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July 31, 2019

HAND-DELIVERED

Lonnie Stedman, Assessor
City of Utica
One Kennedy Plaza
Utica NY 13502

*Re: City of Utica Industrial Development Agency 2019 Real Estate Lease
(Mohawk Hospital Equipment, Inc. Facility)*

Dear Mr. Stedman:

Enclosed you will please find Form RP-412-a (Application for Real Property Tax Exemption) in connection with the above-referenced transaction. Attached to the Application is a copy of the Payment in Lieu of Tax Agreement, which is effective August 1, 2019.

We direct your attention to the fact that all PILOT bills should be delivered directly to the Company.

Should you have any questions on the enclosed, please do not hesitate to contact our offices.

Very truly yours,



Laura S. Ruberto
Paralegal

Enclosures

c: Attached Distribution List (w/enclosures)

FILED

JUL 31 2019

Department of
Assessment & Taxation
Utica, NY

Distribution List

County:

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

Anthony R. Carvelli
Commissioner of Finance
Oneida County Finance Department
800 Park Avenue
Utica NY 13501

Kathy Pilbeam, Director
Real Property Tax Services
Oneida County
800 Park Avenue
Utica, New York 13501

County of Oneida
Receiver of Taxes
800 Park Avenue
Utica, New York 13501

City:

Robert Palmieri, Mayor
City of Utica
One Kennedy Plaza
Utica, New York 13502

Receiver of Taxes
City of Utica
Attn: Brian McClusky, Accountant
One Kennedy Plaza
Utica, New York 13502

William Morehouse, Comptroller
City of Utica
One Kennedy Plaza
Utica, New York 13502

School District:

Louis D. LaPolla, President
Board of Education
Utica City School District
106 Memorial Parkway
Utica, New York 13501

Bruce J. Karam, Superintendent
Utica City School District
106 Memorial Parkway
Utica, New York 13501

Receiver of Taxes
Utica City School District
Attn.: Pamela Backman, District
Treasurer
106 Memorial Parkway
Utica, New York 13501



**NYS DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES**

RP-412-a (1/95)

**INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)**

**1. INDUSTRIAL DEVELOPMENT AGENCY (IDA) 2. OCCUPANT (IF OTHER THAN IDA)
(If more than one occupant attach separate listing)**

Name City of Utica Industrial Development Agency
Street One Kennedy Plaza
City Utica NY 13502
Telephone no. Day (315) 792-0195
Evening () _____
Contact Jack Spaeth
Title Executive Director

Name Mohawk Hospital Equipment, Inc.
Street 247 Elizabeth Street
City Utica NY 13501
Telephone no. Day (315) 797-0570
Evening () _____
Contact Thomas Spellman, Sr.
Title COO

3. DESCRIPTION OF PARCEL

- | | |
|---|--|
| a. Assessment roll description (tax map no./roll year)
<u>SEE ATTACHED</u> | d. School District <u>Utica City School District</u> |
| b. Street address <u>SEE ATTACHED</u> | e. County <u>Oneida</u> |
| c. City, Town or Village <u>Utica</u> | f. Current assessment <u>\$170,000</u> |
| | g. Deed to IDA (date recorded; liber and page)
<u>Memo of Lease 7/26/19 #R2019-001000</u> |

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- | | |
|---|--|
| a. Brief description (include property use) <u>Acquisition and renovation of an existing 11,000± sf building to provide wholesale medical supply sales and distribution</u> | |
| b. Type of construction _____ | |
| c. Square footage <u>11,000±</u> | f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)
<u>June 30, 2030</u> |
| d. Total cost <u>SEE ATTACHED</u> | |
| e. Date construction commenced _____ | |

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment Company will pay no taxes during years 1 - 3, and in years 4 - 10 the lesser of (1) the Exempt Taxes as then currently assessed on the Facility, or (2) the formula described in the attached PILOT Agreement.

- b. Projected expiration date of agreement June 30, 2030

c. Municipal corporations to which payments will be made

	Yes	No
County _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name Mohawk Hospital Equipment, Inc
 Title Thomas Spellman, COO
 Address 247 Elizabeth Street
Utica NY 13501

e. Is the IDA the owner of the property? Yes No (check one)

If "No" identify owner and explain IDA rights or interest in an attached statement. IDA owns leasehold interest.

Telephone 315-797-0570

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted: exemption _____ assessment roll year _____

7. A copy of this application, including all attachments, has been mailed or delivered on _____ (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Vincent J. Gilroy, Jr., Chairman of _____

Name	Title
<u>City of Utica Industrial Development Agency</u>	_____
Organization	

hereby certify that the information on this application and accompanying papers constitutes a true statement of facts.

