

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (“Agreement”) is made as of the 16th day of September, 2009 by and between **NEWBROOK MACHINE CORPORATION**, a corporation organized and existing under the laws of the State of New York, having an address of 16 Mechanic Street, Silver Creek, New York 14136 (the “Lessee”), and the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an address at 200 Harrison Street, Jamestown, New York 14701 (the “Agency”).

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the “Act”), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

WHEREAS, the Agency on behalf of Lessee intends to (i) acquire certain land more particularly described on Schedule A hereto (the “Land”); (ii) construct improvements on the Land (the “Improvements”); and (iii) acquire the equipment more particularly described on Exhibit A to the Lease (as hereinafter defined) (the “Equipment”) (the Land, Improvements and Equipment are hereinafter collectively referred to as the “Project”);

WHEREAS, the Agency is or will be the owner in fee simple of the Land and the Improvements (collectively, the “Facility”);

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to lease the interest of the Agency to Lessee pursuant to an Agency Lease Agreement dated as of the date hereof entered into between the Agency, as lessor, and Lessee, as lessee (as amended, modified, restated or replaced from time to time, the “Lease”);

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control.

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, Lessee and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility.

(a) Application. Lessee shall complete, and the Agency shall file, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law. Such application shall be filed with the assessor of each of the various taxing entities having jurisdiction over the Facility, including, without limitation, the County of Chautauqua and the Town of Hanover, the Village of Silver Creek and the Silver Creek School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the owner of record of the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors.

(b) Completion Date/Assessment. The completion date ("Completion Date") of the Project shall be the date on which (i) the Project is substantially completed, (ii) a certificate of occupancy has been issued, and (iii) the Facility has become entitled to exempt status pursuant to Section 1(a) above. Lessee estimates that the Completion Date will be December 31, 2009 ("Estimated Completion Date"). Lessee shall establish a Completion Date within six (6) months following the Estimated Completion Date.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease, Lessee will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.

(d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or Lessee on the rents under the Lease or the occupancy of or any interest of the Agency or Lessee in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by Lessee. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by Lessee and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) Tax Payments. Prior to the Facility becoming entitled to exempt status as set forth in Section 1(a) above, the applicable real estate tax levies on the Facility shall be payable in full by Lessee to the applicable Taxing Entity.

(b) Pilot Payments During Construction. After the Facility becomes entitled to exempt status until the last day of the tax fiscal year of the applicable Taxing Entity in which the Completion Date occurs, Lessee shall pay to the Agency at its address set forth in the heading of this Agreement, for the account and benefit of each Taxing Entity, payments in lieu of the general real estate tax levies on the Facility ("PILOT Payments") in an amount equal to the amount of the tax levies which would be payable if the Facility were listed on the assessment rolls as fully taxable. All such payments shall be payable on the same dates on which general real estate taxes are payable.

(c) Pilot Payments after Completion of Construction. Commencing with the first tax year for the applicable Taxing Entity following the Completion Date, and for each subsequent tax year thereafter during the "Term of the PILOT" (as hereinafter defined), Lessee shall pay to the Agency PILOT Payments as follows:

Co 73% = 3,714.49
Town 27% 1,373.85

- (i) for the account and benefit of the County and Town, \$5,088.34;
- (ii) for the account and benefit of the Village, \$6,690.48; and
- (iii) for the account and benefit of the School District, \$7,518.32

The foregoing PILOT payments shall remain constant during the Term of the PILOT for each applicable Taxing Entity, and shall not increase or decrease regardless of any increase or decrease in the underlying assessment for the Facility or any portion thereof.

The "Term of the PILOT" shall be the period of time from the first day of the first tax fiscal year of the applicable Taxing Entity following the Completion Date until the last day of the tax fiscal year of the applicable Taxing Entity following ten (10) annual PILOT Payments to such Taxing Entity. If the Term of the PILOT for any Taxing Entity shall have expired while the Term of the PILOT for any other Taxing Entity shall not have expired, Lessee shall pay to the Agency, until the termination of this Agreement, PILOT Payments in an amount equal to the amount of the tax levies which would be payable to such Taxing Entity if the Facility was listed on the assessment rolls as fully taxable.

