

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of June 30, 2016, by and between NICHOLS CROSS DOCK, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, with its principal office located at One Webster's Landing, Syracuse, New York 13202 (the "Company") and the TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public-benefit corporation duly organized and validly existing under the laws of the State of New York with an office for the transaction of business located at 56 Main Street, Owego, New York 13827 (the "Agency,") collectively, (the "Parties.")

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the 1969 Laws of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities on such terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes; and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from its facilities or from the lease thereof; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 534 of the 1971 Laws of the State of New York, as amended by Chapter 883 of the 1974 Laws of the State of New York, constituting Section 912 of said General Municipal Law (said Chapter and Enabling Act being hereinafter referred to as the "Act") created the Agency, which is empowered under the Act to undertake the providing, financing and leasing of the project described below; and

WHEREAS, the Agency and the Company have agreed to a lease and leaseback transaction, on real property more particularly described in Exhibit "A" attached hereto, to facilitate the following: (A) (1) the leasing, by the Agency, of a parcel of land containing

approximately 22.584 acres located at Stanton Hill Road in the Town of Nichols, Tioga County, New York (the "Land"), (2) the construction, by the Company, of a transportation hub on the Land containing a 24,560+/- square foot 52 door cross dock facility, a 5,151+/- square foot office building, and a 9,679+/- square foot vehicle repair shop, together with a fueling island and small truck lubrication shop as well as 169 truck parking spaces and 71 car parking spaces. In addition, the site has been designed to allow for an expansion of the service center to increase the number of doors to as many as 88 in addition to increased parking capacity (the "Facility"), and (3) the acquisition and installation therein and thereon by the Company of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project"), all of the foregoing being intended for use as a transportation hub and any other directly or indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project back, from the Agency to the Company, or to such other person(s) or entity(ies) as may be designated by the Company, and agreed upon by the Agency; and

WHEREAS, the Agency will lease the Project from the Company pursuant to a certain lease agreement (the "Lease Agreement,") and the Agency will lease the Project to the Company pursuant to a certain leaseback agreement (the "Leaseback Agreement") for a term not to exceed ten (10) years; and

WHEREAS, the Agency is exempt from the payment of taxes and assessments imposed upon real property, and the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the Agency for the taxes due to the Town of Nichols (the "Town"), the Owego Apalachin School District (the "School District") and the County of Tioga (the "County") in lieu of general tax levies on the Project.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

1. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the Parties understand that, upon acquisition of a leasehold interest in the Project by the Agency and the filing of an Equalization and Assessment Form RP-412-a (the "Exemption Form") with respect to the Project, and for so long thereafter as the Agency shall have a leasehold interest in the Project, the Project shall be assessed by the various taxing entities having jurisdiction over the Project, including, without limitation, the Town, the School District and the County, as exempt on their respective assessment rolls prepared subsequent to the acquisition by the Agency of a leasehold interest in the Project and the filing of the Exemption Form. The Parties hereto understand that the Project shall not be entitled to such exempt status on any tax roll until the first tax year following the tax status date subsequent to the date upon which the Agency acquires a leasehold interest in the Project and an Exemption Form is filed, which the Parties anticipate to be the 2017-2018 School District tax bill and the 2018 Town and County tax bills. The Company shall be required to pay all taxes and assessments lawfully levied and/or assessed against the Project, including taxes and assessments levied for the current tax

year and all subsequent years until the Project is entitled to exempt status on the tax roll. The Agency will cooperate with the Company to obtain and preserve the tax exempt status of the Project, including the preparation and filing of the Exemption Form.

2. During the period the Agency has a leasehold interest in the Project, the Company agrees to pay to the Agency an amount equal to a percentage of the taxes that would otherwise be levied on said property by the Town, the County and the School District as if the same was subject to real property taxation as indicated on Exhibit "B" attached hereto. Commencing with the eleventh year following the commencement of the Company paying payments in lieu of taxes hereunder, and until such time as the Project is conveyed by the Agency to the Company, the Company shall pay the actual taxes of the Project that would have been imposed but for the Agency's tax exemption.

3. If, upon termination of the Agency's leasehold interest in the Project, the Company is required, pursuant to New York Real Property Tax Law Section 520 or any successor statute, to pay real property taxes for the unexpired portion of the fiscal year during which the Agency's leasehold interest terminates, and the Company has paid a payment in lieu of tax payment attributable to such unexpired portion of the fiscal year, then the Agency shall refund to the Company the pro-rata portion of the payment in lieu of tax payment attributable to the period during which the Project is subject to real property taxation. The purpose of this paragraph is to ensure that the Company shall not pay both payment in lieu of tax payments and real property taxes for the portion of the fiscal year after the Agency's leasehold interest in the Project terminates.

