
COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY

AND

MARKJON PROPERTIES, LLC

AND

NIPPERLAND PROPERTIES LLC

ASSIGNMENT AND ASSUMPTION AGREEMENT

DATED AS OF APRIL 1, 2017

RELATING TO A LEASEHOLD INTEREST HELD BY THE
LANDLORD IN A CERTAIN PARCEL OF LAND LOCATED AT
1601 JOHNSON STREET IN THE CITY OF OLEAN,
CATTARAUGUS COUNTY, NEW YORK.

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ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of April 1, 2017 (the "Assignment and Assumption Agreement") by and among COUNTY INDUSTRIAL OF CATTARAUGUS DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 East Washington Street, Ellicottville, New York (the "Agency"), and MARKJON PROPERTIES, LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 1601 Johnson Street, Olean, New York (the "Company"), and NIPPERLAND PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 3835 West Branch Road, Allegany, New York (the "New Company").

WITNESSETH:

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of 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 dispose of 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 purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities for the purpose of carrying out any of its corporate purposes to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 536 of the Laws of 1971 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, on June 14, 2010 (the "Closing Date"), the Agency entered into a lease agreement dated as of June 1, 2010 (the "Lease Agreement") by and between the Agency and MarkJon Properties, LLC (the "Company"), a memorandum of which was recorded on June 23, 2010 in the Cattaraugus County Clerk's Office as #142313-002 for the purpose of undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 2.2 acre parcel of land located at 1601 Johnson Street in the City of Olean, Cattaraugus County, New York (the "Land"), (2) the construction of an approximately 20,000 square foot building on the Land (the "Facility") and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") all the foregoing to be leased by the Company to Napoleon Engineering Services (the "Tenant") for use by the Tenant as a manufacturing facility (the Land, the Facility and the Equipment being collectively

referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of June 1, 2010 (the "Underlying Lease") by and between the Company, as landlord and the Agency, a memorandum of which was recorded in the Cattaraugus County Clerk's Office on June 23, 2010 as #142313-003, as tenant pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2026, (2) a certain license agreement dated as of June 1, 2010 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, which was recorded in the Cattaraugus County Clerk's Office on June 23, 2010 in #142313-003, pursuant to which the Company granted to the Agency a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and, in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement, (3) a bill of sale dated as of June 1, 2010 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment and (4) a payment in lieu of tax agreement dated as of June 1, 2010 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility and (B) the Agency (1) mailed to the assessor and the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement and (2) executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance (collectively, with the Lease Agreement, the "Basic Documents"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of up to \$1,008,000 (the "Loan") from Olean Area Federal Credit Union (the "Lender"), which Loan was secured by a mortgage and security agreement dated as of June 1, 2010 (the "Mortgage") from the Agency and the Company to the Lender; and

WHEREAS, simultaneously with the execution and delivery of this Assignment and Assumption Agreement, the New Company will assume the Loan pursuant to a Mortgage Modification and Extension Agreement dated as of April 20, 2017 (the "Assigned Mortgage") from the New Company to the Lender; and

WHEREAS, the Company has agreed to sell all of its right, title and interest in and to the Project Facility to the New Company and in connection with such sale to assign to the New Company each of the Basic Documents to which the Company is a party; and

WHEREAS, the Basic Documents may be assigned by the Company to the New Company upon the prior consent of the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on October 21, 2014 (the "Assignment and Assumption Resolution"), the Agency, subject to certain conditions, agreed to authorize the execution and delivery of the Assignment and Assumption Agreement; and

NOW, THEREFORE, for good and valuable consideration, the parties hereto hereby agree as follows:

SECTION 1. ASSIGNMENT. (A) The Company hereby assigns to the New Company, its successors and assigns, all of its rights, title and interest, and delegates all of its obligations and liabilities, under the Basic Documents.

