

**FIRST AMENDMENT TO**

**FIRST AMENDED AND RESTATED LEASE AGREEMENT**

This First Amendment to First Amended and Restated Lease Agreement (the "First Amendment to Lease") dated as of January 1, 2017 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 **NORTEK POWDER COATING LLC**, a Delaware limited liability company with an address of 5900 Success Drive, Rome, New York 13440 (the "Company"), and amends that certain First Amended and Restated Lease Agreement dated as of June 1, 2013 (the "First Amended and Restated Lease 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 June 10, 2013 at Instrument Number R2013-000712.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Amended and Restated Lease Agreement.

***Recitals***

A. The Agency owns a fee interest in a certain 4.516 +/- acre parcel of land situate at 5900 Success Drive, City of Rome, Oneida County, New York (the "Land"), which Land is more particularly described in Exhibit A hereto.

B. The Agency previously provided financial assistance to the Company in connection with the acquisition and renovation of an 44,815± square foot manufacturing facility (the "Existing Improvements") located on the Land and the acquisition and installation of equipment in the Improvements (the "Existing Equipment"), all used for the purpose of formulating and manufacturing custom powder (the Land, the Existing Improvements and the Existing Equipment referred to collectively as the "Existing Facility").

C. Pursuant to the First Amended and Restated Lease 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 June 7, 2013 and terminating June 30, 2024 (the "Lease Term").

D. The Company and the Agency previously entered into a First Amended and Restated Payment-in-Lieu-of-Tax Agreement dated as of June 1, 2013 (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 and the Existing Facility for the duration of the Lease Term.

E. The Company now proposes to undertake a certain project (the "2016 Project") consisting of construction of a 13,000± square foot addition to the Existing Facility (the "Addition") and the acquisition and installation of machinery, furnishings and equipment at the Addition (the "2016 Equipment"), all to increase production capabilities (the Addition and the 2016 Equipment are collectively referred to as the "2016 Facility," and the Existing Facility and the 2016 Facility are collectively referred to as the "Facility").

F. The Company has requested that the Agency provide financial assistance for the 2016 Project by granting abatement of real property taxes on the increased assessment on the Facility resulting from the 2016 Project for a period of ten (10) years.

G. By resolution dated March 18, 2016, the Agency determined to undertake the 2016 Project and to grant the financial assistance requested in connection therewith.

H. The Agency and the Company now desire to amend the First Amended and Restated Lease Agreement to extend the term thereof and to make certain other changes necessary in connection with the 2016 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 First Amended and Restated Lease Agreement.***

(a) The definition of the "Facility" is hereby amended to include both the Existing Facility and the 2016 Facility. Specifically, the fifth WHEREAS is amended to read as follows:

WHEREAS, the Company acquired and renovated a 44,815± square foot manufacturing facility (the "Existing Improvements") located on that certain 4.516 +/- acre parcel of land situate at 5900 Success Drive, City of Rome, Oneida County, New York more particularly described in Exhibit A attached hereto and made a part hereof (the "Land") and acquired and installed equipment in the Existing Improvements (the "Existing Equipment"), all to be used for the purpose of formulating and manufacturing custom powder (the Land, the Existing Improvements and the Existing Equipment referred to collectively as the "Existing Facility"); and

(b) The following recitals are added:

WHEREAS, the Company has requested the Agency provide financial assistance in connection with the construction of a 13,000± square foot addition to the Existing Facility (the "Addition") and the acquisition and

installation of machinery, furnishings and equipment at the Addition (the "2016 Equipment"), all to increase production capabilities (the Addition and the 2016 Equipment are collectively referred to as the "2016 Facility," the Existing Facility and the 2016 Facility are collectively referred to as the "Facility" and the 2016 Project and); and

WHEREAS, ESCDC assigned the 504 Mortgage to the United States Small Business Administration (the "SBA") by assignment of mortgage dated June 7, 2013 and recorded in the Office of the Oneida County Clerk on June 10, 2013 at Instrument Number 2013-009325; and

WHEREAS, the Agency and the Company will enter into a Second Amended and Restated Payment-In-Lieu-of-Tax Agreement dated as of January 1, 2017 (the "Second Amended and Restated PILOT Agreement") to make provision for payments-in-lieu-of-taxes (the "PILOT Payments") with respect to the Facility; and