4. The Town, the County, and the School District shall separately bill the Agency for each in-lieu-of-tax payment due hereunder. For purposes of this Agreement, the term "Timely Payment" shall be defined as payment made within thirty (30) days after receipt by the Company of a written bill demanding payment.

5. Should the Company's tenant (the "Tenant") use the Project for other than a transportation hub or allied purposes such as defined in Article 18-A of the General Municipal Law, fail to retain substantially the number of jobs anticipated by the Project, or acquire title during the term of this Agreement to the leased Project from the Agency, this Agreement shall terminate immediately and the Project shall be returned to the non-exempt portion of the tax roll and be subject to taxation thereafter, including any portion of a tax year not otherwise covered by this Agreement.

6. If any default shall be made in the payment referred to in Paragraph 2, supra, the Company hereby agrees to pay the same to the extent above specified:

A. Without requiring any notice of non-payment or of default to the Company, the Agency, or to any other person after one (1) notice of non-payment or of default is received each year; and

B. Without proof of demand.

7. The Parties 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 an exemption from special assessments and special ad valorem levies such as, but without limitation, charges for metered water and sewer rent. The Company hereby agrees to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

8. Pursuant to Section 858 (15) of the General Municipal Law, the Agency agrees to give the Town, the School District and the County a copy of this Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy thereof be given to the appropriate officer or officers with respect to each taxing jurisdiction responsible for preparing the tax rolls for said jurisdiction, together with a request that said officer or officers submit to the Agency and the appropriate receiver of taxes periodic statements specifying the amount and due date or dates of the payments due to each hereunder. Such periodic statements to be submitted to the Agency at approximately the times that tax bills are mailed by such jurisdictions.

9. Reserved.

10. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment within ten (10) days of when required by this Agreement when due, the Company shall pay the same, together with a late-payment penalty equal to five (5%) percent of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall thereafter pay a late-payment penalty of one (1%) percent per month for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month plus interest thereon, to the extent permitted by law, at the greater of (a) one (1%) percent per month, or (b) the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

11. Pursuant to Section 874(6) of the General Municipal Law, if the Company defaults in performing any of its obligations, covenants or agreements under this Agreement and the Agency or any taxing jurisdiction employs attorneys or incurs other expenses for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such taxing jurisdiction, as the case may be, not only the amounts adjudicated due hereunder, together with the late-payment penalty and interest due thereon, but also reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred whether or not an action is commenced.

12. No remedy herein conferred upon or reserved to the Agency or any taxing jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now and hereafter existing at law or in equity or by statute. No delay or admission in exercising any such right or power accruing upon a default hereunder shall impair any such

right or power or be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

13. The Agency reserves the right to recapture benefits provided through the abatement of real property taxes in the event that the Company's performance is substantially different than anticipated as defined below:

- A. Relocation or closure of the Project and departure of the Tenant from Tioga County;
- B. Significant change in the use of the Project and/or business activities of the Tenant; and
- C. Significant employment reductions not reflective of the Tenant's normal business cycle and/or local and national economic conditions.

In cases deemed to meet one or more of the above conditions, the following recapture schedule will apply:

<u>Period</u>	<u>Accumulative Amount of Recapture</u>
Within 1 Year	100%
Within 2 Years	75%
Within 3 Years	50%
Within 4 Years	25%
After 4 Years	0%

The time period above is from the effective date of the PILOT Agreement. Imposition of this recapture policy is at the sole discretion of the Agency and will be considered on a case by case basis.

14. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE AGENCY: Tioga County Industrial Development Agency  
56 Main Street  
Owego, New York 13827  
Attn: Chairman

Copy to: Joseph B. Meagher, Esq.  
Thomas, Collison & Meagher  
1201 Monroe Street  
P.O. Box 329  
Endicott, New York 13761-0329

IF TO THE COMPANY: Nichols Cross Dock, LLC  
One Webster's Landing  
Syracuse, New York 13202  
Attn: Managing Member

[SIGNATURE PAGE TO FOLLOW]

Copy to:

Kevin M. Pole, Esq.  
Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202

15. The Town, the County, the School District, the Agency and the Company as used herein shall include their successors and assigns. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, any future owners of the Project and the Company's successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the date set forth hereinabove.

TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: 

Ralph E. Kelsey, Chairman

NICHOLS CROSS DOCK, LLC

By: NHW Syracuse, LLC

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

David C. Nutting  
Managing Member

Copy to:

Kevin M. Pole, Esq.  
Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202

15. The Town, the County, the School District, the Agency and the Company as used herein shall include their successors and assigns. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, any future owners of the Project and the Company's successors and assigns.

