

## **AGREEMENT OF PURCHASE, SALE AND DEVELOPMENT**

THIS AGREEMENT OF PURCHASE, SALE AND DEVELOPMENT ("Agreement") is made as of the 11<sup>th</sup> day of May, 2017 ("Effective Date"), by and between Herkimer County Industrial Development Agency ("Seller"), whose business address and address for any notice hereunder is 420 E. German Street, Herkimer, New York 13350; and Tractor Supply Company, a Delaware corporation, or its assignee ("Purchaser"), whose business address and address for any notice hereunder is 5401 Virginia Way, Brentwood, Tennessee 37027, Attn: Clay Teter – Senior Vice President, Real Estate & Construction. Seller and Purchaser are sometimes referred to in this Agreement as a "party" and collectively as the "parties".

WHEREAS, Seller has agreed to sell and Purchaser has agreed to purchase the Property (as hereinafter defined) on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Property; Sale/Purchase; Lease/Leaseback; Development. (a) Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller approximately One Hundred Forty-Two (142) acres of real property as depicted on Exhibit "A" annexed hereto, located in the Town of Frankfort (the "Town"), Herkimer County (the "County"), New York ([portion of] S.B.L No. 112.3-3-1, 112.3-2-2, 112.3-3-3, 112.3-3-4, 112.3-3-5, 112.3-3-6, 112.3-3-7, 112.3-3-8, 112.3-3-9, 112.3-3-10, 112.3-3-11, 112.3-3-12, 112.3-3-13, 112.3-3-14, 112.3-3-15, 112.3-3-16, 112.3-3-17, 112.3-3-18, 112.3-3-24, 112.3-3-25, 112.3-3-26, 112.3-3-27, 112.3-3-28, 112.3-3-29, 112.3-3-30), together with (i) all improvements located thereon and all rights, easements, hereditaments and appurtenances thereto belonging, (ii) all right, title and interest of Seller in and to adjacent streets, alleys and rights-of-way and (iii) any and all water, oil, gas and minerals lying within or which are appurtenant to said land and any rights with respect thereto and any and all air rights, (collectively, the "Property") and the Purchaser further agrees to lease the Property to Seller pursuant to the terms and conditions of a lease by and between the Purchaser and the Seller (the "Lease") and the Seller further agrees to sublease the Property to the Purchaser pursuant to the terms of a sublease by and between the Seller and the Purchaser (the "Lease Back Agreement"). During the Inspection Period (as hereinafter defined), the Property shall be surveyed by Purchaser, the survey plat and legal description shall be initialed by Seller and Purchaser and Purchaser's surveyor. Upon approval of the survey plat and legal description by Seller and thereafter, the Property shall be known as that real property shown on the survey plat and legal description initialed by Seller and Purchaser which shall be substituted for Exhibit "A" attached hereto.

(b) The parties acknowledge and agree that the Lease Agreement is a necessary precondition for the Seller to grant to the Purchaser the financial assistance including, without limitation, the exemption from sales and use taxes and the payment in lieu of real estate taxes.

(c) The terms of the Lease, the Lease Back Agreement and other documents customarily used by the Seller in other straight lease transactions shall be negotiated between the parties in good faith during the Inspection Period (as hereinafter defined). The terms of the Lease

and the Lease Back Agreement must be acceptable to the Seller and the Purchaser. Although material terms and provisions of the Lease Back Agreement still need to be negotiated, it is expected that the Lease Back Agreement shall, among other things, require (i) the Purchaser to: (A) acquire, construct and equip an approximately 930,500 square foot distribution center, including offices and related parking for vehicles and truck trailers (the "Project Facility"), with potential expansion, at Purchaser's sole option, to approximately 1,230,500 square feet, on the Property; (B) begin the Project on or before September 30, 2017 and substantially complete the approximately 930,500 square foot of the Project Facility on or before September 30, 2018; and (C) employ not less than 350 Net New Full-time Permanent Employees at the Project Facility on or before June 30, 2024 and to maintain employment at that level through January 1, 2027, as more particularly set forth in that certain incentive proposal dated November 7, 2016, last revised February 28, 2017, from Empire State Development Corporation to the Purchaser, a copy of which is attached hereto as Exhibit B (the "ESD Letter") and (ii) the Seller to: (A) appoint the Purchaser and Purchaser's general contractor(s) as agents of the Seller to acquire, construct, equip and complete the Project Facility; (B) terminate the Lease and the Lease Back Agreement at any time upon the request of the Purchaser for the consideration of \$1.00 and (C) grant certain financial assistance to the Purchaser with respect to the acquisition, construction, equipping and completion of the Project Facility, including without limitation, exemption from sales and use taxes (at both the State and local level), exemption from real estate transfer taxes and exemption from real property taxes.

2. Earnest Money. Within two (2) Business Days following the full execution and delivery of this Agreement by the Parties, Purchaser shall deposit the sum of \$50,000 (the "Earnest Money") with Sneeringer Monahan Provost Redgrave Title Agency, Inc., 50 Chapel Street, Albany, New York 12207 (the "Escrow Agent") to be held in escrow by the Escrow Agent as provided in this Agreement. At Closing, the Escrow Agent shall pay Purchase Price out of the Earnest Money to the Seller and shall return the balance of the Earnest Money to the Purchaser. In the event that the Closing does not occur due to Purchaser's default, then the Escrow Agent shall pay the Earnest Money to the Seller as provided in Section 21 hereof. In the event that the Closing does not occur due to Seller's default, the Escrow Agent shall disburse the Earnest Money as directed by the Purchaser in writing.

3. Purchase Price. The purchase price ("Purchase Price") of the Property shall be an amount equal to Ten Dollars (\$10.00). The Purchase Price shall be paid by check or cash at the Closing.

4. Documents and Cooperation.

(a) To the extent in Seller's possession or control, Seller shall deliver to Purchaser, if such an action has not already taken place, within ten (10) days of the Effective Date, true and complete copies of the following documents, instruments and agreements (collectively, "Due Diligence Materials"):

(i) List of water, gas, sewer, and electric utility companies servicing the Property.