WHEREAS, all references in the First Amended and Restated Lease Agreement to the First Amended and Restated PILOT Agreement shall be amended and restated to mean the Second Amended and Restated PILOT Agreement; and

WHEREAS, in lieu of the Agency and the Company granting a first-priority mortgage to the Agency to secure PILOT Payments to be made by the Company under the Second Amended and Restated PILOT Agreement, the Agency, the Company and the Bank are entering into a PILOT Payment Escrow Account Agreement dated as of January 1, 2017 (the "PILOT Escrow Agreement").

(c) Section 1.2(h) is hereby omitted and replaced with the following paragraph:

"(h) In its Application for Financial Assistance dated January 25, 2016, the Company projected that, as a result of the 2016 Project, it will retain no less than 14 full time equivalent positions for the duration of the Lease Term and create an additional 4 full time equivalent positions by the commencement of year seven (7) of the Lease Term and maintain them for the duration of the Lease Term (the "Employment Obligation")."

(d) Section 2.1(c) is hereby amended to add the following language:

"By resolution adopted on May 20, 2016, the Agency determined that, based upon the review by the Agency of the materials submitted and the representation made by the Company relating to the 2016 Facility, the 2016 Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act."

(e) Section 5.2(b) is hereby amended, in pertinent part, 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, 2028 or on such earlier date as may be permitted by Section 11.1 hereof."

(f) A new Section 7.1(a)(ix) is added:

(ix) the invalidity, illegality or unenforceability of the PILOT Escrow Agreement or the failure of the Company to enter into a PILOT Mortgage and Security Agreement within twenty (20) days of termination of the PILOT Escrow Agreement, which mortgage shall have a first-priority lien on the Facility.

(g) Section 7.6 is hereby omitted and replaced with the following paragraph:

"The financial assistance granted by the Agency and the lease of the Facility are subject to a First Amended and Restated Job Creation and Recapture Agreement dated as of January 1, 2017 (the "First Amended and Restated Job Creation Agreement"), which is incorporated herein by reference.

(h) A new Section 9.15 is added:

Section 9.15 Rights of Bank.

(a) Bank is hereby given the right by the Agency, in addition to any other rights herein granted, without any requirement to obtain the Agency's consent, to mortgage the mortgagors' respective interests in the Facility and, in the case of the Company, to assign and grant a security interest in the Company's rights under the Company Documents as collateral security for its obligations to the Bank, upon the condition that all rights acquired by Bank shall be subject to all rights and interests of the Agency herein and in the other Company Documents, none of which covenants, conditions or restrictions is or shall be waived by the Agency by reason of this right to mortgage or grant a security interest in the Facility and the Company Documents, including Unassigned Rights.

(b) There shall be no renewal, cancellation, surrender, acceptance of surrender, material amendment or material modification of this First Amended and Restated Lease Agreement or any other Company Document by joint action of the Agency and the Company alone, without, in each case, the prior consent in writing of Bank, nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates or other lesser estates in the Facility. Failure of the Bank to consent to a modification of this First Amended and Restated Lease Agreement by the Agency shall constitute an Event of Default.

(c) If the Agency serves a notice of default upon the Company, it shall also serve a copy of such notice upon Bank at the address set forth in Section 9.1.

(d) In the event of any default by the Company under this First Amended and Restated Lease Agreement or any other Company Document, the Bank shall have fifteen (15) days for a monetary default and thirty (30) days in the case of any other default, after notice to the Company and the Bank of such default to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of Bank as if same had been done by the Company. The Agency in its sole discretion will determine whether such action by the Bank amounts to a cure.

(e) Except where Bank or its designee or nominee has succeeded to the interest of the Company in the Facility, no liability for any payments to be made pursuant to this Agreement or the performance of any of the Company's covenants and agreements under this Agreement shall attach to or be imposed upon the Bank, and if the Bank or its nominee or designee succeeds to the interest of the Company in the Project, all of the obligations and liabilities of the Bank or its nominee or designee shall be limited to such entity's interest in the Facility and shall cease and terminate upon assignment of this First Amended and Restated Lease Agreement by the Bank; provided however, that the Bank or its nominee or designee shall pay all delinquent PILOT Payments, if any, prior to said assignment.

