

**ELG UTICA ALLOYS HOLDING CORP.**

and

**HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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**Herkimer County Industrial Development Agency  
Real Estate Lease-Leaseback**

**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of this 1<sup>st</sup> day of February, 2024 is by and between **ELG UTICA ALLOYS HOLDING CORP.**, a New York Corporation having an address of 378 Gros Boulevard, Herkimer, New York 13350 (hereinafter “ELG”) (the “Company”) and the **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 420 E. German Street, Suite 101A, Herkimer, New York 13350 (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 if 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 if 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, in order to induce the Company to develop the Facility and in order to advance the job opportunities, health and general prosperity and economic welfare of the people of the State of New York, the Agency is willing to accept a leasehold interest in the Facility pursuant to the terms and conditions contained in the Lease Agreement dated of even date herewith entered into between the Company, as Lessor, and the Agency, as Lessee (the “Lease Agreement”); to acquire a leasehold interest in certain real property located in the Town of Herkimer, County of Herkimer, State of New York, more particularly described on Exhibit A thereof; and

WHEREAS, the Company has executed and delivered a Leaseback Agreement, dated of even date herewith, with the Agency to acquire a leasehold interest in the same real property located in the Town of Herkimer, County of Herkimer, New York, more particularly described in Exhibit “A” attached to the Leaseback Agreement, and to construct and reconstruct and equip a facility thereon (the “Facility”); 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 March 1, 2024, 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 this Agreement and the Leaseback Agreement commencing February 1, 2024 through the term of the Leaseback Agreement (the “Exemption Term”) (each year measured by the twelve month period commencing with the first day of January, herein 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 Town of Herkimer, 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, Herkimer County, the Herkimer Central School District and appropriate special districts (hereinafter each a “Taxing Authority” and collectively the “Taxing Authorities”) in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:
  - (a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and
  - (b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.
  
2. The Company shall pay to the Agency for the benefit of each Taxing Authority:
  - (a) in lieu of general real property taxes for the Facility, the Company shall pay the following percentages of the actual real property taxes which would be due if the Facility were fully taxable on the tax rolls of the Taxing Jurisdictions:

<u>Year</u>	<u>Percentage</u>
1	50
2	55
3	60
4	65
5	70
6	75
7	80
8	85
9	90
10	95
11	100

(and each successive year of the term of the lease pursuant to the Lease Agreement)

- (b) Upon receipt of a bill from the Agency at least thirty (30) days prior to the due date, Company shall make payments in lieu of taxes through the Agency based upon calculations of payments due furnished in writing by the Agency to the Company. Payments shall be made to coincide with each individual Taxing Jurisdiction's schedule due dates for payment of taxes. The Agency shall accept payment from the Subtenant.
- (c) 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 on any unpaid portion of the Exempt Taxes together with interest at the rate of five (5%) 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. Provided the Company has received an invoice for same at least thirty (30) days in advance, the Company will make PILOT Payments for the benefit of 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 (including without limitation the expiration or earlier termination of the Leaseback Agreement or this Agreement), the Company is required to pay any tax which the payments specified in this Agreement are intended to be in lieu of, the Company may deduct the aggregate of any such tax 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 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 through the Agency and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.
9.
  - (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.
  - (b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.
  - (c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency:           Herkimer County Industrial Development Agency  
420 E. German Street – Suite 101A  
Herkimer, New York 13350  
Attn: John J. Piseck, Jr., Chief Executive Officer

With a Copy to:       Felt Evans, LLP  
4 - 6 North Park Row  
Clinton, New York 13323  
Attn: Anthony G. Hallak, Esq.

To the Company:       ELG Utica Alloys Holding Corp.  
378 Gros Boulevard, Suite 3  
Herkimer, New York 13350  
Attn: Jay Williams, Vice President of Operations

With a Copy to: Phillips Lytle LLP  
620 Eighth Avenue - 38th Floor  
New York, NY 10018-1442  
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 constructed in accordance with the laws of the State of New York.
- (f) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.