(ii) Copies of all real estate tax bills and assessments for the Property and copies of all documents and filings in connection with any property tax abatements or tax complaints or appeals for calendar years 2014, 2015, and 2016 and any rulings thereupon;

(iii) Copies of all engineering and architectural plans and specifications, drawings, site plans, utility plans, surveys, soil boring test results, other test results, physical reports, archeological and historical reports, wetlands delineations and reports, traffic studies, and other construction and zoning materials, including all documents relating to the NYS Environmental Quality Review for the Property;

(iv) Copies of all environmental reports and geological reports with respect to the Property;

(v) Copies of any insurance policies or certificates insuring the Property;

(vi) Copies of all correspondence with any city, county, state or federal board, commission or otherwise regarding any program or opportunity for financing, tax abatement program, bond issuance or public/private venture development of the Property or any part thereto; and

(vii) Such other documents concerning the Property in Seller's possession or control.

(b) To the extent Purchaser's intended ownership and development of the Property requires any Seller pre-closing applications for zoning changes, tax abatement programs, bond issuance or public/private development, Seller agrees to cooperate and execute, such documents, instruments and agreements as may be reasonably required by Purchaser for Purchaser's intended development of the Property.

##### 5. Inspection Period; Refund of Earnest Money.

(a) Purchaser shall have one hundred eighty (180) days from receipt of all of the Due Diligence Materials to complete its inspection of the Property ("Inspection Period"). Seller shall confirm the delivery of all Due Diligence Materials in writing by notice to the Purchaser which notice upon receipt by Purchaser shall commence the Due Diligence Period. Purchaser shall have the right, at its election, to extend the Inspection Period for two (2) consecutive periods of thirty (30) days each upon written notice given to Seller prior to expiration of the Inspection Period, as the same may have been extended.

(b) Should there be any title defects (as determined and objected to in accordance with Section 10 hereof) or environmental problems (as determined in accordance with Section 11 hereof) with the Property which Seller has, in writing, declined to remedy, Purchaser may terminate this Agreement.

(c) If for any reason Purchaser, in its sole and absolute discretion, is not satisfied with the Property or with the economic incentives being offered to it to undertake the Project (including without limitation the financial assistance being offered by the Seller or the

terms and conditions of either of the grants referred to in Section 13 hereof), or for no reason, Purchaser may, by delivering notice in accordance with Section 19 hereof to Seller on or before the expiration of the Inspection Period, terminate this Agreement. In the event that the Purchaser so terminates this Agreement, the Escrow Agent shall disburse \$100.00 from the proceeds of the Earnest Money to the Seller and shall disburse the balance of the Earnest Money to the Purchaser.

6. Costs and Prorations. (a) Purchaser shall pay for all costs of any environmental reports obtained pursuant to Section 11 hereof, the cost an abstract of title (if Purchaser obtains an such an abstract), the Survey obtained by Purchaser pursuant to Section 10 hereof and the costs of any Property Reports obtained by Purchaser pursuant to Section 13 hereof. Seller shall pay for preparation of the deed of transfer, all transfer taxes and recording costs applicable to the deed of transfer. Each party shall pay its own attorney's fees. Purchaser shall pay all expenses incident to any financing obtained for the purchase and development of the Property.

(b) At the Closing there shall be a proration of the current real estate taxes and special district charges levied against the Property. Seller represents and warrants to Purchaser that no real estate taxes, special district charges, fines or penalties will be unpaid as of Closing. Purchaser shall only be responsible for any special district charges accruing after the Closing. Seller shall be responsible for paying the payment in lieu real of estate taxes and special district charges, if any, for all periods prior to the Closing Date out of Seller's own funds. The Seller shall send copies of the PILOT Agreement and Real Property Tax Exemption Form to the Town, the Frankfort-Schuyler School District and the County.

7. Conditions Precedent To Closing. (a) Seller and Purchaser acknowledge that as conditions precedent to the Purchaser's obligations to purchase the Property the following shall occur on or before the Closing Date:

(i) Purchaser shall have received a current dated environmental assessment for the Property satisfactory to Purchaser in its sole discretion.

(ii) First American Title Insurance Company (the "Title Company") shall be irrevocably committed to issue upon Closing an ALTA owner's policy of title insurance (the "Title Policy"), insuring Purchaser as owner of fee simple title to the Property, subject only to the Permitted Exceptions (defined below), in the amount of up to \$40,000,000 or such lesser amount as Purchaser may select, and containing such endorsements as Purchaser shall have reasonably requested, and deleting the survey and other standard exceptions.

(iii) The Seller and the Purchaser shall have entered into a Payment-in-Lieu of Taxes Agreement (the "PILOT Agreement"); the PILOT Agreement shall provide, among other things, that (A) with regard to the approximately 930,500 square foot portion of the Project Facility (such portion being referred to as "Phase 1"), (i) Phase 1 shall be exempt from real property taxes until the tax status date that occurs three years after a certificate of occupancy has been issued for Phase 1, (ii) the real property taxes on Phase 1 shall be reduced by 75 percent in years 4 through and including 6 and (iii) the real property taxes on Phase 1 shall be reduced by 50 percent in years 7 through and including 10 and (B) if the Purchaser elects to build all or any portion of the approximately 300,000 square foot expansion to Phase 1 (such expansion being

referred to as "Phase 2"), (i) Phase 2 shall be exempt from real property taxes until a certificate of occupancy is issued for Phase 2 and (ii) the real property taxes on Phase 2 shall be reduced by 50 percent commencing on the taxable status date following the issuance of a certificate of occupancy for Phase 2 and continuing for 10 years thereafter. The terms of the PILOT Agreement shall be negotiated between the parties in good faith during the Inspection Period.

(iv) The Seller shall have executed and delivered to Purchaser an Amended Declaration of Protective Covenants (the "Amended Declaration") pertaining to the possible development on the smaller parcels between the Property and New York State Route 5S as shown on Exhibit A attached hereto in form and substance satisfactory to Purchaser. The terms of the Amended Declaration shall be negotiated between the parties in good faith during the Inspection Period.

