

1002 OSWEGO STREET, LLC

and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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City of Utica Industrial Development Agency  
2013 Real Estate Lease  
(1002 Oswego Street, LLC Facility)

Oneida County, City of Utica, Utica City School District

Tax Account No.: 318.055-2-1

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of May 1, 2013, is by and between **1002 OSWEGO STREET, LLC**, a New York limited liability company with an address of 450 Tracy Street, Syracuse, New York 13204 (the "Company") and **CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at One Kennedy Plaza, Utica, New York 13502 (the "Agency").

### W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 710 of the Laws of 1981 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company desires to (a) acquire a 7.00± acre parcel of vacant land formerly known as the Bossert Site located at 1002 Oswego Street, City of Utica, Oneida County, New York (the "Land"); (b) construct on the Land a 20,000± square foot mixed-use commercial and retail building (the "Commercial Improvements") and acquire and install machinery and equipment in the Commercial Improvements (the "Commercial Equipment") all for the purpose of the distribution of automotive parts and lubricants and providing a regional headquarters for United Auto Supply (the Commercial Improvements and the Commercial Equipment collectively, the "Commercial Facility"); and (c) construct on a 2.00± acre out-parcel on the Land a commercial/retail structure (the "Retail Improvements") and acquire and install machinery and equipment in the Retail Improvements (the "Retail Equipment") all for providing a retail convenience store or other equivalent retail/commercial use (the Retail Improvements and the Retail Equipment collectively, the "Retail Facility"); and

WHEREAS, the Commercial Improvements and the Retail Improvements are sometimes referred to collectively as the "Improvements" and the Commercial Equipment and the Retail Equipment are sometimes referred to collectively as the

"Equipment" and the Land, the Commercial Facility and the Retail Facility are sometimes referred to collectively as the "Facility;" and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility pursuant to a Lease Agreement dated of even date herewith and lease the Facility back to the Company pursuant to the terms and conditions contained in a Leaseback Agreement dated of even date herewith; and

WHEREAS, the Agency has agreed to accept a leasehold interest to the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, NBT Bank, National Association, a New York banking corporation (the "Bank") intends to finance a portion of the costs of the Facility by making a loan to the Company in the principal amount of \$1,200,000.00, to be secured by (a) a Mortgage dated on or about May 31, 2013 (the "Mortgage") from the Agency and the Company to the Bank; and (b) a Collateral Assignment of Leases and Rents dated on or about May 31, 2013 (the "Assignment") from the Agency and the Company to the Bank; and (c) a Security Agreement dated on or about May 31, 2013 (the "Security Agreement") from the Agency and the Company to the Bank; and (d) a Building Loan Agreement dated on or about May 31, 2013 (the "Building Loan Agreement") from the Agency and the Company to the Bank; and

WHEREAS, the Company intends to sublease the Commercial Improvements to United Auto Supply of Syracuse, West, Inc. (the "Sublessee") for its operation pursuant to the terms of a Sublease Agreement dated as of March 1, 2013 between the Company and UAS, as the same may be amended from time to time (the "Sublease Agreement"); and

WHEREAS, the Company is searching for a subtenant (the "Retail Sublessee") to operate the Retail Improvements and intends to sublease the Retail Improvements to the Retail Sublessee pursuant to the terms of a sublease agreement to be entered into (the "Retail Sublease Agreement"); and

WHEREAS, the Facility is exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing August 1, 2013, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including

the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the City of Utica, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, Utica City School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:
  - (a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and
  - (b) all special assessments and ad valorem taxes coming due and payable during the term of the Leaseback Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) The Company shall pay to each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

- (i) For the first Exemption Year: 100% of Exempt Taxes; and
- (ii) From the second through and including the fourth Exemption Year: fifty percent (50%) of Exempt Taxes; and
- (iii) For the fifth Exemption Year: fifty-five percent (55%) of Exempt Taxes; and
- (iv) For the sixth Exemption Year: sixty percent (60%) of Exempt Taxes; and
- (v) For the seventh Exemption Year: sixty-five percent (65%) of Exempt Taxes; and
- (vi) For the eighth Exemption Year: seventy percent (70%) of Exempt Taxes; and
- (vii) For the ninth Exemption Year: seventy-five percent (75%) of Exempt Taxes; and
- (viii) For the tenth Exemption Year: eighty percent (80%) of Exempt Taxes; and
- (ix) For the eleventh Exemption Year: eighty-five percent (85%) of Exempt Taxes; and
- (x) After the eleventh Exemption Year: one hundred percent (100%) of all Exempt Taxes.

Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the Leaseback Agreement. The benefits under this Agreement are subject to recapture as described in the Leaseback Agreement.

(b) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Company

shall henceforth pay as PILOT Payments one hundred (100%) percent of the Exempt Taxes together with interest at the rate of nine (9%) percent per annum on any delinquent PILOT Payments together with expenses of collection, including but not limited to, payment of attorneys' fees; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any

proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: City of Utica Industrial Development Agency  
One Kennedy Plaza  
Utica, New York 13502  
Attn.: Executive Director

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street

Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

To the Company: 1002 Oswego Street, LLC  
450 Tracy Street  
Syracuse, New York 13204  
Attn.: James P. Ranalli

With a Copy To: Costello Cooney Fearon PLLC  
500 Plum Street, Suite 300  
Syracuse, New York 13204-1401  
Attn.: John R. Langey, Esq.

provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

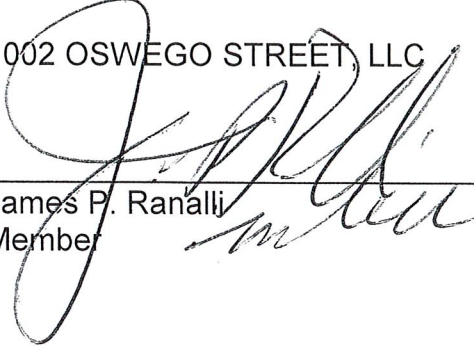
[signature page follows]



IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

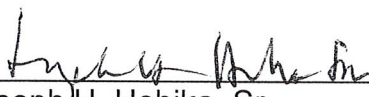
1002 OSWEGO STREET, LLC

By:

  
\_\_\_\_\_  
James P. Ranalli  
Member

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY


By:

  
\_\_\_\_\_  
Joseph H. Hobika, Sr.  
Chairman

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

*3rd*                    *June*

On the ~~31st~~ day of ~~May~~ 2013 before me, the undersigned a notary public in and for said state, personally appeared **James P. Ranalli**, 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

LAURA S. RUBERTO  
Notary Public, State of New York  
Appointed in Oneida County  
Reg. No. 01RU5031396  
Commission Expires August 1, 2014

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

On the 30<sup>th</sup> day of May 2013 before me, the undersigned a notary public in and for said state, personally appeared **Joseph H. Hobika, Sr.**, 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

LAURA S. RUBERTO  
Notary Public, State of New York  
Appointed in Oneida County  
Reg. No. 01RU5031396  
Commission Expires August 1, 2014

## EXHIBIT A

All that tract, piece or parcel of land situate in the City of Utica, County of Oneida and State of New York, as shown on the map entitled "Survey Map Showing Lands Belonging To The City of Utica, Located on Noyes Street, Oswego Street & Lenox Avenue" prepared by Steven A. Roseen, LS of Cornerstone Land Surveying and dated November 9, 2005, said parcel more particularly described as follows:

Beginning at a point located at the intersection of the southeasterly boundary of Lenox Avenue with the northeasterly boundary of Oswego Street;

Thence N.  $42^{\circ} 04' 00''$  E. along said boundary of Lenox Avenue 700.54 feet to its intersection with the southwesterly boundary of Noyes Street;

Thence S.  $48^{\circ} 04' 16''$  E. along said boundary of Noyes Street 488.02 feet to its intersection with the northwesterly boundary of Schuyler Street;

Thence along said boundary of Schuyler Street along an arc having a radius of 1272.00 feet, the chord of which is S.  $53^{\circ} 50' 20''$  W., 552.30, an arc distance of 556.73 feet to a point;

Thence S.  $17^{\circ} 55' 40''$  E. along the southerly boundary of Schuyler Street 18.00 feet to its intersection with the division line between the herein described parcel on the north and the lands now or formerly of New York, Ontario & Western Railroad on the south;

Thence S.  $72^{\circ} 04' 20''$  W. along said division line 173.94 feet to its intersection with the aforementioned northeasterly boundary of Oswego Street;

Thence N.  $48^{\circ} 06' 10''$  W. along said boundary 20.85 feet to a point;

Thence S.  $72^{\circ} 04' 20''$  W. along said boundary 0.58 feet to a point;

Thence N.  $48^{\circ} 06' 10''$  W. along said boundary 282.80 feet to the point of beginning, being  $300,369\pm$  square feet or  $6.896\pm$  acres, more or less.

