

**JDP ASSOCIATES, LLC**

**TO**

**ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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**LEASE AGREEMENT**

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***F.W. Webb Distribution Warehouse Project***

**Section: 95**  
**Block: 1**  
**Lot: 75**

**Dated as of October 1, 2008**

**LEASE AGREEMENT**  
**(Company to Agency)**

THIS LEASE AGREEMENT, dated as of October 1, 2008, by and between **JDP ASSOCIATES LLC**, a Massachusetts limited liability company doing business in the State of New York under the name of **JDP ASSOCIATES (NY), LLC** and authorized to conduct business under the laws of the State of New York with offices at c/o F.W. Webb Company, 17 Erie Boulevard, Albany, New York 12204 (the "Company") and **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 255-275 Main Street, Goshen, New York 10924 (the "Agency").

WITNESSETH:

The Company desires to rent to the Agency the real property, including any buildings, structures or improvements thereon, described in Schedule A attached hereto (the "Leased Premises") pursuant to the terms contained herein (this "Lease Agreement"), during the term of that certain Leaseback Agreement, dated as of the date hereof, by and between the Agency and the Company (the "Leaseback Agreement").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Granting Clause. The Company hereby leases to the Agency the Leased Premises, upon the terms and conditions of this Lease Agreement.
2. Warranty of Title. The Company warrants that it has good and marketable title to the Leased Premises and warrants the title to the Leased Premises for the Lease Term (as defined herein).
3. Term. The term of this Lease Agreement shall be coterminous with the term of the Leaseback Agreement (the "Lease Term").
4. Rent. The Agency agrees that it will pay to the Company, for the use of the Leased Premises, rent of One Dollar (\$1.00) per annum.
5. Taxes. The Company agrees to pay all taxes to be assessed on, or charges or expenses incurred with respect to, the Leased Premises during the Lease Term or, to the extent that the Company is entitled to make payments in lieu of any such taxes pursuant to the Payment In Lieu Of Tax (PILOT) Agreement of even date between the Agency and the Company, the Company agrees to make all such payments.
6. Maintenance and Insurance of Premises. The Company shall maintain and insure the Leased Premises. The Agency shall not be required to maintain the Leased Premises or incur any costs with respect to the Leased Premises. All insurance or condemnation proceeds shall be distributed and governed by the Leaseback Agreement.

7. Lease Expiration. The parties agree that at the expiration of the Lease Term the Agency will surrender the Leased Premises to the Company pursuant to the terms and conditions of this Lease Agreement and the Leaseback Agreement in the then condition of the Leased Premises.

8. Hold Harmless. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members and employees, and their respective successors or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Leased Premises or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Leased Premises or as a result of a breach by the Company of its representations or agreements contained herein or in the Leaseback Agreement, or (ii) liability arising from or expense incurred by the Agency's financing, construction, renovation, equipping, owning and leasing of the Leased Premises, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to the willful misconduct or gross negligence on the part of the Agency, its executive director, or any of its officers, members, directors or employees, or their respective successors, assigns or personal representatives to the extent that such an indemnity would be prohibited by law.

9. Subordination of Lease Agreement to Mortgage(s). The Agency agrees that this Lease Agreement shall be subordinate to any and all mortgages hereafter placed on the Leased Premises with the consent of the Agency and the any applicable mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 of a the Leaseback Agreement. The Agency shall not unreasonably withhold, delay or condition its consent to any mortgage placed on the Leased Premises.

10. Non-Merger. So long as any leasehold or sub-leasehold mortgage is in existence, unless all mortgagees shall otherwise expressly consent in writing, fee title to the Leased Premises and the leasehold estate of the Agency therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Company or by Agency or by a third party, by purchase or otherwise.

11. 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: Orange County Industrial Development Agency  
255-275 Main Street  
Goshen, New York 10924  
Attn: Executive Director

With a Copy to: Philip A. Crotty, Esq.  
8 Stable Way  
Cornwall-on-Hudson, New York 12520

And to: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Charles I. Schachter, Esq.

To the Company: JDP Associates, LLC  
c/o F.W. Webb Company  
160 Middlesex Turnpike  
Bedford, MA 01730  
Attn: Treasurer

With a copy to: Davis, Malm & D'Agostine, P.C.  
One Boston Place, 37<sup>th</sup> Floor  
Boston, Massachusetts 02108  
Attn: Robert J. Diettrich, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

11. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, 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 Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than 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 hereby shall not constitute or give rise to an obligation of the State of New York (the "State") or of the County of Orange, New York, and neither the State of New York nor the County of Orange, 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

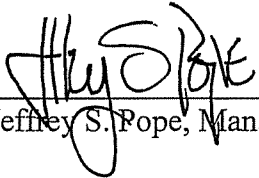
obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Leased Premises (except for revenues derived by the Agency with respect to the Unassigned Rights (as such term is defined in the Leaseback Agreement)).

(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 (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) 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 or 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 Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

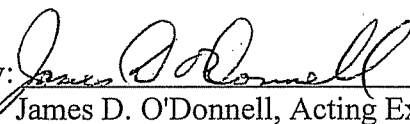
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IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

JDP ASSOCIATES, LLC

By:   
Jeffrey S. Pope, Manager

ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
James D. O'Donnell, Acting Executive Director

Commonwealth Of Massachusetts )  
County Of Middlesex ) ss:

On the 1<sup>st</sup> day of October in the year 2008, before me, the undersigned notary public, personally appeared Jeffrey S. Pope, proved to me through satisfactory evidence of identification which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Manager of JDP Associates, LLC.

  
Notary Public  
My Commission Expires:



State of New York )  
County of Orange ) ss:

On the 25<sup>th</sup> day of September in the year 2008, before me, the undersigned, personally appeared James D. O'Donnell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

DOREEN HAMEL  
REG. # 01HA6175975  
NEW YORK STATE

## SCHEDULE A

### LEGAL DESCRIPTION

All that tract or parcel of land situate in the Town of Newburgh, County of Orange, State of New York, being Lot #1 as shown on a filed map entitled "Northeast Realty Holdings, LLC, Two Lot Subdivision Plat, Corporate Boulevard, Town of Newburgh, Orange County, New York", said filed map being filed in the Orange County Clerk's Office on June 5, 2007 as Map No. 533-07, bounded and described as follows:

Beginning at a point on the easterly line of Corporate Boulevard (an 80' wide right-of-way), said point being the intersection of the easterly line of Corporate Boulevard with the northerly line of Lot 2 as shown on said filed Subdivision Map; thence along the easterly line of Corporate Boulevard (an 80' wide right-of-way), on a curve to the right having a radius of 1,159.28' for a distance of 638.49' to a point; thence along lands now or formerly of Northeast Business Center Associates (L. 3162, p. 73), South  $40^{\circ} 33' 54''$  East 402.09' to a point; thence along lands now or formerly of Pitsinos Properties LLC (L. 5892 p. 52), South  $16^{\circ} 09' 16''$  West 380.62' to a point; thence along Lot #2 as shown on said filed Subdivision Map, North  $73^{\circ} 50' 44''$  West 525.75' to the point or place of beginning. Containing 5.52 acres of land, more or less.

Subject to and together with a 30' wide Reciprocal Utility Easement as per Liber 3159 Page 129.

Together with a right of ingress and egress, along with others, over an 80' wide Right-of-Way known as Corporate Boulevard.

Together with a 30' wide Utility Easement over Corporate Boulevard, as per Liber 4353 Page 167.