(d) Maximum Payment. Notwithstanding anything to the contrary herein, the PILOT Payments should not exceed the amount Lessee would pay under normal calculations for any period. Hence, if the general real estate tax due (calculated as if Lessee were the record owner of the Facility, and the Facility were assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(c) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has

been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(c) above. Notwithstanding any other provision of this Agreement, Lessee agrees that Lessee shall not grieve or otherwise challenge the assessment for the Facility (or any portion thereof) on the tax rolls of any Taxing Entity at any time prior to the commencement of the tenth (10th) year of the Term of the PILOT for such Taxing Entity. Lessee's failure to comply with the requirements of the previous sentence shall be deemed an "Event of Default" hereunder.

(e) Payments to Agency. All PILOT Payments shall be made by Lessee directly to the Agency promptly upon receipt of billings from the Agency. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to such Taxing Entity within thirty (30) days after receipt thereof.

(f) Due Dates; Interest; and Penalties. The Agency will bill Lessee for the respective PILOT Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and Lessee shall pay, for the benefit of the applicable Taxing Entity, a late charge equal to five percent (5%) of the payment. For each month, or part thereof, that the payment is delinquent beyond the first month, Lessee shall pay an additional late charge equal to one percent (1%) per month of the total amount payable.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

County and Town Taxes:	January 30 th
Village Taxes:	June 30 th
School Taxes:	September 30 th

(g) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that any portion of the Land or the Improvements located thereon is sold or disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on such Improvements as may be located on the portion of the Land sold and on the portion of the Land sold as may be required by applicable law.

(h) Sale; Lessee's Obligation. In the event that the Agency sells the Facility to any party other than Lessee, Lessee's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of Lessee for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than Lessee to assure that each of the Taxing Entities shall suffer no loss of revenue until such Facility can be placed back on the tax rolls and taxes levied and billed therefor.

Section 3. Jobs. Lessee covenants and agrees that it shall, throughout the term of this Agreement, maintain, or create within three (3) years from the date of the application submitted to the Agency with respect to the Project, the number of permanent, private sector jobs at the site

of the Project as set forth in the application. The Company agrees to deliver to the Agency on each annual anniversary of this Agreement a written report describing its compliance or noncompliance with the provisions of this Section 3 and to permit the Agency to audit the books and records of Lessee supporting such report.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Lease by Lessee and the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(c) above, or (ii) the date on which title to the Facility is conveyed to Lessee pursuant to the Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

- (a) failure by Lessee to make any payment specified herein and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity;
- (b) failure by Lessee to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice to Lessee detailing the full nature of such failure;
- (c) failure by Lessee to establish a Completion Date within six (6) months after the Estimated Completion Date; and/or
- (d) default in the terms of any agreement entered into between the Agency and Lessee (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, Lessee shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility if it were owned by Lessee, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from Lessee, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorney's fees and expenses) and interest at the rate specified in Section 2(f) above. In addition, the Agency shall have the right to reconvey the Facility to Lessee at any time, and Lessee shall accept any such tender of reconveyance.

The Agency, in enforcing payment by Lessee of said amounts, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. Lessee irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, or the courts of the United States located within the State of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Agency.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not Lessee makes such payments. Lessee hereby agrees to indemnify the Agency against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges of payments on the Project or Lessee's leasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as Lessee and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency
200 Harrison Street
Jamestown, New York 14701
Attention: Administrative Director

To Lessee: Newbrook Machine Corporation
16 Mechanic Street
Silver Creek, NY 14136
Attention: P. J. Azzarella

The Agency or Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of Lessee, but no assignment shall be effective to relieve Lessee of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Lease executed between the parties hereto shall be a separate and independent document from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency, Lessee and any Taxing Entity which is affected by the amendment.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


Section 13. Delivery of Agreement. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

IN WITNESS WHEREOF, the Agency and Lessee have executed this Agreement as of the date first above written. .

**COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY**

By: 
William J. Daly, Administrative Director/CEO

NEWBROOK MACHINE CORPORATION

By: 
Name: Philip J. Azzarella, Jr.
Title: Chief Financial Officer

Doc # 03-108283.1

Schedule A

LAND

Schedule A

PARCEL I

All that tract or parcel of land, situate in the Village of Silver Creek, County of Chautauqua and State of New York, and being part of Lot No. 74, Township 6, Range 10 of the Holland Land Company's Survey and which upon a map on file in the County Clerk's office of Chautauqua County entitled "Map of the lands of the Lee Estate, situate in the Village of Silver Creek, January 1869, surveyed by Walter Scott", is designated on said map as part of Lot No. 6 on Mechanic Street, bounded and described as follows:

Beginning at a point in the easterly line of Mechanic Street, formerly laid out 62 feet wide, 2.25 feet northerly from the southwesterly corner of said lot No. 6, said point of beginning being southwesterly corner of premises conveyed by Frederic Weyand and C. E. Knowles to N. R. Knowles by deed recorded in Chautauqua County Clerk's office in liber 696 of Deeds at page 102; running thence easterly along the southerly line of said premises so conveyed to N. R. Knowles, 255.74 feet to the westerly line of Lot No. 10 on Oak Street; thence northerly along the westerly line of said Lot No. 10 on Oak Street, 18.15 feet to the northwesterly corner of said Lot No. 10; thence northwesterly along the southwesterly line of lot No. 9 on Oak Street, 37 feet to a stake; thence westerly 227.3 feet to a stake in the said easterly side of Mechanic Street located 31.9 feet northerly from the point of beginning; thence southerly along the said easterly line of Mechanic Street 31.9 feet to the point of beginning.

Also, all that tract or parcel of land, situate in the Village of Silver Creek, County of Chautauqua and State of New York and being part of lot No. 74, township 6, range 10 of the Holland Land Company's Survey, bounded and described as follows:

Commencing in the easterly line of Mechanic Street as formerly laid out 62 feet wide, at the northwesterly corner of lands conveyed to Joseph Gascon by deed recorded in Chautauqua County Clerk's office in liber 550 of deeds at page 387; thence northerly along the said easterly line of Mechanic Street 31.9 feet to the northwesterly corner of lands this day conveyed by Nellie R. Knowles to Keroad Mfg. Corp.; thence westerly, on a prolongation of the northerly line of said premises so conveyed by Nellie R. Knowles to Keroad Mfg. Corp., to a point 6 feet westerly measured at right angles from the said easterly line of Mechanic Street; thence southerly, parallel with the said easterly line of Mechanic Street, and 6 feet westerly measured at right angles therefrom to a point where the northerly line of said Joseph Gascon premises extended westerly would intersect the same; thence easterly 6 feet to the place of beginning.

Schedule A

Also all that tract or parcel of land, situate in the Village of Silver Creek, County of Chautauqua and State of New York, being part of lot No. 74, township 6 range 10 of the Holland Land Company's Survey and further distinguished on a map entitled "Map of the Lands of the Lee Estate, situated in the Village of Silver Creek, January 1869 surveyed by Walter Scott" which map is filed in the Office of the Clerk of Chautauqua County as parts of lots Nos. 5 and 6 on Mechanic Street, and more particularly bounded and described as follows:

Beginning at a point in the easterly line of Mechanic Street as formerly laid out 62 feet wide, distant 34.15 feet northerly from the southwesterly corner of said lot No. 6, said point of beginning being the northwesterly corner of land conveyed by Nellie R. Knowles, to Keroad Mfg. Corp. by deed dated November 27, 1948 and recorded December 7, 1948 in the Chautauqua County Clerk's Office in liber 833 of deeds at page 86; running thence northerly along said easterly line of Mechanic Street, 46.85 feet to a point distant 15 feet northerly from the southerly line of said lot No. 5; thence easterly parallel with the northerly line of said lot No. 6, 188.62 feet to the rear line of lots fronting on Oak Street; thence southeasterly along the rear line of lots fronting on Oak Street, 59.07 feet to the northeasterly corner of land conveyed to the Keroad Mfg. Corp. as aforesaid; thence westerly along the northerly line of land so conveyed to the Keroad Mfg. Corp. 227.3 feet to the point of beginning.

