

SQ1 HOLDINGS, LLC

and

SQUARE ONE COATING SYSTEMS LLC

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

FIRST AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2017 Real Estate Lease
and 2021 Project Amendment
(SQ1 Holdings, LLC Facility)

Oneida County, Town of Whitestown, Oriskany Central School District

Tax Account No.: 290.000-2-10

**FIRST AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS FIRST AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of September 1, 2021, is by and among **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"), **SQUARE ONE COATING SYSTEMS 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 "Sublessee") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company acquired and renovated a 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"); and

WHEREAS, the Company leases the 2017 Facility to the Agency pursuant to a Lease Agreement dated as of February 27, 2017 (the "2017 Lease Agreement")

and the Agency leases the 2017 Facility back to the Company pursuant to a Leaseback Agreement dated as of February 27, 2017 (the "2017 Leaseback Agreement"); and

WHEREAS, the Company subleases the 2017 Facility to Square One Coating Systems, LLC (the "Sublessee") for its operation pursuant to a lease agreement dated February 27, 2017 (the "2017 Sublease Agreement");

WHEREAS, NBT Bank, National Association ("NBT") financed certain costs of the 2017 Facility by making a loan to the Company in the principal amount of \$157,500.00, secured by (a) a Fee and Leasehold Mortgage and Security Agreement from the Agency and the Company to the Bank dated February 27, 2017 (the "Mortgage") and (b) a Commercial Security Agreement dated February 27, 2017 (the "Security Agreement") from the Agency and the Company to the Bank; and

WHEREAS, the Company now desires to construct a 15,000± square foot addition to the Existing Improvements (the "Addition") and acquire and install furniture and equipment in the Addition (the "Equipment"), all for the purpose of increasing efficiency and expanding production (the Addition and the Equipment is referred to as the "2021 Facility" and the construction and equipping of the Addition is referred to as the "Project"); and

WHEREAS, in order to induce the Company to develop the 2021 Facility, the Agency is willing to accept a leasehold interest in the 2021 Facility pursuant to a Lease Agreement dated of even date herewith (the "First Amended Lease") and lease the 2017 Facility together with the 2021 Facility (collectively, the "Facility") back to the Company pursuant to the terms and conditions contained in the 2017 Leaseback Agreement as amended by a First Amendment to Leaseback Agreement (the "First Leaseback Amendment") dated of even date herewith (collectively, the "Leaseback Agreement"); and

WHEREAS, the Company and the Sublessee will extend the term of the Sublease Agreement by way of a First Amendment to Sublease Agreement dated as of September 1, 2022 (the "First Sublease Amendment" and together with the 2017 Sublease Agreement, the "Sublease Agreement"); and

WHEREAS, 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; and

WHEREAS, the Agency has agreed to accept a leasehold interest in the 2021 Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the 2017 Facility has been exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the 2017 Facility or the interest therein of the Company or the occupancy thereof by the Company commencing March 1, 2017, the taxable status date, (the "Exempt Taxes"), because the Agency acquired a leasehold interest in the 2017 Facility and the 2017 Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company, the Sublessee and the Agency entered into a Payment-In-Lieu-of-Tax Agreement dated as of February 27, 2017 (the "2017 PILOT Agreement") pursuant to which the Company and/or the Sublessee have been making payments in lieu of the Exempt Taxes with respect to the 2017 Facility; and

WHEREAS, the 2021 Facility will be exempt from Exempt Taxes commencing March 1, 2022, because the Agency acquired a leasehold interest in the 2021 Facility and the 2021 Facility will be used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of this Agreement in the form of PILOT Payments (defined below) from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, under the terms of the Sublease Agreement, the Sublessee is responsible for the payment of Exempt Taxes; and

WHEREAS, the Agency, the Company and the Sublessee deem it necessary and proper to enter into an amended agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company (or by the Sublessee on behalf of the Company) to the Town of Whitestown, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, the Oriskany Central School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay (or shall cause the Sublessee to pay) to each Taxing Authority:

(a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and

(b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) The Company shall pay (or shall cause the Sublessee to pay) the following amounts in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

With respect to the 2017 Facility, the following fixed amounts:

Exemption Year 1	\$1,728.00
Exemption Year 2	1,763.00

Exemption Year 3	1,798.00
Exemption Year 4	1,834.00
Exemption Year 5	1,871.00
Exemption Year 6	3,817.00
Exemption Year 7	3,893.00
Exemption Year 8	3,971.00
Exemption Year 9	4,050.00
Exemption Year 10	4,131.00
Exemption Year 11 and thereafter 100% of Exempt Taxes	

The fixed PILOT Payments shall be billed by the Taxing Authorities in the same proportion as taxes would have been apportioned but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific apportionment (for the purposes of apportioning the PILOT Payments, each Taxing Authority shall use the tax rate for the prior Exemption Year).

With respect to the 2021 Facility, the following amounts:

- (i) one-third of Exempt Taxes from Exemption Year 6 through and including Exemption Year 10; and
- (ii) two-thirds of Exempt Taxes from Exemption Year 11 through and including Exemption Year 15; and
- (iii) one hundred percent of Exempt Taxes after Exemption Year 15.

