

1002 OSWEGO STREET, LLC

and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

---

FIRST AMENDED AND RESTATED  
PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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City of Utica Industrial Development Agency  
2022 Real Estate Lease Amendment  
(1002 Oswego Street, LLC/United Auto Supply Facility Expansion)

Oneida County, City of Utica, Utica City School District

Tax Account No.: 318.055-2-1

**FIRST AMENDED AND RESTATED  
PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS FIRST AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of November 1, 2022, is by and between **1002 OSWEGO STREET, LLC**, a New York limited liability company with an address of 1200 State Fair Boulevard, 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, Agency previously provided financial assistance to the Company relating to the (a) acquisition of 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) construction on the Land of a 20,000± square foot mixed-use commercial and retail building (the "Commercial Improvements") and acquisition and installation of 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) the proposed construction on a 2.00± acre out-parcel situated on the Land of a commercial/retail structure (the "Retail Improvements") and acquisition and installation of 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 together with the Commercial Facility, the "Existing Facility"); and

WHEREAS, the Company leases the Existing Facility to the Agency pursuant to a Lease Agreement dated as of May 1, 2013 (the "Lease Agreement"), and



the Agency leases the Existing Facility back to the Company pursuant to a leaseback agreement dated as of May 1, 2013 as amended on February 12, 2014 and September 30, 2016 (collectively, the "Existing Leaseback Agreement"); and

WHEREAS, the Company in turn subleases portions of the Commercial Facility to (a) United Auto Supply of Syracuse, West, Inc. (the "UAS Sublessee"), (b) Upstate Cerebral Palsy (the "UCP Sublessee") and (c) Orkin (the "Orkin Sublessee") for operation (each a "Sublessee" and collectively, the "Sublessees"); and

WHEREAS, the Company is now requesting to amend the transaction relating to the Existing Facility such that the Agency will assist in (i) the construction of a 21,600 ± square foot building (the "Addition"), which Addition will be constructed in lieu of the Retail Improvements; (ii) the renovation of the Commercial Improvements and (iii) the acquisition and installation of equipment in the Addition and the Commercial Improvements (the "Equipment"), all in furtherance of the Existing Facility to allow for the growth and expansion of the Sublessees (the Addition and the Equipment is referred to as the "2022 Facility," and the construction and equipping of the Addition and the renovation and equipping of the Commercial Facility is referred to as the "2022 Project"); and

WHEREAS, in order to induce the Company to develop the 2022 Facility in furtherance of the Existing Facility, the Agency is willing to accept a leasehold interest in the 2022 Facility pursuant to a First Amendment to Lease Agreement dated of even date herewith, and to lease the 2022 Facility and the Existing Facility (collectively, the "Facility") back to the Company pursuant to a First Amended and Restated Leaseback Agreement dated of even date herewith (the "Leaseback Agreement"); and

WHEREAS, the Agency has agreed to accept a leasehold interest in the 2022 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 (the "Bank") intends to finance a portion of the costs of the 2022 Facility by making a loan to the Company in the principal amount not to exceed \$3,813,188.70, to be secured by a Gap Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated November 4, 2022 (the "Gap Mortgage") from the Agency and the Company to the Bank; and

WHEREAS, the Company and the Bank intend to consolidate the liens of certain existing mortgages and the Gap Mortgage into one first lien covering the Facility and securing the payment of the principal \$5,423,000.00, to be secured by a Mortgage Consolidation, Extension and Modification Agreement dated November 4, 2022 (the "Mortgage") from the Agency and the Company to the Bank and an Assignment of Leases and Rents dated November 4, 2022 (the "Assignment") from the Agency and the Company to the Bank; and

WHEREAS, the Existing Facility has been 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 and the Agency entered into a Payment-In-Lieu-of-Tax Agreement dated as of May 1, 2013 (the "2013 PILOT Agreement") making provision for payments in lieu of the Exempt Taxes (the "PILOT Payments"); and

WHEREAS, PILOT Payments relating to the Existing Facility are secured by a PILOT Mortgage dated September 30, 2016 (the "PILOT Mortgage") from the Company and the Agency to the Agency on behalf of the Tax Authorities (as such terms are defined below); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this amended agreement making provision for PILOT Payments and such assessments relating to the 2022 Facility 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, 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 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, 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 PILOT 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:

With respect to the **Existing Facility**:

(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.

