

JOB CREATION AND RECAPTURE AGREEMENT

THIS AGREEMENT, dated as of February 1, 2012 is made by **SUIT-KOTE CORPORATION**, a New York corporation having an office at 1911 Lorings Crossing Road, Cortland, New York 13045 (the "Company"), for the benefit of **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").

WITNESSETH:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the "Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell 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 facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Company has requested that the Agency (the "Agency") provide financial assistance to the Company, consisting of exemptions from real property tax and sales tax (the "Financial Assistance") in connection with a project (the "Project") consisting of the following: (a) construction of a 10,260 square foot office and maintenance facility (the "Improvements") at the Company's current asphalt emulsion storage facility located 191 Dry Road, Village of Oriskany, Town of Whitestown, Oneida County, New York (the "Land"); and (b) the acquisition and installation of all necessary office and maintenance equipment (the "Equipment"), all to be used in connection with the manufacture of modified asphalts and asphalt emulsions (the Improvements, the Land and the Equipment referred to collectively as the "Facility"); and

WHEREAS, in order to provide such Financial Assistance to the Company under the Act, the Agency requires, among other things, that the Company and the Agency enter into certain lease/leaseback transactions and other associated agreements, including that certain

Payment-in-Lieu-of-Tax Agreement between the Agency and the Company dated of even date herewith (the "PILOT Agreement") (collectively, the "Transaction Documents"), and

WHEREAS, the Agency has appointed the Company and its agents and designees as its agent for the purposes of acquiring the Land and constructing, renovating and equipping the Facility; and

WHEREAS, pursuant to a Lease Agreement dated of even date herewith between the Company as Lessor and the Agency as Lessee, the Company has agreed to lease the Facility to the Agency (the "Lease Agreement"); and

WHEREAS, pursuant to the leaseback agreement dated of even date herewith (the "Leaseback Agreement"), the Agency is leasing the Facility back to the Company; and

WHEREAS, the Agency wishes to condition the Financial Assistance upon the Company creating certain employment at the Facility.

NOW THEREFORE, for good and valuable consideration and in consideration of the Company entering into the Lease and Leaseback Agreement, the Company hereby covenants and agrees as follows:

1. Definitions.

"Agency"	shall mean the Oneida County Industrial Development Agency.
"AER"	shall mean the Company's annual report of employment required to be provided to the Agency.
"Benefit"	means the amount the Company saved by making payments in lieu of real property taxes in a particular year. For example, if a Company's PILOT payment is equal to 75% of normal real property taxes, then the Company's Benefit for that year would be an amount equal to 25% of normal real property taxes.
"Company"	shall mean Suit-Kote Corporation, and its successors and/or assigns.
"Cure Period"	shall mean the period ending June 30 th of the year following the Major Shortfall.
"Employment Obligation Term"	shall mean the longer of 1) the period during which the Company is receiving a benefit in the form of lower payment in lieu of taxes than their real estate taxes would be; or, 2) ten (10) years.
"Employment Obligation"	shall mean the Company's obligation to employ 19 FTEs at the Facility, consisting of 3 new jobs to be created and 16 jobs to be retained, which is what the Company represented in its Application for Financial Assistance it will hire.

“FTE”	means a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or such other number of hours per week (but not less than twenty-five (25) hours) as established by existing written policies of the Company, and whose workplace location is the Facility.
“Initial Benefit”	means the amount of savings the Company received through the Agency, in the form of Mortgage Recording Tax and New York State Sales Tax.
“Major Shortfall”	means any number of FTEs that is less than 50% of the Employment Obligation.
“Per Employee Amount”	means an amount equal to the Benefit for the year after the year of the Shortfall divided by the Employment Obligation.
“Shortfall”	means the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.

2. Representations and Covenants. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It has power to enter into and to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of a plant facility or another commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.

(d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).

(e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.

3. Job Creation and Retention Obligations. The Company's Employment Obligation shall mean that, the Company agrees to create no less than three (3) full-time

positions at the Facility by the end of the initial three (3) years of the Lease Term of the Leaseback Agreement and to retain the sixteen (16) existing full-time positions at the Facility, and agrees to maintain said employees for the duration of the Lease Term. After the expiration of the Employment Obligation Term, the Company shall have no further obligation with respect to the Employment Obligation and shall not be liable for any of the payments described below.

4. Events of Default. An Event of Default shall mean either of the following events:

(a) The failure of the Company to satisfy the Employment Obligation as provided in Section 3 above shall constitute a default under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below. The Company shall be deemed to have failed to satisfy its Employment Obligation if, at such time the Company files its certified annual employment report to the Agency (the "AER"), the total number of FTEs shown on such report for the applicable Lease Year is below the applicable Employment Obligation. The AER shall be filed by the Company to the Agency on or before January 31 of each calendar year during the Employment Obligation Term; provided, however, the Company is not obligated to file its first (1st) AER with the Agency sooner than January 31, 2013.

(b) If the Company shall exercise its option to terminate the Leaseback Agreement as set forth in Section 8.1 of the Leaseback Agreement it shall constitute a default under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below.

5. Remedies.

(a) Initial Shortfall and Shortfall Payments. If, after the first three (3) years of the Employment Obligation Term, the number of actual FTEs for any calendar year shall be a Shortfall, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.

(b) Major Shortfall Payment.

(1) If, after the first three (3) years of the Employment Obligation Term, the number of actual FTEs for any year shall be a Major Shortfall, then the Company shall pay to the Agency, in addition to the payment referred to in Section 5(a), an amount equal to a percentage (as set forth in the schedule below) of the Initial Benefit.

