

SECOND AMENDMENT TO LEASEBACK AGREEMENT

This Second Amendment to Leaseback Agreement (the “Second Amendment”) dated as of December 1, 2015 is entered into by and between the ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”), a New York public benefit corporation having its office at 584 Phoenix Drive, Rome, New York 13441 and CHICKADEE PROPERTIES, L.P., a Texas limited partnership with an address of 6230 North Houston Rosslyn Road, Houston, Texas 77091 (the “Company”), and amends that certain Leaseback Agreement dated as of July 1, 2009 (the “Original Leaseback”) entered into by and between the Agency and the Company, a memorandum of which was recorded in the Oneida County Clerk’s Office on July 28, 2009 at Instrument Number R2009-001422 as amended by an Amendment to Leaseback Agreement dated as of November 1, 2012 (the “First Leaseback Amendment”), a memorandum of which was recorded in the Oneida County Clerk’s Office on _____ at Instrument Number _____.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Original Leaseback.

Recitals

A. Pursuant to a certain Lease Agreement dated as of July 1, 2009 (the “Lease Agreement”), the Company conveyed to the Agency a leasehold interest in a certain parcel of land consisting of 5.962± acre parcel of land located at 650 Harbor Way in the City of Rome, Oneida County, New York (the “Land”), which Land is more particularly described in Exhibit A hereto. In connection with the certain financial assistance to the Company hereinafter described, the Agency leased the Land back to the Company pursuant to the Original Leaseback for a term expiring June 30, 2020. Pursuant to the First Leaseback Amendment, the Agency and the Company extended the term of the Original Leaseback to June 30, 2023.

B. The Agency previously provided financial assistance to the Company in connection with a project undertaken by the Company consisting of (A) (1) the acquisition, construction and equipping of a 52,880± square foot, one-story steel engineered warehouse building and 4,000± square foot, one-story attached office building and outside concrete area for storage and parking lots (the “Improvements”) located on the Land; and (2) the acquisition and installation therein of certain machinery and equipment (the “Equipment”) (the Improvements and the Equipment are hereinafter collectively referred to as the “2009 Facility”) and (B) the construction of an approximately 18,000 square foot addition to the 2009 Facility (the “2012 Addition”) and the acquisition and installation of furnishings and equipment at the 2012 Addition (the “2012 Equipment”) (the 2012 Addition and the 2012 Equipment are collectively referred to as the “2012 Facility”).

C. Pursuant to the Original Leaseback, the Company agreed to acquire, construct and install the 2009 Facility, as agent of the Agency, and the Agency agreed to lease the 2009 Facility to the Company for a term commencing as of July 1, 2009 and terminating June 30, 2020. Pursuant to the First Leaseback Amendment, the Company agreed to construct and equip the 2012 Facility, as agent of the Agency, and the Agency agreed to lease the 2012 Facility to the Company for a term commencing as of November 1, 2014 and terminating June 30, 2023.

D. The Company and the Agency previously entered into a payment-in-lieu-of-tax agreement dated as of July 1, 2009 (the "PILOT Agreement") pursuant to which the Company agreed to make payments in lieu of real property taxes on the Land and the 2009 Facility for the terms of the Lease Agreement and the Original Leaseback. The Company and the Agency previously entered into a First Amended and Restated payment-in-lieu-of-tax agreement dated as of November 1, 2012 (the "First Amended and Restated PILOT Agreement") pursuant to which the Company agreed to make payments in lieu of real property taxes on the Land, the 2009 Facility and the 2012 Facility for the term of the Original Leaseback, as amended by the First Leaseback Amendment.

E. The Company now proposes to undertake a certain project consisting of construction of an approximately 20,928± square foot addition to the Facility (the "2015 Addition") and the acquisition and installation of furnishings and equipment at the 2015 Addition (the "2015 Equipment") (the 2015 Addition and the 2015 Equipment are collectively referred to as the "2015 Facility" and the construction and equipping of the 2015 Facility is referred to as the "2015 Project").

F. The Company has requested that the Agency provide financial assistance for the 2015 Project by granting abatement of real property taxes on the incremental assessment of the 2015 Facility resulting from the construction of the 2015 Addition for a period of ten (10) years and exemptions from sales and use taxes on materials purchased in connection with the 2015 Project.

G. By resolution dated June 20, 2014, the Agency determined to undertake the 2015 Project and to grant the financial assistance requested in connection therewith.

H. The Agency and the Company now desire to amend the Original Leaseback to extend the term thereof and to make certain other changes necessary in connection with the 2015 Project.