Notwithstanding anything herein to the contrary, the term "Exempt Taxes" as it pertains to the 2021 Facility is intended to mean only the increase in real property taxes attributable to construction of the Addition. The Company shall continue to make PILOT Payments on the 2017 Facility through Exemption Year 10; from Exemption Year 11 and thereafter the Company shall pay taxes on the Land and Existing Improvements as if the Agency had no leasehold or other interest therein.

Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the First Amended Lease. The benefits under this Agreement are subject to the terms and

conditions of a certain First Amended and Restated Job Creation and Recapture Agreement dated as of September 1, 2021.

(b) Anything herein to the contrary, notwithstanding, upon the failure of the Company or the Sublessee in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, shall constitute an Event of Default under Section 7.1(a)(vi) of the Leaseback Agreement, and the Agency may take any one or all remedial steps afforded it in Section 7.2 of the Leaseback Agreement; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

(c) In the Mortgage, the Bank has agreed to establish an account for the escrow of PILOT Payments to be made hereunder. Any references herein relating to the obligation of the Company to make PILOT Payments shall be construed to mean the Company or the Sublessee or the Bank, so long as the Bank's requirement to escrow PILOT Payments is in effect. Notwithstanding the Bank's agreement to escrow PILOT Payments, the Company and the Sublessee shall remain primarily liable under this Agreement.

3. The Company will make (or will cause the Sublessee to make) PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility. PILOT Payments that are delinquent under this Agreement shall be subject to a late penalty of five percent (5%) of the amount due which shall be paid by the Company to the affected Taxing Authority at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected Taxing Authority on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made.

4. The PILOT Payments to be made by the Company or the Sublessee pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company or the Sublessee is required to pay any tax which the payments specified herein are intended to be in lieu of, the

Company or the Sublessee may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company or the Sublessee are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company and the Sublessee will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company or the Sublessee is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company and the Sublessee will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, neither the Company nor the Sublessee has the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company and the Sublessee shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company and the Sublessee in all respects in any such proceeding at the sole cost and expense of the Company and the Sublessee. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company and the Sublessee hereby unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect to the Facility, including, without limitation, any real property tax exemption that may be available under Section 485-b and Section 485-e of the Real Property Tax Law.

8. All amounts payable by the Company or the Sublessee hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the

United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, 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.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC
501 Main Street
Rome, 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.

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

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this **First Amended and Restated PILOT Agreement** as of the date first above written.

SQ1 HOLDINGS, LLC

By: 
Lloyd Ploof
Member

SQUARE ONE COATING SYSTEMS LLC

By: 
Lloyd Ploof
Member

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

On the ___ 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

SECOND SIGNATURE PAGE TO
FIRST AMENDED AND RESTATED PILOT AGREEMENT
(SQ1, LLC FACILITY)

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



SCHEDULE A

COUNTY OF ONEIDA

Receiver of Taxes
800 Park Avenue
Rome, New York 13501

TOWN OF WHITESTOWN

8539 Clark Mills Road
Whitesboro, NY 13492
Attn.: Receiver of Taxes

ORISKANY CENTRAL SCHOOL DISTRICT

8539 Clark Mills Road
Whitesboro, NY 13492
Attn.: Receiver of Taxes

SCHEDULE B

EXEMPTION YEARS

Exemption Year (Assessment Roll Year)	County/Town Taxes	School Taxes
Year One (03/01/2017)	01/01/2018 – 12/31/2018	07/01/2017 – 06/30/2018
Year Two (03/01/2018)	01/01/2019 – 12/31/2019	07/01/2018 – 06/30/2019
Year Three (03/01/2019)	01/01/2020 – 12/31/2020	07/01/2019 – 06/30/2020
Year Four (03/01/2020)	01/01/2021 – 12/31/2021	07/01/2020 – 06/30/2021
Year Five (03/01/2021)	01/01/2022 – 12/31/2022	07/01/2021 – 06/30/2022
Year Six (03/01/2022)	01/01/2023 – 12/31/2023	07/01/2022 – 06/30/2023
Year Seven (03/01/2023)	01/01/2024 – 12/31/2024	07/01/2023 – 06/30/2024
Year Eight (03/01/2024)	01/01/2025 – 12/31/2025	07/01/2024 – 06/30/2025
Year Nine (03/01/2025)	01/01/2026 – 12/31/2026	07/01/2025 – 06/30/2026
Year Ten (03/01/2026)	01/01/2027 – 12/31/2027	07/01/2026 – 06/30/2027
Year Eleven (03/01/2027)	01/01/2028 – 12/31/2028	07/01/2027 – 06/30/2028
Year Twelve (03/01/2028)	01/01/2029 – 12/31/2029	07/01/2028 – 06/30/2029
Year Thirteen (03/01/2029)	01/01/2030 – 12/31/2030	07/01/2029 – 06/30/2030
Year Fourteen (03/01/2030)	01/01/2031 – 12/31/2031	07/01/2030 – 06/30/2031
Year Fifteen (03/01/2031)	01/01/2032 – 12/31/2032	07/01/2031 – 06/30/2032