July 24, 2019
Date



Signature

FOR USE BY ASSESSOR

1. Date application filed _____

2. Applicable taxable status date _____

3a. Agreement (or extract) date _____

3b. Projected exemption expiration (year) _____

4. Assessed valuation of parcel in first year of exemption \$ _____

5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

Exhibit A

Application for Real Property Tax Exemption
(Form RP-412-a)
**City of Utica Industrial Development Agency
(Mohawk Hospital Equipment, Inc. Facility)**

3(a) Assessment Roll Description	3(b) Addresses
318.51-1-30	524 – 526 John Street
318.51-1-31./1	528 – 530 John Street
318.51-1-31./2	253 Elizabeth Street
318.51-1-32	247 – 251 Elizabeth Street

4(d). Total Cost of Facility:

Acquisition of Building(s)	\$ <u>487,500</u>
Renovation Costs	\$ <u>250,000</u>
Furniture and Fixtures	\$ <u>50,000</u>
Total Project Cost	\$ <u>787,500</u>

MOHAWK HOSPITAL EQUIPMENT, INC.

and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

City of Utica Industrial Development Agency
2019 Real Estate Lease
(Mohawk Hospital Equipment, Inc. Facility)

Oneida County, City of Utica, Utica City School District

Tax Account Nos.: 318.51-1-30
 318.51-1-31./1
 318.51-1-31./2
 318.51-1-32

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of July 24, 2019, is by and between **MOHAWK HOSPITAL EQUIPMENT, INC.**, a corporation duly organized and validly existing under the laws of the State of New York, having an address of 247 Elizabeth Street, Utica, New York 13501 (the "Company") and **CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office 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 acquire and renovate a 11,000± square foot commercial building (the "Improvements") situated on several parcels of land measuring 0.378± acres in the aggregate located at 247 – 251 Elizabeth Street, 253 Elizabeth Street, 524 – 526 John Street and 528 – 530 John Street, 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 providing wholesale medical supply sales and distribution (the Land, Improvements and Equipment collectively, the "Facility" and the acquisition, renovation and equipping of the Facility is referred to as the "Project"); 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 in 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, 2019, 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:

Exemption Year 1	No Exempt Taxes
Exemption Year 2	No Exempt Taxes
Exemption Year 3	No Exempt Taxes
Exemption Year 4	Base Tax x 1.0 (as defined below)
Exemption Year 5	Base Tax x 1.0
Exemption Year 6	Base Tax x 1.1
Exemption Year 7	Base Tax x 1.1

Exemption Year 8	Base Tax x 1.3
Exemption Year 9	Base Tax x 1.3
Exemption Year 10	Base Tax x 1.5
Exemption Year 11 and thereafter	100% of Exempt Taxes

For purposes of calculating the PILOT Payment, “Base Tax” shall mean the Exempt Taxes payable in accordance with the 2017 taxable status date. During years 4 – 10, the Company shall pay the lesser of (1) the Exempt Taxes as then currently assessed on the Facility, or (2) the formula above.

(b) 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.

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. PILOT Payments that are delinquent under this Agreement shall be subject to a late penalty of five percent (5%) of the amount due which shall be paid by the Company to the affected Taxing Authority at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected Taxing Authority on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made. 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 Agency shall have the right to terminate the Leaseback Agreement and this PILOT Agreement, and the Company shall henceforth pay one hundred (100%) percent of the Exempt Taxes, together with all costs of collection, including but not limited to attorneys’ fees. Nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

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. The Company hereby unconditionally and irrevocably waives its rights, if any, to apply for and/or receive the benefit of, any other real property tax exemption including, without limitation, any real property tax exemptions that may be available under Section 485-b and Section 485-e of the Real Property Tax Law for so long as the PILOT Agreement is in effect.

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 (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when

delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency or the Company, as the case may be, addressed as follows:

If 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 NY 13501
Attn.: Linda E. Romano, Esq.

If to the Company:

Mohawk Hospital Equipment, Inc.
247 Elizabeth Street
Utica, New York 13501
Attn.: Thomas Spellman, Sr., CEO

With a Copy to:

Murray J.S. Kirshtein, Esq.
185 Genesee Street, Suite 1200
Utica, New York 13501

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.

MOHAWK HOSPITAL EQUIPMENT, INC.

By: Thomas Spellman, Sr.
Thomas Spellman, Sr.
Chief Operating Officer

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

On the 24th day of July 2019 before me, the undersigned a notary public in and for said state, personally appeared **Thomas Spellman, 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.

Laura S. Ruberto
Notary Public



SECOND SIGNATURE PAGE OF
PILOT AGREEMENT

CITY OF UTICA INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Vincent J. Gilroy, Jr.
Chairman

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

On the 23rd day of July 2019 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
City Hall
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 Year	County Tax Year	City Tax Year	School Tax Year
1	2020	2020-21	2020-21
2	2021	2021-22	2021-22
3	2022	2022-23	2022-23
4	2023	2023-24	2023-24
5	2024	2024-25	2024-25
6	2025	2025-26	2025-26
7	2026	2026-27	2026-27
8	2027	2027-28	2027-28
9	2028	2028-29	2028-29
10	2029	2029-30	2029-30