(B) Notwithstanding any provisions of this Assignment and Assumption Agreement to the contrary, the New Company hereby agrees, that so long as it has any interest in the Project Facility, the New Company will perform all of the covenants and obligations of the Company under the Lease Agreement arising on or after the date hereof, to the Agency pursuant to the "Unassigned Rights" (as defined in the Lease Agreement), including but not limited to all past, present and future rights to defense and indemnity owed to the Agency by the Company under the Lease Agreement, as well as payments in lieu of taxes, expenses and other amounts owed to the Agency by the Company under the Lease Agreement and the Payment in Lieu of Tax Agreement. The obligations of the New Company under this Subsection extend to the Lease Agreement and the Payment in Lieu of Tax Agreement as each of said documents exists today, as well as any future amendments thereto consented to in writing by the New Company.

SECTION 2. ASSUMPTION. (A) The New Company hereby assumes and will pay, or cause to be paid all payments, judgments, or sums now or hereafter owing by the Company under the Basic Documents.

(B) The New Company hereby assumes and will perform and observe all covenants, claims, actions, liabilities, agreements and other obligations to be performed or observed by the Company under the Basic Documents.

SECTION 3. NEW COMPANY REPRESENTATIONS. (A) The New Company is qualified to transact business in the State of New York.

(B) The New Company shall take no action that would cause the Project Facility to fail to continue to constitute a "project" under the Act (as defined under the Lease Agreement).

SECTION 4. COMPANY REPRESENTATIONS AND WARRANTIES. The Company hereby represents and warrants to the Agency and the New Company that as of the date of this Assignment and Assumption Agreement (A) there exists no covenants and obligations to be performed by the Company to the Agency pursuant to the Lease Agreement and the Payment in Lieu of Tax Agreement and (B) there are no payments or sums owed to the Agency pursuant to the Lease Agreement and the Payment in Lieu of Tax Agreement.

SECTION 5. CONSENT AND RELEASE. The Agency, the Company and the New Company hereby (A) consent to the assignment by the Company to the New Company of the Basic Documents, (B) consent to the conveyance of the Project Facility from the Company to the New Company, (C) consent to the assumption by the New Company of the Company's obligations under the Basic

Documents as contemplated by this Assignment and Assumption Agreement and (D) release the Company from all of its respective covenants, agreements, obligations, liability, claims, actions and judgments under the Basic Documents arising from and after the date hereof.

SECTION 6. NO DEFAULTS. (A) The Company hereby represents and warrants to the Agency and the New Company that as of the date of this Assignment and Assumption Agreement there exists no event of default under the Basic Documents and no event exists which, with the giving of notice or passage of time or both, would become an event of default under the Basic Documents.

(B) The New Company hereby represents and warrants to the Agency that, immediately after giving effect to this Assignment and Assumption Agreement, there exists no event of default under the Basic Documents and no event exists which, with the giving of notice or passage of time or both, would become an event of default under the Basic Documents.

(C) Based on representations made to it by the Company and to the best of its knowledge, the Agency hereby represents and warrants to the New Company that as of the date of this Assignment and Assumption Agreement there exists no event of default under the Basic Documents and no event exists which, with the giving of notice or passage of time or both, would become an event of default under the Basic Documents.

SECTION 7. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE NEW COMPANY:

Nipperland Properties LLC
3835 West Branch Road
Allegany, New York 14706
Attention: Christopher D. Napoleon

WITH A COPY TO:

Reisner Law Group, PLLC
142 North Barry Street
Olean, New York 14760
Attention: Tyler J. Threehouse, Esq.

IF TO THE AGENCY:

County of Cattaraugus Industrial Development Agency
9 East Washington Street
Ellicottville, New York 14731
Attention: Chairman

WITH A COPY TO:

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: George W. Cregg, Jr., Esq.

SECTION 8. AMENDMENTS. This Assignment and Assumption Agreement may not be effectively amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in a writing intended for such purpose and executed and delivered by the parties intended to be bound by such amendment.

SECTION 9. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Assignment and Assumption Agreement shall for any reason be finally held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal, or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Assignment and Assumption Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or enforceable or otherwise affected by any such holding or adjudication.

SECTION 10. MISCELLANEOUS. (A) This Assignment and Assumption Agreement shall be binding upon and inure to the benefit of the Agency, the Company, and the New Company and their respective successors and assigns.

(B) This Assignment and Assumption 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.

(C) This Assignment and Assumption Agreement shall be governed by and construed in accordance with the law of the State of New York.