**[signature page follows]**

IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

**HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Vincent J. Bono, Chairman

**ELG UTICA ALLOYS HOLDING CORP.**

By:   
Jay Williams, Vice President of Operations

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

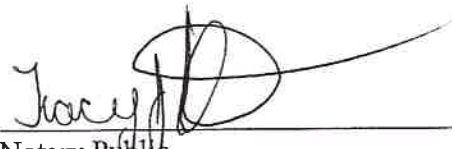
On this 20<sup>th</sup> day of February, 2024, before me, a notary public in and for said State, did personally appear **Vincent J. Bono**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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

SUSAN BEVINS  
Notary Public, State of New York  
Qualified in Herkimer County  
No. 01BE5004336  
My Commission Expires: 11/16/2026

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

On this 13 day of February, 2024, before me, a notary public in and for said State, did personally appear **Jay Williams**, to me personally known 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

Tracy J. Herringshaw  
Notary Public - State of New York  
No. 01HE6380383  
Qualified in Herkimer County  
Commission Expires September 4, 2026



## Exhibit A

### LEGAL DESCRIPTION

**ALL THAT TRACT, PIECE OR PARCEL OF LAND** situate within the Town of Herkimer, County of Herkimer and State of New York, as shown on the map entitled "Property Map Showing Lands to be Conveyed to EUA Holding Corp.", dated October 16, 2023, prepared by Emrich Land Surveying, PLLC; said parcel more particularly described as follows:

**BEGINNING** at a found iron pipe located on the westerly boundary of Gros Blvd. (C.R. 258) at its intersection with the division line between the herein described property on the south and the property of John and Judith Boniface (reputed owners) as described by deed L. 778 P. 694 on the north;

Thence South  $13^{\circ} 59' 15''$  East, along said westerly boundary of Gros Blvd. (C.R. 258), a distance of 209.89 feet to a point; said point located at the intersection of the last mentioned course with the division line between the herein described property on the north and the property of ELG Utica Alloys, Inc. (reputed owner) as described by deed L. 1376 P. 411 on the south;

Thence South  $76^{\circ} 10' 15''$  West, along the last mentioned division line, a distance of 122.55 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the east and said property of ELG Utica Alloys, Inc. (L. 1376 P. 411) on the west;

Thence North  $13^{\circ} 50' 00''$  West, along the last mentioned division line, a distance of 105.00 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the north and said property of ELG Utica Alloys, Inc. (L. 1376 P. 411) on the south;

Thence South  $76^{\circ} 10' 15''$  West, along the last mentioned division line, a distance of 175.00 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the west and said property of ELG Utica Alloys, Inc. (L. 1376 P. 411) on the east;

Thence South  $13^{\circ} 50' 00''$  East, along the last mentioned division line, a distance of 310.74 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the north and said property of ELG Utica Alloys, Inc. (L. 1376 P. 411) on the south;

Thence South  $75^{\circ} 50' 20''$  West, along the last mentioned division line, a distance of 251.60 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the west and said property of ELG Utica Alloys, Inc. (L. 1376 P. 411) on the east;

Thence South 14° 12' 40" East, along the last mentioned division line, a distance of 289.48 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the south and said property of ELG Utica Alloys, Inc. (L. 1376 P. 411) on the north;

Thence North 75° 41' 45" East, along the last mentioned division line, a distance of 797.43 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the east and said property of ELG Utica Alloys, Inc. (L. 1376 P. 411) on the west;

Thence North 14° 13' 00" West, along the last mentioned division line, a distance of 474.44 feet to an iron pin located on the southerly boundary of Gros Blvd. (C.R. 258);

Thence North 79° 48' 30" East, along said boundary of Gros Blvd. (C.R. 258), a distance of 15.51 feet to an angle point;