More modernly described as:

All that tract, piece or parcel of land situate in the City of Utica, County of Oneida and State of New York, as shown on the map entitled "Survey Map Showing Lands Belonging To The City of Utica, Located on Noyes Street, Oswego Street & Lenox Avenue" prepared by Dennis L. Mowers Land Surveying and Associates dated May 23, 2012, said parcel more particularly described as follows:

Beginning at a point located at the intersection of the southeasterly boundary of Lenox Avenue with the northeasterly boundary of Oswego Street;

Thence N. 29° 34' 10" E. along said boundary of Lenox Avenue 700.54 feet to its intersection with the southwesterly boundary of Noyes Street;

Thence S. 60° 34' 05" E. along said boundary of Noyes Street 488.02 feet to its intersection with the northwesterly boundary of Schuyler Street;

Thence along said boundary of Schuyler Street along an arc having a radius of 1272.00 feet, the chord of which is S. 53° 50' 20" W., 552.30, an arc distance of 556.73 feet to a point;

Thence S. 30° 25' 30" E. along the southerly boundary of Schuyler Street 18.00 feet to its intersection with the division line between the herein described parcel on the north and the lands now or formerly of New York, Ontario & Western Railroad on the south;

Thence S. 59° 34' 30" W. along said division line 173.94 feet to its intersection with the aforementioned northeasterly boundary of Oswego Street;

Thence N. 60° 36' 00" W. along said boundary 20.85 feet to a point;

Thence S. 59° 34' 30" W. along said boundary 0.58 feet to a point;

Thence N. 60° 36' 00" W. along said boundary 282.80 feet to the point of beginning, being an area of 300,370± square feet or 6.896± acres.

SCHEDULE A

COUNTY OF ONEIDA  
Receiver of Taxes  
800 Park Avenue  
Utica, New York 13501

CITY OF UTICA  
Receiver of Taxes  
One Kennedy Plaza  
Utica, New York 13502  
Attn.: City Treasurer

UTICA CITY SCHOOL DISTRICT  
Receiver of Taxes  
106 Memorial Parkway  
Utica, New York 13501

## SCHEDULE B

### EXEMPTION YEARS

<b>Exemption Year (Assessment Roll Year)</b>	<b>County Taxes</b>	<b>City Taxes</b>	<b>School Taxes</b>
Year One (08/01/2013)	01/01/2014 – 12/31/2014	04/01/2014 – 03/31/2015	07/01/2014 – 06/30/2015
Year Two (08/01/2014)	01/01/2015 – 12/31/2015	04/01/2015 – 03/31/2016	07/01/2015 – 06/30/2016
Year Three (08/01/2015)	01/01/2016 – 12/31/2016	04/01/2016 – 03/31/2017	07/01/2016 – 06/30/2017
Year Four (08/01/2016)	01/01/2017 – 12/31/2017	04/01/2017 – 03/31/2018	07/01/2017 – 06/30/2018
Year Five (08/01/2017)	01/01/2018 – 12/31/2018	04/01/2018 – 03/31/2019	07/01/2018 – 06/30/2019
Year Six (08/01/2018)	01/01/2019 – 12/31/2019	04/01/2019 – 03/31/2020	07/01/2019 – 06/30/2020
Year Seven (08/01/2019)	01/01/2020 – 12/31/2020	04/01/2020 – 03/31/2021	07/01/2020 – 06/30/2021
Year Eight (08/01/2020)	01/01/2021 – 12/31/2021	04/01/2021 – 03/31/2022	07/01/2021 – 06/30/2022
Year Nine (08/01/2021)	01/01/2022 – 12/31/2022	04/01/2022 – 03/31/2023	07/01/2022 – 06/30/2023
Year Ten (08/01/2022)	01/01/2023 – 12/31/2023	04/01/2023 – 03/31/2024	07/01/2023 – 06/30/2024
Year Eleven (08/01/2023)	01/01/2024 – 12/31/2024	04/01/2024 – 03/31/2025	07/01/2024 – 06/30/2025