

FIRST AMENDMENT TO LEASEBACK AGREEMENT

This First Amendment to Leaseback Agreement (the "First Leaseback Amendment") dated as of September 1, 2021 is entered into by and between **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 **SQ1 HOLDINGS, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with an address of 8693 Maple Lane, Lee Center, New York 13363 (the "Company"), and amends that certain Leaseback Agreement dated as of February 27, 2017 (the "Leaseback Agreement") entered into by and between the Agency and the Company, a memorandum of which was recorded in the Oneida County Clerk's Office on February 28, 2017 at Instrument Number R2017-000327.

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

Recitals

A. Pursuant to a certain Lease Agreement dated as of February 27, 2017 (the "Lease Agreement"), the Company conveyed to the Agency a leasehold interest in 14,000± square foot, one-story manufacturing/office building, parking lot and two loading docks (collectively, the "Existing Improvements") situated on a 5.5± acre parcel of land located at 170 Base Road, Town of Whitestown, County of Oneida (the "Land") and acquired and installed equipment in the Existing Improvements (the "Existing Equipment"), all for the purpose of providing metal finishing services (the Land, Existing Improvements and Existing Equipment is referred to as the "2017 Facility" and the acquisition, renovation and equipping of the 2017 Facility is referred to as the "2017 Project"). The Company subleases the Existing Facility to Square One Coating Systems LLC (the "Sublessee") pursuant to the terms of a Sublease Agreement dated February 27, 2017 (the "Sublease Agreement").

B. Pursuant to the Leaseback Agreement, the Company agreed to acquire, renovate and equip the Existing Facility, as agent of the Agency, and the Agency agreed to lease the Existing Facility to the Company for a term commencing as of February 27, 2017 and terminating December 31, 2027.

C. The Company and the Agency previously entered into a payment-in-lieu-of-tax agreement dated as of February 27, 2017 (the "PILOT Agreement") pursuant to which the Company agreed to make payments in lieu of real property taxes on the Existing Facility for the terms of the Lease Agreement and the Leaseback Agreement.

D. The Company now proposes to undertake a certain project consisting of construction of a 15,000± square foot addition to the Existing Improvements (the "Addition") and acquisition and installation of furniture and equipment in the Addition

(the "2021 Equipment"), all for the purpose of increasing efficiency and expanding production (the Addition and the 2021 Equipment is referred to as the "2021 Facility" and the construction and equipping of the Addition is referred to as the "2021 Project"), and will lease the Existing Facility together with the 2021 Facility to the Agency pursuant to a First Amended and Restated Lease Agreement dated as of September 1, 2021 (the "First Amended Lease").

E. The Company intends to finance a portion of the costs of the 2021 Project through a \$1,123,140.00 Construction/Permanent Loan (the "Loan") with participation by Adirondack Bank (the "Bank") and the U.S. Small Business Administration by and through NYBDC Local Development Corporation d/b/a Pursuit Community Finance ("Pursuit") under the SBA's 504 Program, to be secured in part by (a) a Fee and Leasehold Construction/Permanent Mortgage and Security Agreement dated September 22, 2021 (the "Mortgage") from the Agency and the Company to the Bank in the original principal amount of \$597,300.00; (b) a Collateral Assignment of Leases and Rents dated September 22, 2021 (the "Assignment") from the Agency and the Company to the Bank; (c) a Commercial Security Agreement dated September 22, 2021 (the "Security Agreement") from the Agency and the Company to the Bank; and (d) a Mortgage and Security Agreement (With Assignment of Leases and Rents) dated September 22, 2021 (the "Pursuit Mortgage") in the original principal amount of \$533,000.00.

F. The Company has requested that the Agency provide financial assistance for the 2021 Project by granting abatement of real property taxes on the incremental assessment of the 2021 Facility resulting from the construction of the Addition for the remaining Lease Term, exemptions from mortgage recording taxes, and exemptions from sales and use taxes on materials purchased in connection with the 2021 Project.

G. By resolution dated March 26, 2021, the Agency determined to undertake the 2021 Project and to grant the financial assistance requested in connection therewith.

H. The Agency and the Company now desire to amend the Leaseback Agreement to amend the definition of the Facility to add and include the 2021 Facility, and to amend certain other definitions contained in the Leaseback Agreement.

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 Leaseback Agreement.

(a) The definition of "Addition" is hereby incorporated to mean the 15,000± square foot building constructed, or to be constructed, on the Land.

(b) The definition of “Assignment” is hereby amended to mean the Collateral Assignment of Leases and Rents dated September 22, 2021 from the Agency and the Company to the Bank, as the same may be amended from time to time.