Thence North 40° 38' 25" East, along the southeasterly boundary of Gros Blvd. (C.R. 258), a distance of 354.00 feet to a point marked with a metal post; said post located at the intersection of the last mentioned course with the division line between the herein described property on the southwest and the property of James R. and Timothy D. Wells (reputed owners) as described by deed L. 803 P. 400 on the northeast;

Thence South 45° 03' 45" East, along the last mentioned division line, a distance of 728.98 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the northwest and the property of William M. Babinec and Elizabeth Babinec (reputed owners) as described by deed L. 905 P. 520 on the southeast;

Thence South 24° 40' 20" West, along the last mentioned division line, a distance of 476.03 feet to an iron pin; said pin located at the intersection of the last mentioned division line with the division line between the herein described property on the south and said property of William M. Babinec and Elizabeth Babinec on the north;

Thence South 72° 18' 55" East, along the last mentioned division line, a distance of 123.02 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the northwest and property of Robert J. Mihevc And Sandra Mihevc (reputed owners) as described by deed L. 658 P. 730 on the

Thence South 32° 42' 10" West, along the last mentioned division line and continuing along the northwesterly bounds of Brian Hollis (I.N. RP2020-2089) and Dale and Debra M. Keyser (L. 806 P. 627), a distance of 223.80 feet to an iron pipe; said pipe located at the intersection of the last mentioned division line with the division line between the herein described property on the southwest and said property of Keyser (reputed owners) on the northeast;

Thence South 53° 42' 20" East, along the last mentioned division line, a distance of 309.58 feet to a point located on the centerline of Pine Grove Road (C.R. 106);

Thence South 36° 16' 40" West, along said the centerline of Pine Grove Road, a distance of 50.00 feet to a point; said point located at the intersection of the last mentioned course with the division line between the herein described property on the northeast and the property of Charlene Agne (reputed owner) as described by deed L. 576 P. 835 on the southwest;

Thence North 53° 43' 20" West, along the last mentioned division line, a distance of 166.52 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the northwest and said property of Charlene Agne on the southeast;

Thence South 36° 16' 40" West, along the last mentioned division line and continuing along the northwesterly bounds of John R. and Sharon Ciko (reputed owners) as described by deed L. 823 P. 455, a distance of 159.87 feet to an iron pin; said pin located at the intersection of the last mentioned division line with the division line between the herein described property on the north and the property of Scott Yatarada (reputed owner) as described by deed L. 1327 P. 982 on the south;

Thence North 72° 54' 45" West, along the last mentioned division line and continuing along the northerly bounds of Jamey and Mary Zielinsky (reputed owners) as described by deed L. 1505 P. 36, a distance of 590.37 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the east and the property of Brian and Samantha Maser (reputed owners) as described by deed as Instrument No. RP2022-584 on the west;

Thence North 13° 35' 10" West, along the last mentioned division line and continuing along the easterly terminus of Grace Avenue and the easterly bounds of Regina L. Carter (L. 1186 P. 90) and Jere J. and Lois Van Allen (L. 1568 P. 695), a distance of 249.15 feet to an iron pipe; said pipe located at the intersection of the last mentioned division line with the division line between the herein described property on the north and said property of Jere J. and Lois Van Allen (reputed owners) on the south;

Thence South 75° 24' 05" West, along the last mentioned division line, a distance of 157.10 feet to an iron pipe located on the easterly boundary of East Street;

Thence North 14° 34' 30" West, along said boundary of East Street, a distance of 157.15 feet to a point located on the northerly terminus of said East Street;

Thence South 75° 24' 05" West, along said northerly boundary of East Street, a distance of 50.00 feet to a point located on the westerly boundary of East Street;

Thence South 14° 34' 30" East, along said boundary of East Street, a distance of 157.15 feet to an iron pipe; said pipe located at the intersection of the last mentioned course with the division line between the herein described property on the north and the property of Tara Marsh (reputed owner) as described by deed as Instrument No. RP2021-3470 on the south;