(v) The Lease, the Lease Back Agreement, the Environmental Indemnification Agreement and the Recapture Agreement, which Recapture Agreement shall include among other things provisions for a minimum of 170 full time equivalent jobs at the Project by June 30, 2020, all in form and substance satisfactory to Purchaser in its sole discretion, shall have been duly approved, executed and delivered by the Seller.

(vi) The ESD letter shall be in full force and effect and shall not have been modified in any way.

(vii) All of Seller's Undertakings (as defined in Section 13 hereof) shall have been completed to Purchaser's satisfaction in its sole discretion.

(viii) The Seller shall have provided evidence satisfactory to Purchaser in its sole discretion that the Seller has complied with all applicable, laws, rules and regulations relating to the sale of the Property, including without limitation Section 2897-a of the New York State Public Authorities Law, as amended, and the Seller's policies and by-laws.

(ix) Each and every representation and warranty of Seller set forth in Section 12 shall be true and correct in all material respects as of the Closing Date, and Seller shall not be in default under any of its material obligations hereunder.

(x) The Purchaser shall have obtained all governmental permits and approvals, including without limitation, wetlands approvals (if any), zoning variances and zone changes, and permits from the New York State Department of Transportation (if any) (collectively, the "Governmental Approvals") necessary or desirable (in Purchaser's sole opinion) to acquire, construct, equip and operate the Project Facility as a distribution center in accordance with the Purchaser's intended use, all of which permits, approvals, variances and zone changes shall be in form and substance acceptable to Purchaser in its sole discretion.

(xi) The Seller shall have complied with the New York State Environmental Quality Review Act and the regulations issued pursuant thereto (collectively, "SEQRA").

(xii) The applicable statute of limitations shall have expired with respect to challenging the Governmental Approvals, and no action or proceeding shall have been brought with respect to any of such Governmental Approvals.

(xiii) The Seller and Purchaser shall have renegotiated and/or secured required easements or releases with the Town of Frankfort and Heidelberg's Bakery in form and substance satisfactory to the Town of Frankfort, Heidelberg's Bakery, the Seller and the Purchaser.

(xiv) The Haying Agreement (as hereinafter defined) shall have been terminated and Purchaser shall be satisfied that neither party thereto has any rights or obligations thereunder.

(xv) The agreements relating to the Billboards (as hereinafter defined) shall have been terminated and Purchaser shall be satisfied that neither party thereto has any rights or obligations thereunder.

(xvi) Improvements acceptable to the Purchaser in its sole discretion shall have been made by the County of Herkimer to Higby Road or the Purchaser shall have received evidence satisfactory to it in its sole discretion that the County of Herkimer is committed to making such improvements on a schedule acceptable to Purchaser.

(xvii) Improvements acceptable to the Purchaser in its sole discretion shall have been made by the New York State Department of Transportation ("NYSDOT") to the ramp system of the interchange of Route 5S with Cemetery Road/Higby Road or the Purchaser shall have received evidence satisfactory to it in its sole discretion that the NYSDOT is committed to making such improvements on a schedule acceptable to Purchaser.

(b) If Purchaser reasonably believes that any of the foregoing conditions have not been satisfied on the Closing Date, then Purchaser shall have the right to either (i) terminate this Agreement upon the delivery of notice to Seller, given not more than ten (10) days prior to or on the Closing Date; and the Seller shall have a period of sixty (60) days to effect a cure of the default (the "Closing Cure Period"), and thereafter, if the Seller fails to effect a cure of the default during the Cure Period, the Purchaser may terminate this Agreement or (ii) extend the Closing Date for such period of time as Purchaser reasonably determines is necessary for each and every one of the foregoing conditions to be satisfied; provided, however, that the Closing Date shall not be extended for more than one hundred eighty (180) days after the originally scheduled Closing Date. Notwithstanding anything in this Agreement to the contrary, the Purchaser may at any time during the Closing Cure Period, as the same may be extended, waive any of the foregoing conditions which have not been met and proceed to Closing. If Purchaser terminates this Agreement pursuant to its rights hereunder as aforesaid, then the Earnest Money shall be immediately refunded to Purchaser; and upon any such termination neither party shall have any further obligation hereunder.

8. Closing; Seller's Administrative Fee. (a) Subject to all conditions precedent set forth herein, the closing or settlement ("Closing") of the transaction contemplated hereby, unless terminated in accordance with this Agreement shall be held at the offices of the Seller's

attorneys, located at Felt & Evans, LLP, 4-6 North Park Row, Clinton New York 13323, or at such other place as the parties may agree, at 10 a.m. on or before the date that is thirty (30) days after expiration of the Inspection Period, as extended or further extended (or the next business day if such date is not a business day) (such date shall be referred to herein as the "Closing Date"). A party shall not be required to be present in person at such Closing if such party has delivered all of the items it is required to deliver at the Closing to the Title Company on or before the Closing Date; provided, that if such items have been delivered to the Title Company with escrow instructions, such instructions must be consistent with the provisions of this Agreement. The attorneys of each party are hereby authorized to execute and deliver escrow instructions on behalf of their respective clients with the same binding effect as if executed by their respective clients.

(b) At Closing, Seller shall convey to Purchaser the Property by warranty deed with full covenants in proper form for recording, which deed will include the covenant required by Subdivision 5 of Section 13 of the New York State Lien Law, subject to any matters approved or waived by Purchaser pursuant to Section 10 below (the "Permitted Exceptions").

(c) The Seller's administrative fee for the Project shall be \$600,000. The fee shall be paid in three installments as follows: 1/3<sup>rd</sup> upon the execution and delivery of this Agreement; 1/3<sup>rd</sup> at Closing; and the balance upon the issuance of a building permit for the Project.

9. Survey. Purchaser, at Purchaser's sole cost and expense, shall cause a survey (the "Survey") of the Property to be prepared by a surveyor acceptable to Purchaser. After the Survey shall have been completed and approved by Seller and Purchaser, the survey plat and legal description of the Property shall thereafter be the legal description of the Property for all purposes relating to this Agreement.

