on the last day of any earlier termination of the Term, surrender and deliver the Premises and all buildings, improvements, alterations, equipment and fixtures located thereon to the possession and use of the Real Estate Owner without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Term or on the last day of any earlier termination of the 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 Real Estate Owner. Notwithstanding the foregoing, upon the reasonable request of the Real Estate Owner, the Agency shall execute and deliver to the Real Estate Owner an instrument in the form of Exhibit C to the Lease Agreement 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 REAL ESTATE OWNER:

Gerald W. Tracey  
6082 Hiller Drive  
Cicero, New York 13057

WITH A COPY TO:

Bond, Schoeneck & King PLLC  
One Lincoln Center  
110 West Fayette Street  
Syracuse, New York 13202-1355  
Attention: Matthew N. Wells, Esq.



IF TO THE AGENCY:

Onondaga County Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Executive Director

WITH A COPY TO:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Jeffrey W. Davis, Esq.

(C) The Agency and the Real Estate Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates 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 Real Estate Owner and their respective successors and assigns; provided, that, except as provided elsewhere herein or in the Lease Agreement, the interest of the Agency in this Underlying Lease may not be assigned, sublet or otherwise transferred without the prior written consent of the Real Estate Owner.

**SECTION 5.5. SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Real Estate Owner 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 Basic Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Real Estate Owner) or employee of the Agency in his/her individual capacity, and the members, officers, agents (other than the Real Estate Owner) 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 the County of Onondaga, New York, and neither the State of New York nor the County of Onondaga, 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 Basic 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 Real Estate Owner) 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 Real Estate Owner) 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 Real Estate Owner) 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 Real Estate Owner agree that a Memorandum of this Underlying Lease shall be recorded by the Agency in the appropriate office of the County Clerk of Onondaga County, New York.

SECTION 5.11. INDEMNIFICATION. The Real Estate Owner hereby releases the Agency and its members, officers, agents (other than the Real Estate Owner) and employees from, agrees that the Agency and its members, officers, agents (other than the Real Estate Owner) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Real Estate Owner) and employees harmless from and against any and all (i) claims and liability for loss or damage to Property or any injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Real Estate Owner Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Real Estate Owner Project Facility, or (ii) claims and liability for loss or damages from the execution, delivery or performance of the Basic Documents, or (iii) liability arising from or expense incurred by the Agency's providing financial assistance, as such term is defined in Section 854(14) of the Act, including, without limiting the generality of the foregoing, all claims arising from the exercise by the Real Estate Owner of the authority conferred upon it pursuant to the Basic Documents, any sales or use taxes which are or may be payable with respect to goods supplied or services rendered with respect to the Real Estate Owner Project Facility and all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such claims, causes of action, judgments, losses, damages, liabilities or expenses of the Agency and its members, officers, employees and agents are not incurred or do not result from the intentional or willful wrongdoing of the Agency or any of its members, officers, agents (other than the Real Estate Owner) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency or any of its officers, members, agents (other than the Real Estate Owner) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) Notwithstanding anything contained in the Agency Documents or the Real Estate Owner Documents to the contrary, whenever the Real Estate Owner is obligated under the Agency Documents or the Real Estate Owner Documents to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Real Estate Owner) or employees, the Real Estate Owner shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Real Estate Owner under this Section provided that such failure does not materially prejudice the Real Estate Owner in its ability to defend the Agency or materially impair the Real Estate Owner's defense. The Real Estate Owner shall have the right to defend the Agency, its directors, members, officers, agents (except the Real Estate Owner) and employees, and provided the Real Estate Owner promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Real Estate Owner) and employees, no other attorneys' fees of the Agency, its directors, members, officers, agents (except the Real Estate Owner) and employees shall be payable by the Real Estate Owner.

(C) Notwithstanding the provisions of subsection (B) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in the Agency Documents or the Real Estate Owner Documents, which in the reasonable opinion of the Agency, its directors, members, officers, agents (except the Real Estate Owner) or employees, independent counsel is necessary to protect the interests of the Agency due to the failure or inability of the Real Estate

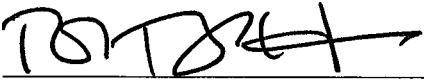
Owner to defend the Agency consistent with contemporary legal standards. In any such defense of itself, the Agency shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Real Estate Owner.

SECTION 5.12. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event either party should default under any of the provisions of this Underlying Lease and the other party should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the defaulting party herein contained, the defaulting party shall, on demand therefor, pay to the other party the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

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IN WITNESS WHEREOF, the parties hereto have executed this Underlying Lease as of the day and year first above written.

ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

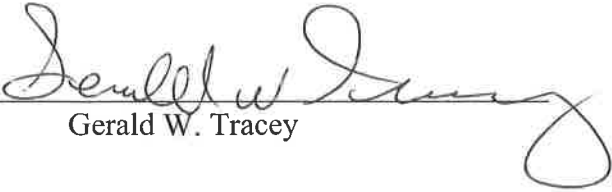
By:   
Robert M. Petrovich  
Executive Director

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

On the 22 day of December in the year 2020 before me, the undersigned, a notary public in and for the State of New York, personally appeared Robert M. Petrovich, 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 upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Karen Doster  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01DO6404890  
Qualified in Onondaga County  
Commission Expires        March 2, 2024

  
Gerald W. Tracey

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

On the 18 day of December in the year 2020 before me, the undersigned, a notary public in and for the State of New York, personally appeared Gerald W. Tracey, 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 upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Meghan Mary Ray  
Notary Public - State of New York  
No. 01RA6273749  
Qualified in Onondaga County  
**My Commission Expires April 21, 2021**

Signature Page to Underlying Lease  
Page 2 of 2

EXHIBIT A

DESCRIPTION OF THE LAND

6803 Manlius Center Rd.

Tax Parcels 014.-01-05.1, 014.-01-07.2, 014.-01-07.4 & 014.-01-07.6

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Dewitt, County of Onondaga and State of New York, being part of Farm Lot 43 in said Town and being more particularly bounded and described as follows:

BEGINNING at the northwesterly corner of lands appropriated by The People of the State of New York, Map No. 39, Parcel No. 54, said northwesterly corner being situate in the present northerly line of East Manlius Street - East Syracuse - Chittenango State Highway No. 555 (Route No, 290) at its intersection with the easterly line of lands conveyed to the New York Central Railroad Company:

THENCE North 05° 25' 00" East, along said easterly line, a distance of 1087.80 feet to an angle point therein;

THENCE North 33° 28' 07" East, continuing along said easterly line, a distance of 350.0 feet to an angle point therein;

THENCE North 80° 55' 50" East, along the southerly line of said lands conveyed to the New York Central Railroad Company (Con-Rail) - Dewitt Yard, a distance of 212.91 feet to its intersection with westerly line of Claymaster Drive;

THENCE South 10° 23' 00" West, along said westerly line, a distance of 1479.51 feet to its intersection with the present northerly line of East Manlius Street at the northeasterly corner of said lands appropriated by The People of the State of New York, Map No. 39, Parcel No. 54;

THENCE North 84° 22' 49" West, along said present northerly line of East Manlius Street, a distance of 35.0 feet to an angle point therein; and

THENCE North 78° 00' 50" West, continuing along said northerly line, a distance of 209.02 feet to the point of beginning.

TOGETHER WITH a right-of-Way over Claymaster Drive, the following being a description of same:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Dewitt, County of Onondaga and State of New York, being part of Lot 43 in said Town and being more specifically described as follows: Beginning at a point in the northerly line of N.Y. Route #290 (a/k/a East Manlius Street) measured on the following courses and distances from the intersection of the centerline of said N.Y. Route #290 with the centerline of Butternut Drive (as said centerline existing on 11/1/74); North 79° 37' West a distance of 383.88 feet along the centerline of said N.Y. Route #290 to a point and North 10° 23' East a distance of 33.0 feet to the place of beginning;

running thence North 79° 37' West a distance of 60.0 feet along the northerly line of N.Y. Route #290 to a point;

thence North 10° 23' 00" East a distance of 1,492.51 feet to a point in the southerly line of lands of the former N.Y. Central Railroad (now Conrail);

thence North 80° 55' 50" East a distance of 63.64 feet along the southerly line of said Railroad Lands to a point;

thence South 10° 23' 00" West a distance of 1,513.71 feet to the point of beginning.

TOGETHER with a hammerhead turnaround (easterly rectangle), more specifically described as follows:

Beginning at a point in the southerly line of lands of the former N.Y. Central Railroad (now Conrail) at the northeasterly corner of Claymaster Drive;

running thence North 80° 55' 50" East along the southerly line of lands of the former N.Y. Central Railroad a distance of 53.03 feet to a point;

thence South 10° 23' 00" West a distance of 53.03 feet to a point;

thence South 80° 55' 50" West a distance of 53.03 feet to a point in the easterly line of Claymaster Drive;

thence North 10° 23' 00" East a distance of 53.03 feet along the easterly line of Claymaster Drive to the northeasterly corner thereof and the place of beginning.

TOGETHER WITH a right-of-way over the aforementioned Claymaster Drive, the following being a description of same:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Dewitt, County of Onondaga and State of New York, being part of Lot 43 in said Town and being more specifically described as follows:

Beginning at a point in the northerly line of N.Y. Route #290 (a/k/a East Manlius Street) measured on the following courses and distances from the intersection of the centerline of said N.Y. Route #290 with the centerline of Butternut Drive (as said centerline existed on 11/1/74); North 79°37' West a distance of 383.88 feet along the centerline of said N.Y. Route #290 to a point and North 10°23' East a distance of 33.0 feet to the place of beginning; running thence North 79°37' West a distance of 60.0 feet along the northerly line of N.Y. Route #290 to a point; thence North 10°23'00" East a distance of 1,492.51 feet to a point in the southerly line of lands of the former N.Y. Central Railroad (now Conrail); thence North 80°55'50" East a distance of 63.64 feet along the southerly line of said Railroad Lands to a point; thence South 10°23'00" West a distance of 1,513.71 feet to the place of beginning.