

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

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of April 15, 2016, is by and between **JR&R II, LLC**, a Minnesota limited liability company with an address of 901 N. Highway 59, Marshall, Minnesota 56258 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (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 372 of the Laws of 1970 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 has requested the Agency's assistance in connection with the acquisition and renovation of a 290,000± square foot facility (the "Improvements") located on a 15± acre parcel of land at 5865 Success Drive, City of Rome, Oneida County, New York (the "Land") and the acquisition and installation of equipment in the Improvements (the "Equipment"), all to be used for the warehousing of general merchandise and distribution to retail operations in the Northeast (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the 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 acquire a leasehold interest in the Land, Improvements and Equipment constituting the Facility and lease said Land, Improvements and Equipment to the Company pursuant to the terms and conditions contained in a Leaseback Agreement dated as of April 15, 2016 (the "Leaseback Agreement"); and

WHEREAS, the Company subleases an 80,900± square foot portion of the Facility to Running Supply, Inc. (the "Sublessee") upon the terms and conditions contained in a Warehouse Lease (Multi-Tenant) Agreement dated June 11, 2014 between Rite Aid of Rome Distribution Center, Inc. ("Landlord") and the Sublessee, as the same may be amended from time to time (the "Sublease Agreement"); and

WHEREAS, as part of the Company's acquisition of the Facility, Landlord will assign to Company and Company will assume from Landlord all of Landlord's rights and obligations under the Sublease Agreement; and

WHEREAS, the Company intends to further sublease other portions of the Facility to commercial tenants to be determined from time to time and as permitted by the Leaseback Agreement; and

WHEREAS, Minnwest Bank, a bank/insurance corporation duly formed and existing in accordance with the laws of the State of Minnesota having an office at 301 Baseline Road, Marshall, Minnesota 56258 (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 \$1,912,500.00, to be secured by (i) a Mortgage and Security Agreement (the "Mortgage") from the Agency and the Company to the Bank, and (ii) an Assignment of Leases and Rents (the "Assignment") from the Agency and the Company to the Bank; and

WHEREAS, the Agency has agreed to acquire an 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 will be 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 and/or the Sublessee or the occupancy thereof by the Company commencing July 26, 2016 (the "Exempt Taxes"), because the Agency will own a leasehold interest in the Facility and the Facility will be 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 this agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the City of Rome, 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, Rome City School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities" more particularly set forth on Schedule A attached hereto and made a part hereof) 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 or PILOT Payments 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 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 an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:
  - i. A fixed annual PILOT Payment in the amount of \$85,000.00 during Exemption Years 1 through and including 10; and
  - ii. One hundred percent (100%) of Exempt Taxes after Exemption Year 10.

Such PILOT Payments 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 preparing a PILOT bill, each Taxing Authority shall use the tax rate for the prior Exemption Year).

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 interest in the Facility pursuant to the Leaseback Agreement. The benefits under this Agreement are subject to the terms and conditions of a certain Job Creation and Recapture Agreement among the Agency, the Company and the Sublessee dated as of April 15, 2016.

(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 own a leasehold 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 own a leasehold 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 own a leasehold 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 own a leasehold 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 ownership of 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. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company hereby unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect



to the Facility, including, without limitation, any real property tax exemption that may be available under Section 485-b and Section 485-e of the Real Property Tax Law.

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. Notwithstanding any provision contained in the Sublease Agreement for the Sublessee to make payments to the Taxing Authorities, or a provision contained in any future sublease agreement for any future sublessee to make payments to the Taxing Authorities, the Company shall remain primarily liable to the Agency under this Agreement.

10. The PILOT Payments to be made pursuant to this Agreement are secured by a PILOT Mortgage and Security Agreement dated as of April 15, 2016 from the Agency and the Company to the Agency, to be recorded in the office of the Oneida County Clerk.

10. (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, the Company and the Sublessee, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441-4105  
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

To the Company: JR&R II, LLC  
901 N. Highway 59  
Marshall, Minnesota 56258  
Attn.: Dan Herrmann, Chief Financial Officer

With a Copy To: Gislason & Hunter LLP  
2700 S. Broadway  
P.O. Box 458  
New Ulm, Minnesota 56073-0458  
Attn.: C. Thomas Wilson, Esq.

To the Sublessee: Running Supply, Inc.  
901 N. Highway 59  
Marshall, Minnesota 56258  
Attn.: Dan Herrmann, Chief Operating Officer

With a Copy To: Gislason & Hunter LLP  
2700 S. Broadway  
P.O. Box 458  
New Ulm, Minnesota 56073-0458  
Attn.: C. Thomas Wilson, Esq.

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

(d) 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.

JR&R II, LLC

By: 

Dan Herrmann  
Chief Financial Officer

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_

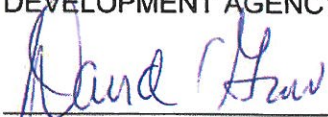
David C. Grow  
Chairman

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as of the date first above written.

JR&R II, LLC

By: \_\_\_\_\_  
Dan Herrmann  
Chief Financial Officer

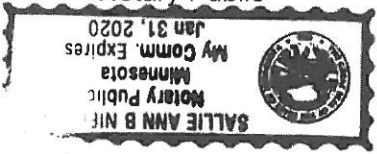
ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:  \_\_\_\_\_  
David C. Grow  
Chairman



STATE OF MINNESOTA            )  
  : ss.:  
COUNTY OF PIPESTONE        )

On the 14 day of April 2016 before me, the undersigned a notary public in and for said state, personally appeared **Dan Herrmann**, 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.

*Sallie Ann B Nilsen*  
\_\_\_\_\_  
Notary Public  


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

On the 13th day of April 2016 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, 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

STATE OF MINNESOTA            )  
  : ss.:  
COUNTY OF                        )

On the \_\_\_\_ day of April 2016 before me, the undersigned a notary public in and for said state, personally appeared **Dan Herrmann**, 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

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

On the 13th day of April 2016 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, 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, 2018

**SCHEDULE A**

**COUNTY OF ONEIDA**

Receiver of Taxes  
800 Park Avenue  
Utica, New York 13501

**CITY OF ROME**

Receiver of Taxes  
Rome City Hall  
198 North Washington Street  
Rome, New York 13440  
Attn.: City Treasurer

**ROME CITY SCHOOL DISTRICT**

409 Bell Street  
Rome, New York 13440  
Attn.: David Dreidel, District Treasurer

**SCHEDULE B**

**EXEMPTION YEARS**

<b>Exemption Year</b>	<b>County/City Taxes</b>	<b>School Taxes</b>
Year One	01/01/2017 – 12/31/2017	07/01/2017 – 06/30/2018
Year Two	01/01/2018 – 12/31/2018	07/01/2018 – 06/30/2019
Year Three	01/01/2019 – 12/31/2019	07/01/2019 – 06/30/2020
Year Four	01/01/2020 – 12/31/2020	07/01/2020 – 06/30/2021
Year Five	01/01/2021 – 12/31/2021	07/01/2021 – 06/30/2022
Year Six	01/01/2022 – 12/31/2022	07/01/2022 – 06/30/2023
Year Seven	01/01/2023 – 12/31/2023	07/01/2023 – 06/30/2024
Year Eight	01/01/2024 – 12/31/2024	07/01/2024 – 06/30/2025
Year Nine	01/01/2025 – 12/31/2025	07/01/2025 – 06/30/2026
Year Ten	01/01/2026 – 12/31/2026	07/01/2026 – 06/30/2027