10. Title. On or before the date that is forty-five (45) days after the Effective Date, Purchaser shall procure, from the Title Company a title insurance commitment (the "Title Commitment") in an amount selected by Purchaser covering the Property issued by the Title Company and furnish a copy thereof to Seller. Purchaser shall have until the expiration of a period of twenty (20) days after receipt of the Title Commitment, legible copies of all exceptions listed thereon, and the Survey to object to any matters shown on the Title Commitment and legible copies of all exception listed therein or any objectionable matters shown on the Survey. If Purchaser gives Seller written notice of any title or Survey defects or objectionable matters, Seller shall use its best efforts to cure or satisfy such defects and objectionable matters (or commence to cure or satisfy such defects and objectionable matters as long as Seller reasonably believes such objections may be cured or satisfied prior to Closing) within fifteen (15) days after receipt of the notice. Seller shall notify Purchaser within ten (10) days of Seller's receipt of the notice from Purchaser as to whether Seller will undertake such cure or satisfaction. Notwithstanding the foregoing, Seller shall be required to satisfy and release at Closing any mortgage or other voluntary liens on the Property. If any defect of objectionable matters is not satisfied by Seller by the scheduled date of Closing, Purchaser shall have the right to terminate this Agreement or waive such objection and proceed to Close. Any exception to or defect in title or Survey which Purchaser has elected to waive Seller's cure or which is otherwise acceptable to Purchaser, shall be deemed "Permitted Exceptions" to title at Closing.

11. Environmental. Purchaser has obtained, at its cost, a Phase I Environmental Site Assessment dated February 7, 2017, prepared for the Purchaser by Schnabel Engineering for the Property (the "Phase I"). The Phase I has revealed the actual presence of wastes, the potential presence of Hazardous Materials and potential violations of Environmental Law (as hereinafter defined) on the Property that Seller shall remedy as provided in Section 13 hereof. Purchaser may procure, at its own cost a Phase II environmental site assessment ("Phase II") or a supplemental report to the Phase I to confirm that the required remediation work has been fully performed in accordance with all applicable laws and to Purchaser's satisfaction. If the Phase II suggests or requires further environmental remediation of the Property, the Purchaser may elect to terminate this Agreement or require Seller to remediate the Property as suggested or required by the Phase II; provided, however, Seller may, subject to the next sentence, terminate this Agreement if the cost of the remediation (exclusive of the cost of remediating the items identified in the Phase I) is reasonably estimated to cost more than \$25,000. If the estimated cost of the remediation (exclusive of the cost of remediating the items identified in the Phase I) exceeds \$25,000, Purchaser may, at its sole election, fund any actual cost in excess of \$25,000 and this Agreement may not be terminated by Seller and Seller shall remediate the Property as suggested or required in the Phase II. If neither Purchaser nor Seller terminates this Agreement, then, upon completion of the remediation of the Property by Seller, Seller shall provide to Purchaser proof, in form and substance satisfactory to Purchaser in its sole discretion, of completion of the remediation to the satisfaction of the Purchaser and the applicable regulatory entity or entities.

As used in this Agreement: (a) "Environmental Law" means any or all federal, State or local laws, rules, regulations, orders and ordinances relating to any environmental, health or safety matter or condition, Hazardous Materials (as defined), pollution or protection of the Environment (including, but not limited to, on-site or off-site contamination), occupational safety and health, and regulation of chemical substances or products, emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic, radioactive or Hazardous Materials or wastes into the Environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, pollutants, contaminants, chemicals, or industrial, toxic, radioactive or hazardous substances or wastes. (b) "Hazardous Materials" means and includes, but shall not be limited to, any (i) "hazardous substances," "pollutant" or "contaminant" (as defined in Sections 101(14), (33) of CERCLA, 42 U.S.C. '9601(14), (33) or the regulations designated pursuant to Section 102 of CERCLA, 42 U.S.C. '9602 and found at 40 C.F.R. Part 302), including any element, compound, mixture, solution, or substance which is or may be designated pursuant to Section 102 of CERCLA; (ii) all substances which are or may be designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act, 33 U.S.C. '1251, 1321(b)(2)(A), as amended ("FWPCA"); (iii) any hazardous waste having the characteristics which are identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. '6901, 6921, as amended ("RCRA") or having such characteristics which are or shall subsequently be considered under RCRA to constitute a hazardous waste; (iv) any substance containing petroleum, as that term is defined in Section 9001(8) of RCRA, 42 U.S.C. '991(8) or 40 C.F.R. Part 280; (v) any toxic pollutant which is or may be listed under Section 3077(a) of FWPCA, 33 U.S.C. '1317(a); (vi) any hazardous air pollutant which is or may be listed under Section 112 of the Clean Air Act, 42 U.S.C. '7401, 7412, as amended; (vii) any imminently hazardous chemical substance or mixture with respect to which action has been or may be taken

pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. "2601, 2606, as amended; (ix) waste oil and other petroleum products; (x) any asbestos or material which contains asbestos, (xi) any urea formaldehyde or material which contains urea formaldehyde which is a threat to the Environment; or (xii) any other toxic materials, contaminants, or hazardous substances or wastes pursuant to any Environmental Law.

12. Seller's Representations and Warranties. As of the date hereof and as of the Closing Date, Seller represents, warrants and covenants to Purchaser that:

(a) There are no contracts, agreements, undertakings or otherwise which would be binding on Purchaser or the Property from and after the Closing Date.

(b) The Seller has not received any notice, nor is the Seller aware, of any violation of any ordinance, regulation, law, statute, rule, insurance requirement, or restriction relating to the Property.

(c) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any applicable debtor relief laws or any other litigation contemplated by or pending or threatened against the Seller or the Property.

(d) No other signatures or approvals are required to make this Agreement fully enforceable by the Purchaser with respect to the Seller or the Property. This Agreement constitutes, and all agreements and documents contemplated hereby (when executed and delivered pursuant hereto) will constitute, the valid and legally binding obligations of Seller, enforceable in accordance with their respective terms.

(e) The Seller has and will convey to the Purchaser unencumbered fee title to the Property subject only to the Permitted Exceptions.

(f) There is no pending or threatened condemnation or similar proceeding or assessment affecting the Property or any part thereof, nor to the knowledge of the Seller is any such proceeding or assessment contemplated by any governmental authority.

