

MUNSON MACHINERY COMPANY, INC.

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  
2014 Real Estate Lease  
(Munson Machinery Company, Inc. Facility)

Oneida County, City of Utica, Utica City School District

Tax Account No.: 329.7-3-4

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

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of May 1, 2014, is by and between **MUNSON MACHINERY COMPANY, INC.**, a New York corporation with an address of 210 Seward Avenue, Utica, New York 13502 (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 construct a 12,000± addition (the "Addition") to an existing 44,230± manufacturing facility (the "Existing Improvements") (the Addition and the Existing Improvements referred to collectively as the "Improvements") located on a 7.5± acre parcel of land situated at 210 Seward Avenue, City of Utica, Oneida County, New York (the "Land") and acquire and install machinery and equipment in the Improvements (the "Equipment") all for the purpose of manufacturing industrial mixing, blending and size reduction equipment (the Land, Improvements and Equipment collectively, 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, 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, 2014, 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 Lease 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 Addition:

(i) From the first through and including the fifth Exemption Year: one-third (1/3) of Exempt Taxes resulting from the increase in assessment attributed to the construction and equipping of the Addition; and

(ii) From the sixth through and including the tenth Exemption Year: two-thirds (2/3) of Exempt Taxes resulting from the increase in assessment attributed to the construction and equipping of the Addition; and

(iii) After the tenth Exemption Year: one hundred percent (100%) of Exempt Taxes.

With respect to the Existing Improvements:

(iv) From the first through and including the tenth Exemption Year: the Exempt Taxes shall be reduced by three thousand dollar (\$3,000.00) each Exemption Year, which credit shall be allocated among the Taxing Authorities in the same proportion as taxes would have been allocated but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific allocation (For the purposes of apportioning the credit, each Taxing Authority shall use the tax rate for the prior Exemption Year); and

(v) After the tenth Exemption Year: one hundred percent (100%) of Exempt Taxes.

Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement terminates and the Agency terminates its leasehold interest in the Facility pursuant to 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.

(c) The financial assistance contained in this PILOT Agreement is conditioned upon the Company meeting the Employment Obligation (as defined in the Leaseback Agreement). Failure to meet the Employment Obligation may subject the Company to recapture under the Leaseback Agreement.

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, 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 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: Munson Machinery Company, Inc.  
210 Seward Avenue  
Utica, New York 13502  
Attn.: Charles H. Divine, President

With a Copy To: The Matt Law Firm, PLLC  
1701 Genesee Street  
Utica, New York 13501  
Attn.: F.X. Matt III, 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.

MUNSON MACHINERY COMPANY, INC.

By: 

Name: Charles H. Divine

Title: President

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By: 

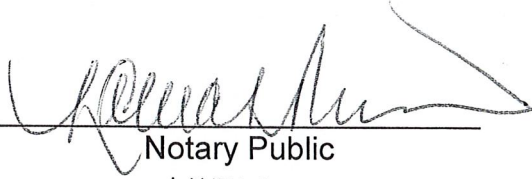
Name: Joseph H. Hobika, Sr.

Title: Chairman



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

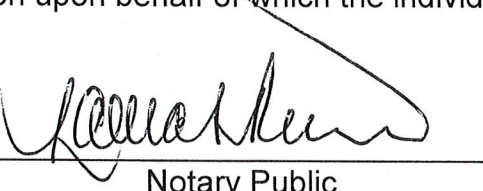
On the 22nd day of May 2014 before me, the undersigned a notary public in and for said state, personally appeared **Charles H. Divine**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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 21st day of May 2014 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

THAT TRACT OR PARCEL OF LAND situate on the northeast side of the highway known as Seward Ave. in the Town of New Hartford, Oneida County, N.Y., being part of the John French Estate, bounded and described as follows:

Beginning in the center of the said Seward Ave. at a point 300 feet northwesterly from the northwesterly line of the right of way of the Delaware, Lackawanna 86 Western Railroad Company, thence north  $43^{\circ}$  east passing through an iron pipe set in the northeasterly line of said Seward Ave., where said line meets lands belonging to the Sauquoit Toilet Paper Company, and continuing along the line of said lands 656.9 feet parallel to the northwesterly line of the right of way of said land 656.9 feet parallel to the northwesterly line of the right of way of the Delaware, Lackawanna and Western Railroad Company to an iron pipe set in the boundary between the lands conveyed, and the lands of the Sauquoit Toilet Paper Company, thence north  $41^{\circ} 18' W.$  257.75 feet to an iron pipe set in the southerly line of the premises of the West Shore Railroad Co., thence north  $82^{\circ} 56'$  west 280.25 feet along the southerly line of said West Shore Railroad Co. to an iron pipe, thence south  $47^{\circ} 47'$  east 124.8 feet to an iron pipe, thence south  $43^{\circ}$  west 522.3 feet parallel to the northwesterly line of the right of way of the Delaware Lackawanna and Western Railroad Co. to the center line of Seward Ave. passing through an iron pipe set in the northeasterly line of said Seward Ave., thence along the center of said Seward Ave. 358.6 feet to the place of beginning, containing 5.594 acres of land as computed and surveyed by A.M. Scripture, C.E. on a map made July 11, 1919 and filed in Oneida County Clerk's Office July 25, 1919 (for reference purposes - Map Book 31 at Page 28), and this conveyance is made subject to the rights of the Town of New Hartford, or the Sewer Commissioners of said town under the agreement for the construction of a sewer over and upon the premises hereby conveyed and it is hereby understood and agreed that a manufacturing plant will be erected upon the premises above described and that the said premises will not be used for any other than manufacturing purposes before July 1, 1924.