Thence South 75° 24' 05" West, along the last mentioned division line, a distance of 162.00 feet to an iron pipe; said pipe located at the intersection of the last mentioned division line with

the division line between the herein described property on the east and the property of Robert and Nancy Knapp (reputed owners) as described by deed as Instrument No. RP2022-5886 on the west;

Thence North  $14^{\circ} 35' 50''$  West, along the last mentioned division line, a distance of 50.00 feet to iron pipe; said pipe located at the intersection of the last mentioned division line with the division line between the herein described property on the north and said property of Robert and Nancy Knapp on the south;

Thence South  $75^{\circ} 24' 05''$  West, along the last mentioned division line, a distance of 162.00 feet to an iron pipe located on the easterly boundary of Palisade Street;

Thence North  $14^{\circ} 35' 55''$  West, along said boundary of Palisade Street, a distance of 107.00 feet to a point located on the northerly terminus of said Palisade Street;

Thence South  $75^{\circ} 24' 00''$  West, along said northerly boundary of Palisade Street, a distance of 50.00 feet to a point located on the westerly boundary of Palisade Street;

Thence South  $14^{\circ} 35' 55''$  East, along said boundary of Palisade Street, a distance of 107.00 feet to an iron pipe; said pipe located at the intersection of the last mentioned course with the division line between the herein described property on the north and the property of Robert and Arleta Lowell (reputed owners) as described by deed as Instrument No. RP2023-219 on the south;

Thence South  $75^{\circ} 23' 55''$  West, along the last mentioned division line and continuing along the northerly bounds of James P. and Joellen M. Mula (reputed owners) as described by deed L. 756 P. 043, a distance of 323.00 feet to a concrete monument located on the easterly boundary of West Street;

Thence North  $14^{\circ} 35' 55''$  West, along said boundary of West Street, a distance of 107.00 feet to an iron pin located on the northerly terminus of said West Street;

Thence South  $75^{\circ} 24' 00''$  West, along said northerly boundary of West Street, a distance of 50.00 feet to a point located on the westerly boundary of West Street;

Thence South  $14^{\circ} 35' 45''$  East, along said boundary of West Street, a distance of 7.00 feet to an iron pin; said pin located at the intersection of the last mentioned course with the division line between the herein described property on the north and the property of Craig Tangorra (reputed owner) as described by deed as Instrument No. RP2017-4602 on the south;

Thence South  $75^{\circ} 24' 00''$  West, along the last mentioned division line, a distance of 140.00 feet to an iron pin; said pin located at the intersection of the last mentioned division line with the division line between the herein described property on the west and said property of Craig Tangorra on the east;

Thence South  $14^{\circ} 36' 00''$  East, along the last mentioned division line, a distance of 149.10 feet to a point; said point located at the intersection of the last mentioned division line with the division line between the herein described property on the north and the property of Leona Scott (reputed owner) as described by deed L. 835 P. 003 on the south;

Thence South 77° 00' 05" West, along the last mentioned division line, a distance of 187.60 feet to an iron pin; said pin located at the intersection of the last mentioned division line with the division line between the herein described property on the east and the property of John and Judith Boniface (reputed owners) as described by deed L. 778 P. 694 on the west;

Thence North 14° 17' 25" West, along the last mentioned division line, a distance of 1011.40 feet to an iron pin; said pin located at the intersection of the last mentioned division line with the aforementioned division line between the herein described property on the south and said property of John and Judith Boniface on the north;

Thence North 78° 03' 20" East, along the last mentioned division line, a distance of 1289.78 feet to the **point of beginning**, containing 1,736,573 ± square feet or 39.86± acres, more or less;

Bearings are based on Grid North, North American Datum (NAD) 83, New York State Plane East Zone.

**BEING** all the same premises conveyed by Bargain and Sale Deed from Curtains and Fabrics Inc. to Herkimer Distribution LLC, dated November 27, 2002 and recorded on January 7, 2003 in the Herkimer County Clerk's Office in Book 918 of Deeds at Page 14.