<u>Major Shortfall Occurs:</u>	<u>Percentage of Initial Benefit</u>
Year 1	100%
Year 2	90%
Year 3	80%
Year 4	70%
Year 5	60%
Year 6	50%
Year 7	45%
Year 8	40%
Year 9	35%
Year 10	30%

- (2) Notwithstanding any of the foregoing, the Company shall not be liable for paying a Major Shortfall Payment unless the number of FTEs remains at less than 80% of the Employment Obligation after the expiration of a Cure Period.
- (3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.

6. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions.

7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: ONEIDA COUNTY INDUSTRIAL DEVELOPMENT
AGENCY
584 Phoenix Drive
Rome, New York 13441
Attention: David Grow

With a Copy to: BOND, SCHOENECK & KING, PLLC
501 Main Street
Utica, New York 13501
Attention: Linda E. Romano, Esq.

To the Company: SUIT-KOTE CORPORATION
1911 Lorings Crossing Road
Cortland, New York 13045
Attention: President

With a Copy to: ERIC DADD, ESQ.
Dadd, Nelson and Wilkinson
11 Exchange Street
Attica, New York 14011

8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and permitted assigns.

9. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

11. Execution of Counterparts. This Agreement 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.

12. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State of New York.

13. Survival of Obligations. This Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 of the Leaseback Agreement and all indemnities shall survive any termination or expiration of the Leaseback Agreement as to matters occurring during the period of the Company's occupancy of the Facility.

14. Section Headings Not Controlling. The headings of the several sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

15. Merger of the Agency.

(a) Nothing contained in this Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.

16. No Assignment. This Agreement may not be assigned by the Company except with the written consent of the Agency, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent from the Agency shall be required if an assignment of this Agreement is made by the Company to the Company's parent, any direct or indirect subsidiary or affiliate of the Company, or a successor to the Company by way of merger, consolidation, corporate reorganization, or the purchase of all or substantially all of the Company's assets.

17. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Agency 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 Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

18. No Additional Waiver Implied By One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

19. Inducement Agreement. The Transaction Documents represent the entire agreements of the Agency and the Company and supersede the terms of the Inducement Agreement dated as of January 20, 2012 among the same parties.

20. Successors and Assigns. The rights and obligations of the Company hereunder shall be binding upon and inure to the benefit of its respective successors and assigns.

[signature page follows]

IN WITNESS WHEREOF, the Company has executed and delivered this **JOB CREATION AND RECAPTURE AGREEMENT** as of the day and year first above written.

SUIT-KOTE CORPORATION

By: 

James A. Ehle
Chief Financial Officer

EXHIBIT A
Legal Description

EXHIBIT A

ALL THAT PIECE OR PARCEL OF LAND situate in the Town of Whitestown, County of Oneida, State of New York, and more particularly described as follows:

BEGINNING at an iron pin set at the intersection of the northeasterly highway boundary of existing Hangar Road with the southeasterly highway boundary of existing Dry Road; thence N. 47° 00' 00" E. along the last mentioned highway boundary 600.00 feet to an iron pin set at an angle point; thence S. 43° 00' 00" E. along a proposed division line and Lot 32, Block 3 on the northeast and Lot 31, Block 3 on the southwest 500.00 feet to an iron pin set at an angle point; thence S. 47° 00' 00" W. along the division line between County of Oneida (Liber 1872, Page 278) on the southeast and Economic Development Growth Enterprises Corporation (Liber 2974, Page 325) on the northwest 600.00 feet to an iron pin set on the northeasterly highway boundary of the first mentioned Hangar Road; thence N. 43° 00' 00" W. along the last mentioned highway boundary 500.00 feet to the point of beginning, containing 300,000 plus or minus square feet or 6.8 acres more or less.

The above mentioned courses and distances are as shown on a map entitled "MAP AND SURVEY SHOWING LOTS 26-35 BLOCK 3, ONEIDA COUNTY AIRPORT INDUSTRIAL PARK, TOWN OF WHITESTOWN, COUNTY OF ONEIDA, STATE OF NEW YORK", made by Christopher S. Nash, L.L.S.

#049163, dated March 13, 2001, revised December 10, 2003, further revised March 16, 2005, and filed April 19, 2005, in the Oneida County Clerk's Office as Instrument No. M2005-000078.

EXCEPTING AND RESERVING from the property described above, the permanent easements as set forth on a map entitled "DEVELOPMENT PHASE III, AIRPORT INDUSTRIAL PARK, TOWN OF WHITESTOWN, ONEIDA COUNTY, NEW YORK" dated April 8, 1966, and prepared by Gordon G. Baird, Oneida County Commissioner of Public Work, which map has been duly filed in the Oneida County Clerk's Office.

ALSO EXPECPTING AND RESERVING for the use and benefit of the general public a right of flight for the passage of aircraft in the airspace above the surface of the land, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft using said airspace for landing at, taking off from or operating on the airport.

This conveyance is also made subject to any easements, covenants, conditions and/or restrictions of record affecting the premises, including but not limited to those easements, covenants, conditions and/or restrictions contained in "COVENANTS AND RESTRICTIONS FOR THE AIRPORT INDUSTRIAL PARK, DEVELOPMENT PHASE III" which covenants and restrictions have been duly declared by Economic Development Growth Enterprises Corporation f/k/a Oneida County Industrial Development Corporation, and duly recorded in the Oneida County Clerk's Office on April 25, 2006, as Instrument No. 2006-008112.

Being a portion of the same premises conveyed by County of Oneida to Economic Development Growth Enterprises Corporation by covenant against grantor's deed dated May 25, 2001, and recorded June 18, 2001, in the Oneida County Clerk's Office in Book of Deeds 2974 at Page 325.