Also all that tract or parcel of land, situate in the Village of Silver Creek, County of Chautauqua and State of New York, being part of lot No. 74, township 6 range 10 of the Holland Land Company's Survey and more particularly bounded and described as follows:

Beginning at the southwesterly corner of premises described in Parcel I above in the easterly line of Mechanic Street as formerly laid out 62 feet wide; running thence northerly along said easterly line of Mechanic Street, 46.85 feet to the northwesterly corner of premises described in Parcel 1 above; thence westerly along a projection westerly of the northerly line of premises described in Parcel 1 above, 6 feet to the easterly line of Mechanic Street, as now laid out 56 feet wide; thence southerly along the easterly line of Mechanic Street, as now laid out, 56 feet wide, 46.85 to a projection westerly of the southerly line of premises described in Parcel 1 above; thence easterly along the last mentioned line, 6 feet to the point of beginning.

Schedule A

Parcel II

All that Tract or Parcel of land, situate in the Village of Silver Creek, County of Chautauqua and State of New York, being part of Lot 74, Township six and Range ten of the Holland Land Company's Survey, bounded and described as follows:

Beginning in the easterly line of Mechanic Street at a point 197.46 feet north of the northerly line of Central Avenue, formerly East Dunkirk Street at the intersection thereof; thence south 85° east, 264.43 feet; thence north 4° east, 69.03 feet to lands conveyed to Columbia Postal Supply Company by deed recorded in Chautauqua County Clerk's Office in liber 539 of deeds at page 179; thence north 85° west, along the southerly line of lands so conveyed to said Columbia Postal Supply Company as aforesaid, to the easterly line of Mechanic Street; thence south 3° west along the easterly line of Mechanic Street, 68.25 feet to the place of beginning.

Parcel III

All that tract or parcel of land, situate in the Village of Silver Creek, County of Chautauqua and State of New York, being part of lot #74, township 6 and range 10 of the Holland Land Company's Survey bounded and described as follows:

Beginning at the intersection of the easterly line of Mechanic Street and the northerly line of East Dunkirk Street, now Central Avenue; thence southeasterly along the northerly line of East Dunkirk Street, now Central Avenue, 308 feet; thence north 4° west, 270.82 feet; thence north 85° west, 264.43 feet to the easterly line of Mechanic Street; thence south along the easterly line of Mechanic Street 197.46 feet to the place of beginning.

Excepting and reserving any lands appropriated by the New York Department of Public Works for highway purposes affecting the above described premises, being the same property conveyed by Donald Koestler to Lake Shore Heating Corporation by deed dated August 10, 1956 and recorded on the 10th day of September, 1956 at 9:00 A.M. in Book No. 1061 of deeds at page 580 at the Office of Recorder of Deeds, Chautauqua County, New York.

Schedule A

Parcel IV

ALL THAT TRACT OR PARCEL OF LAND situate in the Village of Silver Creek, County of Chautauqua, and State of New York, and being part of Lot 74 in Township 6, and Range 10 of the Holland Land Company's Survey and more particularly described as follows:

Beginning in the westerly line of Mechanic Street as now laid out and occupied (62 feet wide) at the iron pin located 123.2 feet northerly along said westerly line of Mechanic Street from the intersection thereof with the northerly line of Central Avenue as now laid out and occupied (66 feet wide); thence continuing northerly a distance of 192.2 feet along said westerly line of Mechanic Street to an iron pin; thence westerly at an interior angle of 88 degrees 44 minutes, a distance of 107.5 feet to the westerly face of a concrete retaining wall, and passing through an iron pin located 4 feet easterly along the last described course from said westerly face of a concrete retaining wall; thence southerly at an interior angle of 87 degrees 47 minutes, a distance of 152.5 feet along said westerly face of a concrete retaining wall to a deflection point therein; thence southerly at an interior angle of 206 degrees 49 minutes, a distance of 9.7 feet along said westerly face of a concrete retaining wall to a deflection point therein; thence southerly at an interior angle of 152 degrees 16 minutes, a distance of 22.8 feet along said westerly face of a concrete retaining wall to a point; thence easterly at an interior angle of 97 degrees 49 minutes, a distance of 100.5 feet to the point or place of beginning., and passing through an iron pin located 22 feet easterly along the last described course from said westerly face of a concrete retaining wall.