(g) There is no existing lease or service, management, maintenance, repair, employment, construction or other contract or agreement currently affecting the Property, with the exception of the agreement, dated July 13, 2015, by and between the Seller and William Cahall, as amended (the "Haying Agreement") and the Lease Agreement dated July 26, 2011 by and between the Seller and Park Outdoor Advertising of New York, Inc. (the "Billboard Lease"). True and complete copies of the Haying Agreement and the Billboard Lease and all amendments to either of them have been provided by the Seller to the Purchaser. The Seller will not further amend or modify the Haying Agreement or the Billboard Lease without the prior written consent of the Purchaser which may be withheld in the Purchaser's sole discretion.

(h) To Seller's actual knowledge (i) the Property does not contain and is not affected by any Hazardous Materials, underground storage tanks, hydrocarbon contamination, radioactive materials, electromagnetic fields or other pollutants or contaminants and has not been used as a landfill or other waste disposal site, except as set forth in the Phase 1; (ii) there are no

federal or State wet-lands on the Property, except as shown on Exhibit E; (iii) there are no archeologically significant items on the Property, except as shown on Exhibit E.

Seller hereby indemnifies and holds harmless Purchaser from and against any and all loss, expense (including without limitation reasonable attorney fees), penalty fees, liability, cost, claim, demand, action, cause of action and suit arising out of or in any way related to any breach of any representation or warranty of Seller in this Agreement. Seller's obligation under this Section 12 shall terminate on the first anniversary of the Closing unless Purchaser notifies Seller in writing of an actual or potential claim for indemnification on or before such date.

13. Seller's Undertakings. (a) Seller shall, at no cost or expense to Purchaser: (1) assist the Purchaser in obtaining a Small Cities Grant in the amount of \$750,000 for the Project Facility in form and substance satisfactory to the Purchaser in its sole discretion; (2) assist the Purchaser in obtaining all Governmental Approvals necessary or desirable for the acquisition, construction, equipping and operation of the Project Facility as a distribution center on an expedited basis; (3) cause the Village of Frankfort Municipal Power and Light to enter into an agreement in form and substance satisfactory to the Purchaser in its sole discretion to extend service to the Project Facility meeting the specifications set forth on Exhibit C attached hereto; (4) pay the Town's building permit and inspection fees relating to the Project and associated fees and costs of the Town retained engineers and other experts involved in the governmental review of the Project (but excluding fees charged by attorneys engaged by the Town with respect to the Project); (5) obtain a 12-month lease for the Purchaser for office space (approximately 1,000 square feet including a conference room) at the Working Solutions office building located at 320 North Prospect Street, Herkimer, New York 13350, for recruitment efforts, which lease shall commence on a date to be agreed upon between the parties (Purchaser shall pay the actual cost of utilities and shall furnish the premises, if needed, at its own cost); (6) cause the road shown on Exhibit E attached hereto to be turned into a cul-de-sac generally as shown on Exhibit E and, if necessary, cause the remainder of such road and any easements in or associated with the road or any utilities to be abandoned; (7) pay the costs of a water storage tank and related items as more particularly described on Exhibit D attached hereto and made a part hereof (Purchaser shall design and construct the water tank, shall competitively bid the construction work and provide the Seller with the results of such bidding; (8) remove or relocate (at Purchaser's option) any existing utility lines, valves, meters, pedestals and appurtenances located on the Property; (9) relocate the existing access road to the existing municipal water tower to the hatched gravel based road generally as shown on the draft site plan attached hereto as Exhibit E; (10) remove and properly dispose of both the wastes located on the Property as identified in the Phase 1 and soils, if any, that have been contaminated by the wastes in accordance with all applicable laws and to Purchaser's satisfaction and provide a copy of the record of the disposal to the Purchaser; and (11) assist the Purchaser in obtaining a second CDBG in the amount of \$750,000 for the Project Facility in form and substance satisfactory to the Purchaser in its sole discretion. The items set forth in clauses (1) through and including (11) of the preceding sentence being collectively referred to as the "Seller's Undertakings". Without limiting the generality of the Seller's Undertaking set forth in clause (a) (8) of this Section 13, on or before July 1, 2017, the primary water main entering the Property from the east shall be intercepted at the east property line and split into two separate mains: one main running north along the northern property line to provide service to the existing Bakery and the four (4) remaining outparcels; the other running south along the southern property line providing supply to the existing water storage tank.

Additionally, Seller shall not undertake the Seller's Undertaking referred to in clause (a)(10) of this Section 13 without first providing Purchaser with reasonable advance written notice of the date on which Seller shall begin such undertaking and providing Purchaser, its agents, representatives and contractors the opportunity to observe such removal, testing and disposition. Further, with regard to the Seller's Undertaking referred to in clause (a)(9) of this Section 13, the parties acknowledge that the Town of Frankfort will need to be granted an easement of ingress and egress over the Property to and from Higby Road and the water tower; the terms and location of the easement shall be negotiated between the parties in good faith during the Inspection Period.

(b) Notwithstanding anything in this Agreement to the contrary, in the event that the Seller fails or refuses to timely perform any of Seller's Undertakings, Purchaser shall the right, but not the obligation, to undertake any or all of Seller's Undertakings and the documented costs and expenses so paid or incurred by Purchaser shall be a credit, dollar for dollar, against the amounts payable by the Purchaser pursuant to the PILOT Agreement.

(c) Seller's Undertakings and all of Seller's other obligations under this Agreement shall survive the Closing and the delivery of the deed to Purchaser.

14. Property Inspection. Purchaser and Purchaser's agents, employees and independent contractors shall have the right and privilege to enter upon the Property prior to Closing to survey and inspect the Property and to conduct such tests or studies as Purchaser shall determine reasonable and necessary for Purchaser's intended use of the Property, including but not limited to surveys, geotechnical reports, soil borings and phase I environmental site assessments ("Property Reports"). All Property Reports shall be at Purchaser's sole cost and expense. Purchaser hereby covenants and agrees to indemnify and hold harmless Seller from any and all loss, liability, cost, claim, demand, damage, action, cause of action and suit arising out of or in any manner related to the negligent exercise by Purchaser of Purchaser's rights under this Section (but not the existence of any condition discovered in the course of Purchaser's inspections and testing). In the event this Agreement is terminated as permitted herein by either Seller or Purchaser, Purchaser shall repair any damage done to the Property as a result of any such testing or inspection, reasonable wear and tear excepted. Purchaser's obligations under this Section 14 shall terminate and be of no further force and effect upon the later to occur of the first anniversary of the Closing Date or the first anniversary of the date on which this Agreement is terminated.