(c) The definition of “Bank” is hereby amended to mean Adirondack Bank, and its successors and assigns.

(d) The definition of “Construction Period” is hereby amended to add and include the period (a) beginning on the earlier of (i) the date of commencement of construction, renovation and equipping of the 2021 Facility, which date shall not be prior to August 14, 2020, or (ii) the Closing Date of the 2021 Facility Amendment and (b) ending on the Completion Date.

(e) The definition of “Equipment” is hereby amended to add and include the 2021 Equipment.

(f) The definition of “Facility” is hereby amended to add and include the 2021 Facility.

(g) The definition of “Improvements” is hereby amended to add and include the Addition.

(h) The definition of “Job Creation Agreement” is hereby amended to mean the First Amended and Restated Job Creation and Recapture Agreement dated as of September 1, 2021 by and between the Agency and the Company

(i) The definition of “Lease Agreement” is hereby revised to mean the First Amended and Restated Lease Agreement dated as of September 1, 2021 from the Company to the Agency.

(j) The definition of “Mortgage” is hereby amended to mean the Fee and Leasehold Construction/Permanent Mortgage and Security Agreement dated September 22, 2021 from the Agency and the Company to the Bank, as the same may be consolidated, extended, modified or amended from time to time.

(k) The definition of “Project” is hereby amended to add and include the 2021 Project.

(l) The definition of “PILOT Agreement” is hereby amended to mean the First Amended and Restated PILOT Agreement dated as of September 1, 2021 by and between the Agency and the Company.

(m) The definition of “Pursuit” is hereby added to mean NYBDC Local Development Corporation d/b/a Pursuit Community Finance, and its successors and assigns.

(n) The definition of "Pursuit Mortgage" is hereby added to mean the Mortgage and Security Agreement (With Assignment of Leases and Rents) made by the Company to Pursuit in the original principal amount of \$533,000.00.

(o) The definition of "Security Agreement" is hereby amended to mean the Commercial Security Agreement dated September 22, 2021 from the Agency and the Company to the Bank, as the same may be amended from time to time.

(p) The definition of "Sublease Agreement" is hereby amended to add and include the First Sublease Amendment dated as of September 1, 2021 between the Company and the Sublessee.

(q) By virtue of updating the definitions within the Leaseback Agreement, said definitions are incorporated throughout all Transaction Documents.

2. Lease Term. The duration of the Lease Term as described in Section 2.5(b) is hereby extended to terminate at midnight on December 31, 2032.

3. Employment Obligation. Section 1.2(h) is hereby amended to read as follows:

(h) In its Application for Financial Assistance dated October 7, 2016, the Company projected that, as a result of the 2017 Project, it will retain (or will cause the Sublessee to retain) the existing eleven (11) full time equivalent positions at the Facility, create (or cause the Sublessee to create) an additional six (6) full time equivalent positions at the Facility by the end of the third lease year, and maintain (or cause the Sublessee to maintain) all for the duration of the Lease Term as a result of undertaking the Facility (the "2017 Employment Obligation"). In its Application for Financial Assistance dated July 31, 2020 as amended on September 10, 2020 and March 15, 2021, the Company projected that, as a result of the 2021 Project, it will retain (or cause the Sublessee to retain) the additional six (6) existing full time equivalent positions at the Facility, create (or cause the Sublessee to create) an additional six (6) full time equivalent positions at the Facility by the end of the third lease year, and maintain (or cause the Sublessee to maintain) all for the duration of the Lease Term as a result of undertaking the 2021 Facility (the "2021 Employment Obligation"). The Company acknowledges that the financial assistance granted by the Agency in connection with the Existing Facility is conditioned upon the Company or the Sublessee achieving the 2017 Employment Obligation, and the financial assistance granted by the Agency in connection with the 2021 Facility is conditioned upon the Company or the Sublessee achieving the 2021 Employment Obligation.

4. Annual Rent. The annual rent payment as described in Section 2.6(a) is hereby amended to provide that the Company shall pay basic rent for the Facility as follows: Seven Hundred Fifty Dollars (\$750.00) per year commencing on January 1, 2022 and continuing on the First Business Day of each and every January thereafter during the term of this Leaseback Agreement.

5. **Insurance.** Section 3.4 of the Leaseback Agreement is omitted and replaced in its entirety as follows:

Section 3.4 Insurance Required.

At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, the Company shall, at its sole cost and expense, maintain or cause to be maintained (and cause the Sublessee to maintain, where appropriate) insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in New York State. The Insurance carrier must have at least an A- (excellent) rating by A. M. Best.