EXCEPTING AND RESERVING the easement from Munson Mill Machinery Co., Inc. to The City of Utica dated August 16, 1932 and recorded in the Oneida County Clerk's Office on August 5, 1941 in Book of Deeds 1007 at Page 414.

ALSO EXCEPTING AND RESERVING ALL THAT TRACT OR PARCEL OF LAND situate in Utica, Oneida County, New York, described as follows: Beginning at an iron pipe set on the original southerly line of the former West Shore R.R., which point is N.  $43^{\circ} 00'$  east 586.04 feet from an iron pipe found on the northerly line of Seward Avenue, which said pipe marks the division line between Munson Mill on the East and Telephone Co. Bldg. lot on the west; thence from the beginning point and along the south line of the R.R. N  $82^{\circ} 56' W.$  154.12 feet to a point; thence S.  $47^{\circ} 47' E.$  124.8 feet to an iron pipe

located on the west line of the Munson Mill, the last course being on the northeasterly line of Kabot; thence N. 43°00' E. 88.74 feet to the point of beginning. As set forth in warranty deed from Bradford' Lees Divine to John A. Kabot, dated December 22, 1988 and recorded in the Oneida County Clerk's Office on December 29, 1988 in Book of Deeds 2442 of Deeds at Page 177.

Being a portion of the same premises conveyed by Munson Machinery Co., Inc. (whose proper name is Munson Machinery Company, Inc.) to Bradford Lees Divine by warranty deed dated September 27, 1984 and recorded in the Oneida County Clerk's Office on November 9, 1984 in Book of Deeds 2190 at Page 55.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Utica, Oneida County, New York described as follows:

BEGINNING at an iron pipe set on the original southerly line of the former West Shore R.R. N. 43° 00' E. 586.04 feet from an iron pipe found on the northerly line of Seward Avenue, said pipe marking the division line between Munson Mill on the East and the Telephone Co. Bldg. lot on the west; thence along the original south line of the R.R. S. 82° 56' E. 70.88 feet to an iron pipe set; thence at 90° northerly 41 feet to an iron pipe set; thence N. 82° 56' W. parallel to the first course 41.17 feet to an iron pipe set; thence S. 43° 00' W. 50.63 feet to the place of beginning. Describing a parcel being at the easterly end of a larger parcel as described in Book 1940, Page 715, September 30, 1971 now owned by John A. Kabot. Refer to City Tax Map Book 8, Map 7, Block 1.

Excepting any easements of record as described in a warranty deed from John A. Kabot to B. Lees Divine, dated December 23, 1988 and recorded in the Oneida County Clerk's Office on January 9, 1989 in Book of Deeds 2443 at Page 293.

**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 (08/01/2014)	01/01/2015 – 12/31/2015	04/01/2015 – 03/31/2016	07/01/2015 – 06/30/2016
Year Two (08/01/2015)	01/01/2016 – 12/31/2016	04/01/2016 – 03/31/2017	07/01/2016 – 06/30/2017
Year Three (08/01/2016)	01/01/2017 – 12/31/2017	04/01/2017 – 03/31/2018	07/01/2017 – 06/30/2018
Year Four (08/01/2017)	01/01/2018 – 12/31/2018	04/01/2018 – 03/31/2019	07/01/2018 – 06/30/2019
Year Five (08/01/2018)	01/01/2019 – 12/31/2019	04/01/2019 – 03/31/2020	07/01/2019 – 06/30/2020
Year Six (08/01/2019)	01/01/2020 – 12/31/2020	04/01/2020 – 03/31/2021	07/01/2020 – 06/30/2021
Year Seven (08/01/2020)	01/01/2021 – 12/31/2021	04/01/2021 – 03/31/2022	07/01/2021 – 06/30/2022
Year Eight (08/01/2021)	01/01/2022 – 12/31/2022	04/01/2022 – 03/31/2023	07/01/2022 – 06/30/2023
Year Nine (08/01/2022)	01/01/2023 – 12/31/2023	04/01/2023 – 03/31/2024	07/01/2023 – 06/30/2024
Year Ten (08/01/2023)	01/01/2024 – 12/31/2024	04/01/2024 – 03/31/2025	07/01/2024 – 06/30/2025