15. Eminent Domain. If, after the Effective Date and prior to Closing, Seller shall receive notice of the commencement or threatened commencement of eminent domain or other like proceedings against the Property or any portion thereof, Seller shall immediately notify Purchaser in writing, and Purchaser shall elect within thirty (30) days from and after such notice, by written notice to Seller, one of the following: (a) to terminate this Agreement, in which event all Earnest Money shall be refunded to Purchaser and this Agreement shall be null and void and of no further force and effect except for obligations which expressly survive termination or (b) to close the purchase of the Property contemplated hereby in accordance with its terms but subject to such proceedings, in which event the Purchase Price shall remain the same and Seller shall transfer and assign to Purchaser at Closing all condemnation proceeds and rights to additional condemnation proceeds, if any. If Purchaser elects to purchase after receipt of such a notice, all

actions taken by Seller with regard to such eminent domain proceedings, including but not limited to, negotiations, litigation, settlement, appraisals and appeals, shall be subject to the approval of Purchaser, which approval shall not be unreasonably withheld. If Purchaser does not make such election within the aforesaid time period, Purchaser shall be deemed to have elected to close the transactions contemplated hereby in accordance with clause (b) above.

16. Property Damage. (a) If after the Effective Date and prior to Closing, the Property or any infrastructure improvements benefitting the Property shall suffer significant damage as the result of any casualty, Seller shall immediately notify Purchaser in writing. In the event said casualty results in damage to the Property in the amount of \$10,000 or greater, Purchaser shall have the right to elect within thirty (30) days from and after such notice, by written notice, one of the following: (a) to terminate this Agreement, in which event all Earnest Money shall be refunded to Purchaser and this Agreement shall be null and void and of no further force and effect except for obligations which expressly survive termination; or (b) to close the purchase of the Property contemplated hereby in accordance with the terms of this Agreement but subject to such damage, in which event the Purchase Price shall remain the same and Seller shall transfer and assign to Purchaser at Closing all insurance proceeds received or to be received as a result of such damage and Purchaser shall receive a credit against the Purchase Price for any insurance deductible or uninsured loss. If Purchaser does not make such election within the aforesaid time period, Purchaser shall be deemed to have elected to close the transactions contemplated hereby in accordance with clause (b) above.

(b) In the event less than \$10,000 of damage to the Property exists, this Agreement shall remain in full force and effect; provided, however, at Closing Seller shall transfer and assign to Purchaser all insurance proceeds received or to be received as a result of such damage, and Purchaser shall receive a credit against the Purchase Price for any insurance deductible or uninsured loss.

17. Condition of Property. Subsequent to the Effective Date and prior to Closing, Seller shall maintain the Property in accordance with its past practices.

18. Operations. From and after the Effective Date, Seller shall not enter into any lease or service, management, maintenance, repair, employment, construction or other contract or agreement or grant any easement or otherwise encumber the property with any restrictions affecting the Property without the prior written consent of Purchaser, which consent may be withheld in the Purchaser's sole discretion.

19. Notice. Each notice required or permitted to be given hereunder shall be sent by hand delivery, or by certified mail with return receipt requested and adequate postage prepaid or by a nationally recognized overnight delivery service, addressed to the appropriate party at the address set forth in the preamble of this Agreement. Each such notice delivered by hand shall be deemed effective upon such delivery; each notice sent by a nationally recognized over night carrier shall be deemed effective upon deposit with such nationally recognized carriers; and each notice sent by the US mail, shall be deemed three (3) days after mailing. Rejection or other refusal by the addressee to accept shall be deemed to be receipt of the notice sent. A copy of any notice required or permitted herein shall be sent to Seller's representative at Felt and Evans, LLP, Atten: Anthony G. Hallak, 4-6 North Park Row, Clinton, New York 13323 and Purchaser's

representative at Tractor Supply Company, Office of the General Counsel, 5401 Virginia Way Brentwood, TN 37027. Any party shall have the right from time to time to change the address to which notices shall be sent to another address in the same manner as provided above. Notices may be given by an attorney purporting to represent a party with the same force and effect as if given by the party.

20. Purchaser Default. Unless earlier terminated by Seller or Purchaser as permitted herein, if the transaction contemplated by this Agreement fails to close by reason of Purchaser's unexcused failure to perform its obligations under this Agreement and after written notice from Seller to Purchaser specifying the details of such failure and Purchaser fails within thirty (30) days after such notice to cure such failure, then the Earnest Money shall be forfeited to Seller as liquidated damages for Purchaser's default, it being agreed that the receipt thereof shall be Seller's sole and exclusive remedy for any such default (any right of Seller to specific performance or other equitable remedy being expressly waived), and Purchaser shall have no further obligation or liability to Seller hereunder by reason thereof.

21. Seller Default. In the event Seller fails or refuses to convey the Property in accordance with the terms hereof or otherwise fails to perform its obligations hereunder, the Purchaser shall have the right, at Purchaser's option, to (a) deliver a notice of the Purchaser's intent to terminate this Agreement by the delivery of notice thereof to Seller, and the Seller shall have a period of thirty (30) days to effect a cure of such default (the "Non-Closing Default Cure Period"), and if the Seller shall fail to effect a cure of the default during the Non-Closing Default Cure Period, the Purchaser may thereafter terminate this Agreement and following such event the Purchaser shall be entitled to receive a refund of the Earnest Money and recover from Seller all of Purchaser's documented and reasonable costs and expenses paid or incurred by Purchaser as a result thereof, or (b) exercise any other right or remedy available under applicable law as a result of such default including, without limitation, the right to specifically enforce Seller's obligations under this Agreement.