(D) This Assignment and Assumption Agreement is being recorded against the Land more fully described in Exhibit A attached hereto and made a part hereof.

SECTION 11. LIMITATION ON LIABILITY OF THE AGENCY. (A) The obligations and agreements of the Agency contained herein and any Basic Document, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the New Company as assignee of the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the New Company as assignee of the Company) and employees of the Agency, shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Cattaraugus County, New York, and neither the State of New York nor Cattaraugus County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility, as such term is defined in the Lease Agreement (except for revenues derived by the Agency with respect to the Unassigned Rights, as such term is defined in the Lease Agreement).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount of undertaking sufficient to cover such reasonable fees and expenses and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the New Company as assignee of the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the New Company as assignee of the Company) and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the New Company as assignee of the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption Agreement to be duly executed as the date first above written.

COUNTY OF CATTARAUGUS INDUSTRIAL
DEVELOPMENT AGENCY

BY: Tom E Buffante
(Vice) Chairman

MARKJON PROPERTIES, LLC

BY: _____
Authorized Officer

NIPPERLAND PROPERTIES LLC

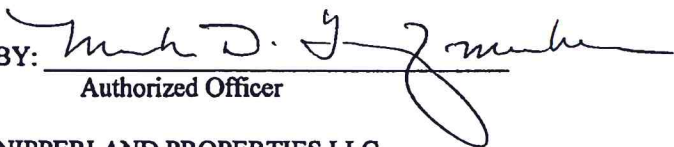
By: Christopher D. Napoli
Authorized Officer

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption Agreement to be duly executed as the date first above written.

COUNTY OF CATTARAUGUS INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

MARKJON PROPERTIES, LLC

BY: 
Authorized Officer

NIPPERLAND PROPERTIES LLC

By: _____
Authorized Officer

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

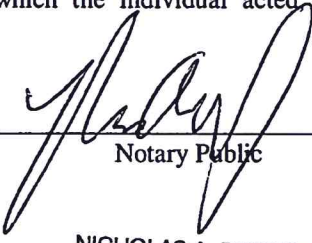
On the 14th day of March, in the year 2017 before me, the undersigned, personally appeared Thomas E. Buffamante, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed 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

SANDRA K. ANDREWS
NO. 01AN6087856
Notary Public State of New York
Qualified in Cattaraugus County
My Commission Expires 2/24/2019

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

On the 21 day of ~~March~~^{April}, in the year 2017 before me, the undersigned, personally appeared Mark Franz, 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

NICHOLAS A. DICERBO, JR.
Notary Public State of New York
No. 02DI6045474
Qualified in Cattaraugus County
My Commission Expires 9/03/2018

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

On the 21 day of April, in the year 2017 before me, the undersigned, personally appeared Christopher Napoleon, 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

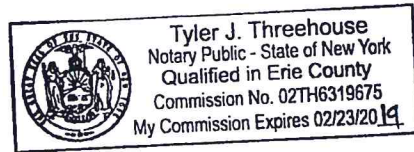


EXHIBIT A
Land Description

Title No. 296755

Schedule A

All that tract or parcel of land, situate in the City of Olean, Cattaraugus County, State of New York, being a part of Lot 1, Section 9, Township 2, Range 4 of the Holland Land Company's Survey, bounded and described as follows:

Beginning at the intersection of the east line of Lot 1, Section 9 and the centerline of Johnson Street extended, being the northeast corner of lands of Markjon Properties, LLC (Instrument #106283-001); thence the following courses along the east line of Lot 1, Section 9 and the east bounds of lands of Markjon Properties, LLC, (Instrument #106283-001); S 01°51'06" E, a distance of 33.56' to a point; S 00°15'23" W, a distance of 245.90' to a point; thence the following courses through other lands of Markjon Properties, LLC; N 78°49'09" W, a distance of 261.72' to a point; N 11°11'30" E, a distance of 248.73' to a point; N 37°37'16" E, a distance of 87.62' to a point; N 14°13'59" E, a distance of 30.37' to a point in the centerline of Johnson Street; thence S 52°16'22" E, along the centerline of Johnson Street, a distance of 186.53' to the point of beginning.

TICOR TITLE INSURANCE COMPANY