With respect to the 2022 Facility:

- (i) For the eleventh Exemption Year: no Exempt Taxes; and
- (ii) For the twelfth Exemption Year: thirty percent (30%) of Exempt Taxes; and
- (iii) For the thirteenth Exemption Year: forty percent (40%) of Exempt Taxes; and
- (iv) For the fourteenth Exemption Year: fifty percent (50%) of Exempt Taxes; and
- (v) For the fifteenth Exemption Year: seventy-five percent (75%) of Exempt Taxes; and
- (vi) After the fifteenth Exemption Year: one hundred percent (100%) of all Exempt Taxes.

Notwithstanding anything herein to the contrary, as it pertains to the 2022 Facility the term "Exempt Taxes" is intended to mean only the increase in real property taxes attributable to the 2022 Project. The Company shall continue to pay taxes, or make PILOT Payments, on the Existing Facility as described herein.

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 termination or 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  
1200 State Fair Boulevard  
Syracuse, New York 13209  
Attn.: James P. Ranalli, Sole Member

With a Copy To: Costello, Cooney & Fearon, PLLC  
221 West Jefferson Street  
Syracuse, New York 13202  
Attn.: Robert J. Smith, 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.

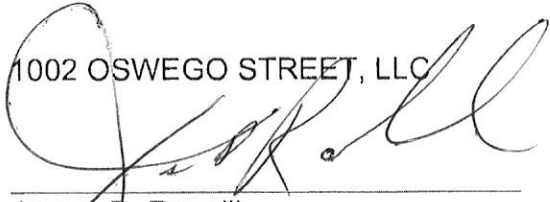


(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(f) This Agreement is intended to supercede in its entirety the 2013 PILOT Agreement between the Agency and the Company, effective immediately.

[signature pages follow]

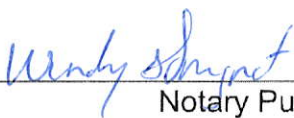
IN WITNESS WHEREOF, the parties have executed this **First Amended and Restated PILOT Agreement** as of the date first above written.

1002 OSWEGO STREET, LLC  


By: \_\_\_\_\_  
James P. Ranalli  
Sole Member

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

On the 2nd day of November 2022 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

WENDY S. LOUGNOT  
Notary Public in the State of New York  
Qualified in Oswego County No. 02L06090224  
My Commission Expires April 7, 2023



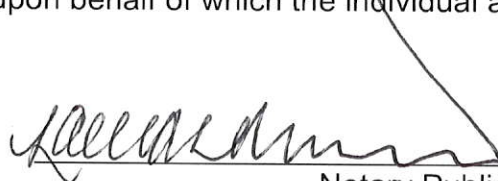
**SECOND SIGNATURE PAGE TO FIRST AMENDED AND RESTATED PILOT  
AGREEMENT BETWEEN CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY  
AND 1002 OSWEGO STREET, LLC**

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Vincent J. Gilroy, Jr.  
Chairman

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

On the 2nd day of November 2022 before me, the undersigned a notary public in and for said state, personally appeared **Vincent J. Gilroy, Jr.**, 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



**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  
929 York Street  
Utica, New York 13502



## 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		
Year Ten (03/01/2023)		04/01/2023 – 03/31/2024	07/01/2023 – 06/30/2024
Year Eleven (03/01/2023)	01/01/2024 – 12/31/2024		
Year Eleven (03/01/2024)		04/01/2024 – 03/31/2025	07/01/2024 – 06/30/2025
Year Twelve (03/01/2024)	01/01/2025 – 12/31/2025		
Year Twelve (03/01/2025)		04/01/2025 – 03/31/2026	07/01/2025 – 06/30/2026
Year Thirteen (03/01/2025)	01/01/2026 – 12/31/2026		
Year Thirteen (03/01/2026)		04/01/2026 – 03/31/2027	07/01/2026 – 06/30/2027
Year Fourteen (03/01/2026)	01/01/2027 – 12/31/2027		
Year Fourteen (03/01/2027)		04/01/2027 – 03/31/2028	07/01/2027 – 06/30/2028
Year Fifteen (03/01/2027)	01/01/2028 – 12/31/2028		
Year Fifteen (03/01/2028)		04/01/2028 – 03/31/2029	07/01/2028 – 06/30/2029