22. Time of Essence. Time is of the essence of this Agreement.

23. Closing Documents. At or prior to Closing, each party shall deliver to the other party appropriate evidence to establish the authority of such party to enter into and close the transaction contemplated hereby. Seller also shall execute and deliver to Purchaser at Closing (a) a warranty deed with full covenants and related documents necessary to permit the deed to be recorded in the Herkimer County Clerk's office reasonably acceptable to Purchaser and the Title Company; (b) a certificate with respect to Section 1445 of the Internal Revenue Code stating, among other things, that Seller is not a foreign corporation as defined in the Internal Revenue Code and I.R.S. Regulations; (c) certified resolutions of Seller's board of directors authorizing the transactions contemplated herein, and such other certifications and confirmations as may be reasonably required by the Title Company to issue an ALTA owner's policy of title insurance to Purchaser and omit the standard exceptions contained in an ALTA owner's policy of title insurance; (d) a closing statement reasonably acceptable to Purchaser; and (e) such other documents reasonably necessary or appropriate to complete and evidence the transaction contemplated hereby, including without limitation a standard title company owner's affidavit.

24. Entire Agreement. This Agreement constitutes the entire agreement of the parties and may not be amended except by written instrument executed by Purchaser and Seller.

25. Headings. The section headings herein are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provision hereof.

26. Possession. Seller shall deliver sole and actual possession of the Property at Closing free of all leases, occupancy agreements or similar agreements and free of all tenants and occupants, other than the Underlying Lease and the Lease Agreement.

27. Applicable Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of New York, without regard to its conflicts of laws principles.

28. No Personal Recourse.

(a) The obligations and agreements of Seller contained herein and in any other instrument or document executed in connection herewith, and any other instrument or document supplemental or hereto, shall be deemed the obligations and agreements of Seller, and not of any member, officer, agent or employee of Seller in his individual capacity, and the members, officers, agents and employees of Seller shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of Seller contained herein shall not constitute or give rise to an obligation of the State of New York or Herkimer County, New York, and neither the State of New York nor Herkimer County, New York shall be liable hereon.

(c) No order or decree of specific performance with respect to any of the obligations of Seller hereunder shall be sought or enforced against Seller unless the party seeking such order or decree shall first have requested Seller in writing to take the action sought in such order or decree of specific performance and Seller shall have failed or refused to comply with such request within ten (10) days after receipt of such request.

29. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. This Agreement may not be assigned by Purchaser without the consent of Seller; provided, however, that no such consent shall be required for an assignment of this Agreement by Purchaser to a subsidiary or affiliate of Purchaser that assumes Purchaser's obligations under this Agreement and specifically agrees to use the Property as a distribution center, including offices. This Agreement may not be assigned by Seller without the Purchaser's prior written consent, which consent shall not be unreasonably withheld. Upon an assignment to an assignee assuming all of Purchaser's obligations hereunder, Purchaser shall assign the Earnest Money to its permitted assignee and this Agreement shall continue to govern the rights of the parties hereto with respect to the Earnest Money.

30. Attorney Fees and Costs. In the event either Seller or Purchaser are required to enforce this Agreement against the other through litigation or threat of litigation, the party prevailing in such enforcement shall be entitled to reasonable attorney fees and out of pocket costs from the party not prevailing in addition to such other and further award a court may grant.

31. Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any work or act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, floods, earthquakes, acts of God or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Agreement and if such party shall give written notice, including a reasonable description of such force majeure, to the other party within a reasonable period of time after the occurrence of the event or cause relied upon, the period for the performance of any such acts shall be extended for a period equivalent to the period of such delay. It is agreed that the settlement of strikes, lockouts, and other labor troubles shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other labor trouble by acceding to the demands of the opposing party or parties.

32. Counterparts: Facsimile Signatures. This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument. Facsimile, email and PDF versions of a signed document, including this Agreement, shall constitute an original.

33. Action on Next Business Day. In the event that the day on which or before which or after which an act is required or authorized to be performed hereunder falls on a Saturday, Sunday or public holiday, the act may be done on the next business day with the same force and effect as of done on such Saturday, Sunday or public holiday.

34. Seller's Obligations Subject to Compliance with SEQRA. The parties acknowledge that the Seller's obligations under this Agreement are contingent upon the Seller's compliance with SEQRA.

(signatures of parties appear on next pages)

(signature pages for Agreement of Purchase, Sale and Development)  
(dated May 16, 2017)

IN WITNESS WHEREOF, this Agreement of Purchase, Sale and Development has been duly executed on the day and year first above written.

**PURCHASER:**

Tractor Supply Company

\_\_\_\_\_  
Official's Printed Name

\_\_\_\_\_  
Official's Title

\_\_\_\_\_  
Official's Signature

**SELLER:**

Herkimer County Industrial Development  
Agency

Stephen R. Smith

\_\_\_\_\_  
Official's Printed Name

Executive Director

\_\_\_\_\_  
Official's Title

[Signature]

\_\_\_\_\_  
Official's Signature

(signature pages for Agreement of Purchase, Sale and Development)  
(dated May 16, 2017)

IN WITNESS WHEREOF, this Agreement of Purchase, Sale and Development has been  
duly executed on the day and year first above written.

**PURCHASER:**

Tractor Supply Company

Clay Teter

Official's Printed Name

Sr. Vice Pres. Real Estate & Const

Official's Title

[Signature]  
Official's Signature

**SELLER:**

Herkimer County Industrial Development  
Agency

\_\_\_\_\_  
Official's Printed Name

\_\_\_\_\_  
Official's Title

\_\_\_\_\_  
Official's Signature

**Reviewed and Approved by**  
**TSC Legal Department**

By J. West Date 5/16/17

## **EXHIBIT A**

### **Property Description**

## RFI PROCESS DOCUMENT

### SUGGESTED INDUSTRIAL SITE FINALISTS (CONCEPT LAYOUT)

Frankfort, NY



\*NOTE: The visuals, layouts and sizes shown in this Plan are conceptual; and are based on generalized data. The features depicted are purely an artistic perception; and not suitable for construction.