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TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Ralph E. Kelsey, Chairman

NICHOLS CROSS DOCK, LLC

By: NHW Syracuse, LLC

By:  \_\_\_\_\_  
David C. Nutting  
Managing Member

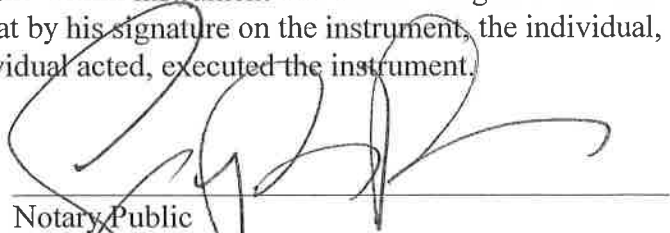


STATE OF NEW YORK:

: ss:

COUNTY OF BROOME:

On this 29<sup>th</sup> day of June, 2016, before me, the undersigned, personally appeared RALPH E. KELSEY 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.



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Notary Public

JOSEPH B. MEAGHER  
Notary Public, State of New York  
Broome County 02ME4974837  
Commission Expires Nov. 26, 20

STATE OF NEW YORK :

: ss.:

COUNTY OF ONONDAGA:

On this 30<sup>th</sup> day of June, 2016, before me, the undersigned, personally appeared DAVID C. NUTTING, 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.

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Notary Public

STATE OF NEW YORK:

: ss:

COUNTY OF BROOME:

On this 29<sup>th</sup> day of June, 2016, before me, the undersigned, personally appeared RALPH E. KELSEY 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.

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Notary Public

STATE OF NEW YORK :

: ss.:

COUNTY OF ONONDAGA:

On this <sup>29</sup>30<sup>th</sup> day of June, 2016, before me, the undersigned, personally appeared DAVID C. NUTTING, 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.



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Notary Public

KEVIN M. POLE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 02P06076749  
My Commission Expires July 1, 20 18

EXHIBIT "A"

DESCRIPTION OF LAND

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE TOWN OF NICHOLS, COUNTY OF TIOGA AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a monument standing at the southeasterly corner of lands of the United States of America (Now or Formerly), as described in a General Warranty Deed dated September 29, 2011 and filed in the Tioga County Clerk's Office in Instrument Number 194203 001, said monument standing therein distant S 34° 58' 33" E 760.11 feet as measured along the northeasterly boundary of the lands of the United States of America from a point standing at the intersection of the northeasterly boundary of the lands of the United States of America with the centerline of Stanton Hill Road (County Route 54); thence S 69° 21' 25" W 882.00 feet along the southeasterly boundary of the lands of the United States of America to a point standing on the southwesterly boundary of the lands of the United States of America; thence N 39° 36' 09" W 213.89 feet along the southwesterly boundary of the lands of the United States of America to an iron rod; thence S 54° 40' 55" W 405.78 feet to an iron rod standing on the northeasterly boundary of Tioga County Industrial Development Agency (Now or Formerly); thence S 35° 19' 05" E 990.17 feet along the northeasterly boundary of the Tioga County Industrial Development Agency and then along the northeasterly boundary of Frank Hess and Jeanne E. Hess (Now or Formerly) to an iron rod standing on the northwesterly boundary of Lounsberry Land Management, LLC (Now or Formerly); thence N 54° 46' 06" E 1271.67 feet along the northwesterly boundary of Lounsberry Land Management, LLC to an iron rod standing on the southerly extension of the northeasterly boundary of the lands of the United States of America; thence N 34° 58' 33" W 555.37 feet along the southerly extension of the northeasterly boundary of the lands of the United States of America to the point and place of beginning.

The above described parcel containing 22.584 acres (983,750.8 sq. ft.) of land, more or less.

TOGETHER WITH the rights of Nichols Cross Dock LLC under that certain Easement Agreement dated February 16, 2016 and recorded in the Tioga County Clerk's Office on February 18, 2016 in Instrument #2016-628.

EXHIBIT "B"

SEE ATTACHED PILOT SCHEDULE.

## **PAYMENT-IN-LIEU-OF-TAX Schedule**

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The following is the Standard PILOT offered to Nichols Cross Dock, LLC.

<b>Year</b>	<b>PILOT percentage</b>	<b>PILOT estimated payment amount</b>	<b>Estimated Real Property Tax*</b>
1	0%	\$0	\$291,011
2	10%	\$29,683	\$296,831
3	20%	\$60,553	\$302,767
4	30%	\$92,646	\$308,822
5	40%	\$125,999	\$314,998
6	50%	\$160,648	\$321,297
7	60%	\$196,633	\$327,722
8	70%	\$233,993	\$334,276
9	80%	\$272,768	\$340,961
10	90%	\$313,002	\$347,780
11	100%	\$354,735	\$354,735
<b>Total</b>		<b>\$1,840,660</b>	<b>\$3,541,200</b>