Company shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) **Property Insurance:** Insurance against loss or damage by fire, lightning and other casualties customarily insured against in an all risk policy with special form perils, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) **Workers' Compensation & Employers Liability Insurance** and **Disability Benefits Insurance** and each other form of insurance that the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted sublessee who are located at or assigned to the Facility. Statutory New York limits shall apply to these policies. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) **General Liability Insurance** protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

Comprehensive Automobile Liability Insurance including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage) protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage, and **Umbrella Liability Insurance** of not less than \$5,000,000 per occurrence. This coverage shall also be in effect during the Construction Period. After the Completion Date, the Company may terminate the Umbrella Liability Insurance.

(d) During the Construction Period (and for at least two years thereafter in the case of Products and Completed Operations as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation & employer's liability and disability benefits insurance both with statutory limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:
Premises and Operations
Products and Completed Operations
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The annual aggregate shall apply per project. The contractor's general liability policy shall include coverage for the contractor and any of the additional insureds for any operations performed on residential projects including single or multi-family housing, residential condominiums, residential apartments and assisted living facilities.

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Umbrella Liability with limits of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.

(e) A policy or policies of flood insurance in the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 3.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write

such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 3.4 hereof shall provide for at least thirty (30) day's prior written notice of the restriction, cancellation or modification thereof to the Agency. The policies evidencing the insurance required by Section 3.4(c) hereof shall name the Agency as additional insured on a primary & non-contributory basis. All policies evidencing the insurance required by Sections 3.4(d)(ii) (iii) and (iv) shall name the Agency and Company as additional insured on a primary and non-contributory basis for the ongoing construction phase and for two years following completion during the completed operations phase. The policies under Section 3.4 (a) shall contain appropriate waivers of subrogation. The policies under Section 3.4 (b),(c),(d) shall contain waivers of subrogation in favor of the Agency and Company.

(b) All policies or certificates (or binders) of insurance required by Sections 3.4 hereof shall be submitted to the Agency on or before the Closing Date. Attached to the certificate of insurance shall be a copy of the additional insured endorsement from the Company's General Liability policy. The Company shall deliver to the Agency before the renewal date of each policy a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 3.4 hereof and complying with the additional requirements of Section 3.5(a) hereof. Prior to the expiration of each such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Leaseback Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Leaseback Agreement as the Agency may from time to time reasonably require.

6. Notices. Section 9.1 of the Leaseback Agreement is hereby amended to read as follows:

Section 9.1 Notices. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441-4105
Attn.: Executive Director

With a Copy To: Bond, Schoeneck & King, PLLC
501 Main Street
Utica, New York 13501
Attn.: Linda E. Romano, Esq.

To the Company: SQ1 Holdings, LLC
8693 Maple Lane
Lee Center, New York 13363
Attn.: Lloyd Ploof, Member

With a Copy To: Saunders Kahler, L.L.P.
185 Genesee Street, Suite 1400
Utica, New York 13501
Attn.: Camille T. Kahler, Esq.

To the Sublessee: Square One Coating Systems LLC
8693 Maple Lane
Lee Center, New York 13363
Attn.: Lloyd Ploof, Member

With a Copy To: Saunders Kahler, L.L.P.
185 Genesee Street, Suite 1400
Utica, New York 13501
Attn.: Camille T. Kahler, Esq.

To the Bank: Adirondack Bank
185 Genesee Street
Utica, New York 13501
Attn.: Commercial Lending Department

With a Copy to: Kowalczyk & Deery, LLP
185 Genesee Street, 12th Floor
Utica, New York 13501
Attn.: Andrew S. Kowalczyk III Esq.

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

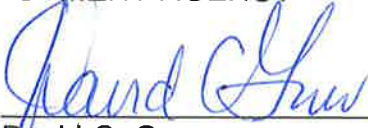
8. Counterparts. This First Leaseback Amendment may be executed in duplicate counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. Effective Date. This First Leaseback Amendment shall be effective as of September 1, 2021.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
David C. Grow
Chairman

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

On the 21st day of September 2021 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, 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



SECOND SIGNATURE PAGE OF
FIRST AMENDMENT TO LEASEBACK AGREEMENT
(SQ1 HOLDINGS, LLC FACILITY)

SQ1 HOLDINGS, LLC

By: 
Lloyd Ploof
Member

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

On the 22nd day of September 2021 before me, the undersigned a notary public in and for said state, personally appeared **Lloyd Ploof**, 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

