
169 Route 303, LLC

and

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

HEAD LEASE AGREEMENT

Dated as of May 16, 2011

169 Route 303
Valley Cottage, New York

HEAD LEASE AGREEMENT

THIS HEAD LEASE AGREEMENT, made as of the 16th day of May, 2011 (this "Head Lease"), by and between **169 Route 303, LLC**, a New York limited liability company (the "Company"), having its principal office at 7 Conklin Drive, Stony Point, New York 10980, as lessor, and **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State of New York (the "Agency") having its principal office at Two Blue Hill Plaza, Pearl River, New York 10965, as lessee (capitalized terms used in this Head Lease and not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement referred to below):

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in 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 furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes and which may include or mean an industrial pollution control facility to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 564 of the 1980 Laws of New York, as amended (together with the Enabling Act, the "Act"), for the benefit of the County of Rockland (the "County") and the inhabitants thereof; and

WHEREAS, on February 4, 2011, the Company submitted an Application for Financial Assistance to the Agency for financial assistance with respect to the construction of new buildings and renovation of existing facilities and the acquisition of machinery and equipment related thereto, all to be used for warehousing and distribution facilities and administrative offices, as more fully described in the application and supplemental materials, at 169 Route 303, Valley Cottage, New York (the "Leased Premises") for a total cost of \$1,635,180.00 (the "Project"); and

WHEREAS, the Company is the owner of the Premises, which shall be leased by the Company to the Agency on the terms and conditions set forth in this Head Lease; and

WHEREAS, the Agency's interests in the Premises shall simultaneously be subleased by the Agency to the Company pursuant to a Lease Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and representations hereinafter contained, the Company and the Agency hereby agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred, but any such obligation shall be payable by the Agency solely out of the lease rentals, revenues and receipts payable by the Company under the Lease Agreement):

ARTICLE I

The Company does hereby lease to the Agency, and the Agency hereby leases from the Company, the land and property described in Exhibit A hereto, including all improvements thereto, (the "Leased Premises"), for the term herein provided and for use as provided in the Lease Agreement. It is the intention of the Company and the Agency that leasehold title to all improvements hereafter constructed by the Company shall vest in the Agency as and when the same are constructed. Accordingly, the Company and the Agency agree that the Agency shall hold leasehold title pursuant to this Head Lease to all improvements hereafter constructed by the Company constituting the Leased Premises.

ARTICLE II

The term of this Head Lease shall commence on May 16, 2011 and expire on the earliest of (i) December 31, 2022 or (ii) the expiration or earlier termination of the Lease Agreement.

ARTICLE III

The sole rental hereunder shall be the single sum of ten dollars (\$10.00), receipt of which is hereby acknowledged by the Company.

ARTICLE IV

The Company hereby delivers possession to the Agency of the Leased Premises.

ARTICLE V

The Company represents and warrants that the execution and delivery by the Company of this Head Lease and the performance by the Company of its obligations under this Head Lease and the consummation of the transactions herein contemplated have been duly authorized by all requisite action on the part of the Company and will not violate (i) any provision of law, or any order of any court or agency of government, (ii) the articles of organization or operating agreement of the Company, or (iii) any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or would result in the imposition of any lien, charge or encumbrance of any nature whatsoever on the Leased Premises other than Permitted Encumbrances (as defined in the Lease Agreement). The Company

represents and warrants that it has full right and lawful authority to enter into this Head Lease for the full term hereof. The Company covenants and agrees that, so long as the Lease Agreement shall be in full force and effect, the Agency shall have, hold and enjoy a valid leasehold estate in the Leased Premises during the term hereof, and the Company shall from time to time take all necessary action to that end. Further, this Head Lease will automatically terminate if the Lease Agreement should terminate.

ARTICLE VI

Neither the Agency nor the Company shall assign or transfer this Head Lease, nor sublease the whole or any part of the Leased Premises, nor subject this Head Lease to any lien, claim, mortgage or encumbrance (other than Permitted Encumbrances), in any manner, nor sell, assign, convey or otherwise dispose of the Leased Premises or any part thereof, during the term of this Head Lease, in any manner, to any Person, except that (i) the Agency will sublease the Leased Premises to the Company pursuant to the Lease Agreement, (ii) the Agency may assign its rights and interests under this Head Lease to Bank and grant a mortgage and security interest herein to the Bank, and (iii) the Company may effect releases of portions of the Leased Premises pursuant to Sections 4.2 and 6.4 of the Lease Agreement.

ARTICLE VII

Except for the Lease Agreement, this Head Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Head Lease. This Head Lease is subject and subordinate to the Mortgages, and to any renewals, replacements, modifications and consolidations thereof. This Head Lease may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Head Lease or any obligations under this Head Lease, unless such agreement is set forth in a written instrument executed by the Company and the Agency. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

ARTICLE VIII

All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including telecopy or similar writing) and shall be given to such party or other Person, addressed to it, at its address or telecopy number set forth below or such other address or telecopy number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified below and the appropriate answer back or confirmation of receipt is received, (ii) if given by mail, three (3) Business Days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (iii) if given by any other means, when delivered at the address specified below.

Party

Address

Company:

169 Route 303, LLC
7 Conklin Drive
Stony Point, New York 10980
Telephone: (845) 499-3675
Telecopier: (845) 624-2597

with a copy to:

Anthony J. Occhipinti, Jr., Esq.
P.O. Box 3100
1593 Route 202
Pomona, New York 10970
Telephone: (845) 354-1710
Telecopier: (845) 354-8193

Agency:

County of Rockland Industrial Development Agency
Two Blue Hill Plaza
Pearl River, New York 10965
Attention: Executive Director
Telephone: (845) 735-7040
Telecopier: (845) 735-5736

with a copy to:

Montalbano, Condon & Frank, P.C.
67 North Main Street
New City, New York 10956
Attn: Anthony Montalbano, Esq.
Telephone: (845) 634-7010
Telecopier: (845) 634-8993

Any notice by the Agency or the Company may be given on behalf of such party by its attorney.

ARTICLE IX

This Head Lease shall be governed by, and construed in accordance with, the laws of the State of New York.

The terms of this Head Lease are and shall be binding upon and inure to the benefit of the Agency and the Company and their respective successors and assigns.

If any one or more of the provisions of this Head Lease shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision(s) shall not affect any of the

remaining provisions hereof, but this Head Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

ARTICLE X

This Head Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE XI

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Head Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, employee or agent of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation it may incur shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred.

ARTICLE XII

The Agency and the Company agree that this Head Lease or a memorandum hereof shall be recorded by the Agency in the appropriate office of the County Clerk of the County.

ARTICLE XIII

The use of the Leased Premises, and all other rights, duties, liabilities and obligations of the Company and the Agency with respect thereto and including the construction, equipping and furnishing of the Project, and the use, operation, leasing and financing of the Project, not fixed in this Head Lease, shall be as set forth in the Lease Agreement.

ARTICLE XIV

The Agency and Lessee acknowledge and agree that this Head Lease is subject and subordinate to the Mortgage and that the Agency's rights under this Head Lease are subject and subordinate to the Bank's rights under the Mortgage; provided however that the foregoing shall not impose or imply any additional obligations on the Agency not expressly set forth in the Mortgage.