



NYS BOARD OF REAL PROPERTY 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 Oneida County IDA
Street 153 Brooks Road
City Rome NY 13441
Telephone no. Day (315) 338-0393
Evening ()
Contact Shawna Papale
Title Executive Director

Name ECR Properties, Inc.
Street 2201 Dwyer Avenue
City Utica NY 13501
Telephone no. Day (315) 797-1310
Evening ()
Contact Alan Freetage
Title Controller

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 319.15-2-25 and 319.15-2-26
b. Street address 2201 Dwyer Avenue
c. City, Town or Village City of Utica
d. School District Utica City School Dist
e. County Oneida
f. Current assessment \$39,000/\$1,834,000
g. Deed to IDA (date recorded; liber and page)
Memorandum of Lease recorded
Instrument No. R2009-001428

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

- a. Brief description (include property use) construct a 30,000± sf addition to an existing 154,500± sf building all for manufacturing and servicing heating and cooling products.
b. Type of construction
c. Square footage 184,500± (total)
d. Total cost \$1,500,000
e. Date construction commenced October 2009
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) June 30, 2020

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 1/3 of taxes years 1 - 5 and 2/3 of taxes years 6 - 10. See PILOT Agreement attached.
b. Projected expiration date of agreement June 30, 2020

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 checked="" type="checkbox"/>
School District _____	<input checked="" type="checkbox"/>	

d. Person or entity responsible for payment

Name ECR Properties, Inc.
 Title Alan Freetage, Controller
 Address 2201 Dwyer Avenue
Utica NY 13501

e. Is the IDA the owner of the property? Yes/No (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement.

Telephone 315-797-1310

Leasehold Interest

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 7/29/09 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Natalie Brown, Vice Chairman of Oneida County Industrial Development Agency hereby certify that the information on this application and accompanying papers constitutes a true statement of facts.

July 29, 2009
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

ECR PROPERTIES, INC.

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2009 Real Estate Lease
(ECR Properties, Inc. Facility)

Oneida County, City of Utica, Utica City School District

Tax Account No.: 319.15-2-25
319.15-2-26

ECR PROPERTIES, INC.

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of July 1, 2009, is by and between **ECR PROPERTIES, INC.**, a corporation duly organized and validly existing under the laws of the State of New York, having an address of 2201 Dwyer Avenue, Utica, New York 13501 (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 153 Brooks Road, Rome, New York 13441-4105 (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 desires to construct a 30,000± square foot addition (the "Addition") to an existing 154,500± square foot manufacturing facility (the "Existing Building") (the Addition and the Existing Building referred to collectively as the "Improvements") situated on a 13.2± acre parcel of land located at 2201 Dwyer Avenue in the City of Utica, Oneida County (the "Land"); renovate the Existing Building; and acquire and install equipment in the Improvements (the "Equipment"), all for the purpose of manufacturing and servicing residential and light commercial heating and cooling products for the HVAC industry (the Land, the Improvements and the Equipment 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, 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, 2009, 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, the PILOT Payments (as defined below) represent a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, pursuant to Section 874 of the Act, the Agency sent a notice to the chief executive officer of each Taxing Authority providing a description of the PILOT Payments, the Agency's reasons for deviating from the Policy as well as the time and location of the meeting during which the Agency would consider a resolution approving the deviation from its Policy and the PILOT Payments; 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) one-third of such taxes from the first through and including the fifth Exemption Year; and

(ii) two-thirds of such taxes from the sixth through and including the tenth 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 leasehold interest in the Facility pursuant to the Lease Agreement.

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:

If to the Agency:

Oneida County Industrial Development Agency
153 Brooks Road
Rome, New York 13441-4105
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:

ECR Properties, Inc.
2201 Dwyer Avenue
Utica NY 13502
Attn.: Controller

With a Copy to:
Phillips Lytle LLP
437 Madison Avenue, 34th Floor
New York NY 10022
Attn.: Milan K. Tyler, 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.

ECR PROPERTIES, INC.

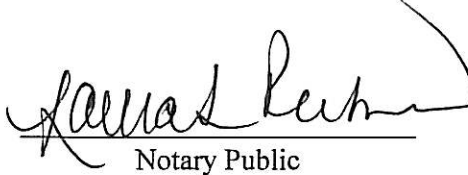
By: 
Paul Totaro
Chief Financial Officer

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Natalie Brown
Vice Chairman

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

On the 29th day of July 2009 before me, the undersigned a notary public in and for said state, personally appeared **Paul Totaro**, 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.

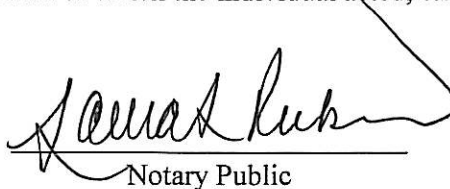


Notary Public

LAURA S. RUBERTO
Notary Public, State of New York
Appointed in Oneida County
Commission Expires Aug. 1, 2010

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

On the 27 day of July 2009 before me, the undersigned a notary public in and for said state, personally appeared **Natalie Brown**, 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 she executed the same in her capacity, and that by her 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
Commission Expires Aug. 1, 2010

EXHIBIT A

Property Descriptions

Those two (2) certain parcels located in the City of Utica, County of Oneida, State of New York described as follows:

Section : 319.15
Block : 02
Lot : 26

- and -

Section : 319.15
Block : 02
Lot : 25

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
1115 Mohawk Street
Utica, New York 13501

SCHEDULE B

EXEMPTION YEARS

Exemption Year (Assessment Roll Year)	County Taxes	City Taxes	School Taxes
Year One (08/01/2009)	01/01/2010 – 12/31/2010	04/01/2010 – 03/31/2011	07/01/2010 – 06/30/2011
Year Two (08/01/2010)	01/01/2011 – 12/31/2011	04/01/2011 – 03/31/2012	07/01/2011 – 06/30/2012
Year Three (08/01/2011)	01/01/2012 – 12/31/2012	04/01/2012 – 03/31/2013	07/01/2012 – 06/30/2013
Year Four (08/01/2012)	01/01/2013 – 12/31/2013	04/01/2013 – 03/31/2014	07/01/2013 – 06/30/2014
Year Five (08/01/2013)	01/01/2014 – 12/31/2014	04/01/2014 – 03/31/2015	07/01/2014 – 06/30/2015
Year Six (08/01/2014)	01/01/2015 – 12/31/2015	04/01/2015 – 03/31/2016	07/01/2015 – 06/30/2016
Year Seven (08/01/2015)	01/01/2016 – 12/31/2016	04/01/2016 – 03/31/2017	07/01/2016 – 06/30/2017
Year Eight (08/01/2016)	01/01/2017 – 12/31/2017	04/01/2017 – 03/31/2018	07/01/2017 – 06/30/2018
Year Nine (08/01/2017)	01/01/2018 – 12/31/2018	04/01/2018 – 03/31/2019	07/01/2018 – 06/30/2019
Year Ten (08/01/2018)	01/01/2019 – 12/31/2019	04/01/2019 – 03/31/2020	07/01/2019 – 06/30/2020