Agreement

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Company hereby agree as follows:

1. *Amendments to Original Leaseback.*

(a) The definition of the “Facility” in the Original Leaseback is hereby amended to include the 2009 Facility, the 2012 Facility and the 2015 Facility. Specifically, the fifth (5th) paragraph of the Recitals to the Original Leaseback is hereby amended to read as follows:

The Facility shall consist of (a) the acquisition of a 5.962± acre parcel of land located at 650 Harbor Way in the City of Rome, Oneida County, New York (the “Land”); (ii) acquisition and renovations to the 52,880± square foot, one-story steel engineered warehouse building, 4,000± square foot, one-story attached office building and outside concrete area for storage and parking lots situated on the Land (collectively, the “Improvements”); and (iii) the acquisition and installation of equipment in the Improvements (the “Equipment”), all for distribution of steel, the storage of steel plate and custom flame cutting of steel, including the following, as they relate to the construction, erection and completion of such building, whether or not any materials or supplies described below are incorporated into or become an integral part of such building: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction (the “2009 Facility”); (b) the 18,000± square foot addition to the 2009 Facility (the “2012 Addition”) and the acquisition and installation of furnishings and equipment at the 2012 Addition (the “2012 Equipment”) (the 2012 Addition and the 2012 Equipment are collectively referred to as the “2012 Facility”); and (c) the 20,928± square foot addition to the Facility (the “2015 Addition”) and the acquisition and installation of furnishings and equipment at the 2015 Addition (the “2015 Equipment”) (the 2015 Addition and the 2015 Equipment are collectively referred to as the “2015 Facility”).

(b) Section 1.2 of the Original Leaseback is hereby amended, in pertinent part, to add the following language:

“(i) In its Application for Financial Assistance dated June 10, 2014, the Company projected that, as a result of the 2015 Project, it will retain no less than 23 employees for the duration of the Lease Term (the “2015 Employment Obligation”).

(c) Section 5.2(b) of the Original Leaseback is hereby amended to read as follows:

“Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on June 30, 2026 or on such earlier date as may be permitted by Section 11.1 hereof.”

(d) Section 7.6 of the Original Leaseback is hereby amended to add and include the following language:

“(f)The financial assistance granted by the Agency in connection with the 2015 Project and the lease of the 2015 Facility are subject to a Job Creation and Recapture Agreement dated as of December 1, 2015 (the “2015 Job Creation Agreement”), which is incorporated herein by reference.

(e) Section 8.1(a) of the Original Leaseback is hereby amended to read as follows:

“The Company shall have the option to terminate this Leaseback Agreement at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and the date upon which such payments required by Section 8.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 8.2 hereof. The Company acknowledges that exercising its option to terminate pursuant to this Section will result in a failure to meet (i) the 2009 Employment Obligation and the Agency shall be afforded all remedies under Section 7.6 herein with respect to the 2009 Facility, (ii) the 2012 Employment Obligation and the Agency shall be afforded all remedies under the Job Creation Agreement with respect to the 2012 Facility and (ii) the 2015 Employment Obligation and the Agency shall be afforded all remedies under the 2015 Job Creation Agreement with respect to the 2015 Facility.”

(f) Section 8.2(a) of the Original Leaseback is hereby amended to read as follows:

“To the Agency or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the terms of the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 8.3 hereof, including all amounts due and payable resulting from the Company’s failure to meet the 2009 Employment Obligation and/or the 2012 Employment Obligation and/or the 2015 Employment Obligation, if any.”

2. Ratification. Except as expressly amended hereby, the Original Leaseback is in all respects ratified and confirmed, and the terms, provisions and conditions thereof shall be deemed to remain in full force and effect.

3. Counterparts. This Second Amendment may be executed in duplicate counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

4. Effective Date. This Second Amendment shall be effective as of December 1, 2015.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed and delivered this Second Amendment to Leaseback Agreement as of the day and year first above written.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Natalie L. Brown
Vice Chairman

CHICKADEE PROPERTIES, L.P.,
a Texas limited partnership

By: Chickadee Properties GP, Inc.,
its General Partner

By: _____
Arthur J. Moore, President

STATE OF NEW YORK)
) ss.:
COUNTY OF ONEIDA)

On the ____ day of December in the year 2015 before me, the undersigned, a notary public in and for said State, personally appeared **Natalie L. Brown**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed this instrument.

Notary Public

STATE OF TEXAS)
 : ss.:
COUNTY OF)

On the ____ day of December 2015 before me, the undersigned a notary public in and for said state, personally appeared **Arthur J. Moore**, 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

EXHIBIT A

REAL ESTATE DESCRIPTION