(g) Notwithstanding any provision of this First Amended and Restated Lease Agreement or any other Company Document to the contrary, foreclosure of a mortgage or any sale of the Company's interest in this First Amended and Restated Lease Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings, or any conveyance of the Company's interest in this Agreement and/or the Facility to Bank by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of the Company's interest in this First Amended and Restated Lease Agreement and/or the Facility by Bank shall not require the consent or approval of the Agency and failure to obtain the Agency's consent shall not be a default or Event of Default hereunder.

(h) The following definitions are added to Schedule A:

"Addition" means the 13,000± square foot addition to the Existing Facility.

"Agency Documents" shall be amended to add and include the First Amendment to the First Amended and Restated Lease Agreement, the Second Amended and Restated PILOT Agreement and the PILOT Escrow Agreement.

"Company Documents" shall be amended to add and include the First Amended and Restated Job Creation and Recapture Agreement, the First Amendment to the First Amended and Restated Lease Agreement, the Second Amended and Restated PILOT Agreement and the PILOT Escrow Agreement.

"First Amended and Restated Job Creation and Recapture Agreement" shall mean the First Amended and Restated Job Creation and Recapture Agreement dated as of January 1, 2017 by the Company for the benefit of the Agency, as amended from time to time.

"First Amendment to First Amended and Restated Lease Agreement" shall mean the First Amendment to the First Amended and Restated Lease Agreement dated as of January 1, 2017 between the Company and the Agency.

"PILOT Escrow Agreement" shall mean the PILOT Payment Escrow Account Agreement dated as of January 1, 2017 by and among the Agency, the Company and the Bank, as amended from time to time.

"SBA" means the United States Small Business Administration, an agency duly created under and by virtue of an Act of Congress, having its principal office in Washington, in the District of Columbia, and a servicing center located at 2120 Riverfront (Suite 100), Little Rock Arkansas 72202-1747, and its successors and/or assigns.

"Second Amended and Restated PILOT Agreement" shall mean the Second Amended and Restated PILOT Agreement dated as of January 1, 2017 between the Agency and the Company, as the same may be amended from time to time.

**2. Effect of Amendment.** Except as expressly amended hereby, the First Amended and Restated Lease 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.

**3. Ratification.** Except as expressly amended hereby, the First Amended and Restated Lease 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.

**4. Counterparts.** This First 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.

**5. Effective Date.** This First Amendment shall be effective as of January 1, 2017.

[SIGNATURES APPEAR ON NEXT PAGE]

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

**ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

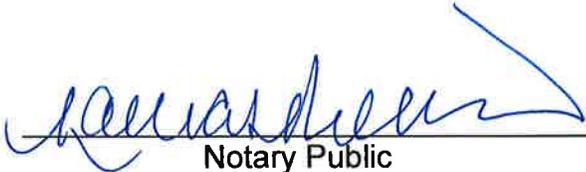
By:   
\_\_\_\_\_  
David C. Grow  
Chairman

**NORTEK POWDER COATING LLC**

By:   
\_\_\_\_\_  
Borin Keith  
Member

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

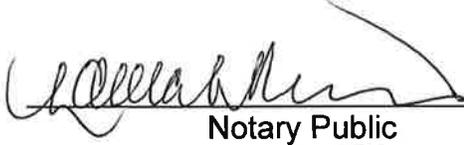
On the 24<sup>th</sup> day of January in the year 2017 before me, the undersigned, a notary public in and for said State, personally appeared **David C. Grow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument 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 this instrument.

  
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Notary Public

LAURA S. RUBERTO  
Notary Public, State of New York  
Appointed in Oneida County  
Reg. No. 01RU5031396  
Commission Expires August 1, 2018

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

On the 25<sup>th</sup> day of January 2017 before me, the undersigned a notary public in and for said state, personally appeared **Borin Keith**, 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.

  
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Notary Public

LAURA S. RUBERTO  
Notary Public, State of New York  
Appointed in Oneida County  
Reg. No. 01RU5031396  
Commission Expires August 1, 2018