J. M. MULLIS, INC.

**Confidential & Proprietary**  
**No. 4101 - Project 'Boxer'**



**EXHIBIT B**

ESD Letter

## **INCENTIVE PROPOSAL**

### **Tractor Supply Company**

November 7, 2016  
Revised December 30, 2016  
Revised February 28, 2017

This **Incentive Proposal** outlines the general terms and conditions of the incentive package being offered by Empire State Development ("ESD")\* to Tractor Supply Company to assist with its job creation project in Frankfort, Herkimer County. This offer is subject to the completion of any applicable environmental and historic review requirements, applicable statutes, and compliance with program requirements.

\*The New York State Department of Economic Development and the New York State Urban Development Corporation, d/b/a Empire State Development, are collectively referred to as ESD.

#### **I. GENERAL INFORMATION**

- |   |   |
|---|---|
| <b>a) Recipient Name:</b>   | Tractor Supply Company (the "Recipient")  |
| <b>b) Contact Information:</b>  | Colin Yankee<br>Sr. Vice President Distribution & Logistics<br>5401 Virginia Way<br>Brentwood, TN 37027<br>Phone: (615) 440-4000<br>Email: <a href="mailto:cyankee@tractorsupply.com">cyankee@tractorsupply.com</a> |
| <b>c) Project Location(s):</b>  | 2576 Higby Road<br>Frankfort 13340  |
| <b>d) Type of Business:</b>   | Warehouse/Distribution  |
| <b>e) Number of Full-time, Permanent Employees at all NYS Locations as of Today's Date:</b>                                     | 713   |
| <b>f) Number of Full-time, Permanent Employees at Project Location(s) as of Today's Date:</b>                                   | 0   |
| <b>g) Number of Part-time or Seasonal Employees, or Full-time Contract Employees at Project Location(s) as of Today's Date:</b> | 0   |

## II. PROJECT SPECIFICS

- a) **Project Description:** Tractor Supply Company will establish a distribution center in the Herkimer County in order to better serve their increasing market presence in the northeast.
- b) **Estimated Schedule:** Begin: September 2017  
Complete: September 2018
- c) **Company Employment Commitment:** Employ 350 Net New Full-time Permanent Employees at the Project Location by June 30, 2024, and retain 713 existing Full-time Permanent Employees. New positions at the project location may not be filled by transferring employees from other New York State locations.
- d) **Time Period Required for Employment to be maintained at Project Location(s):** Through January 1, 2027

**New York State Job Bank:** ESD encourages the Recipient to post, to the maximum extent feasible, job openings associated with this project through the New York State Job Bank, where New Yorkers can view the region in which they live, see which industries are growing and find out what jobs are available in various economic sectors. Job listing options include:

- Self-posting – No cost service allows businesses to manage their job orders throughout the recruitment process. <http://newyork.us.jobs>
- Indexing – No cost service to allow jobs posted on your company website to upload daily to the New York State Job Bank. <http://us.jobs/indexingrequest.asp>

**Definition of Net New Full-time Permanent Employee:** (i) a full-time, permanent, private-sector employee on the Recipient's payroll, who has worked at the Project Location for a minimum of 35 hours per week for more than six months of a year and who is entitled to receive the usual and customary fringe benefits extended by Recipient to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on Recipient's payroll, who have worked at the Project Location for a combined minimum of 35 hours per week for more than six months of a year and who are entitled to receive the usual and customary fringe benefits extended by Recipient to other employees with comparable rank and duties.

Jobs transferred from employment with another business located in the State including from a related person in this State are not net new jobs for purposes of the employment commitment.

### **III. PROJECT BUDGET**

You have informed us that the following costs will be incurred to complete this project. It is understood that these costs are estimates, based on the best information available to date. If these figures change, please inform your ESD contact as soon as possible.

Real Estate Acquisition:	\$2,880,000
Construction / Renovation	\$43,000,000
Machinery and Equipment Acquisition:	\$30,000,000
Employee Training Costs:	\$1,000,000
Design & Planning:	\$1,000,000
Furniture, Fixtures & Equipment:	\$600,000
<b>Total Estimated Cost:</b>	<b>\$78,480,000</b>

### **IV. ESD INCENTIVES**

#### **Excelsior Jobs Program – Job Growth Track– Project #AB328**

**a) Amount:** Up to \$3,000,000

**b) Requirements:** Tractor Supply Company may qualify for refundable tax credits under the Excelsior Jobs Program, as indicated in the attached "Preliminary Schedule of Benefits". The "Preliminary Schedule of Benefits" means the maximum aggregate amount of each component of the Excelsior tax credit that Tractor Supply Company may claim in each of its years of eligibility, beginning in tax year 2020, provided it meets the established commitments indicated in the Schedule.

The components of the Excelsior Jobs Program Credits will be based on the actual wages of the net new jobs created at the project location. Please note, the jobs component of the Excelsior Jobs Program Credits indicated in the Schedule is based upon the creation of 170 net new jobs in NYS at the project location by June 30, 2020, increasing to 245 net new jobs in NYS at the project location by June 30, 2021, increasing to 308 net new jobs in NYS at the project location by June 30, 2022, increasing to 326 net new jobs in NYS at the project location by June 30, 2023, increasing to 350 net new jobs in NYS at the project location by June 30, 2024 and sustained at that level through January 1, 2027.

If Tractor Supply Company accepts this offer, it **must complete an online consolidated funding application (CFA) before it can be officially admitted into the Excelsior Jobs Program.** To access the CFA, and any related materials, please visit <http://nyworks.ny.gov>. Once completed, Tractor Supply Company will be admitted into the Excelsior Jobs Program and issued a Certificate of Eligibility. Expenses (i.e. wages for new jobs) incurred on or after the date Tractor Supply Company accepts this offer may be

included in the calculation of the Excelsior Jobs Program credit. Expenses incurred prior to the date Tractor Supply Company accepts this offer are not eligible to be included in the calculation of the credit.

The Certificate of Eligibility does not by itself guarantee eligibility to claim the tax credit. To claim the tax credit, Tractor Supply Company must submit evidence that it satisfies the applicable job and other eligibility requirements (see 5 NYCRR §191.2 and §192.1), including, where applicable, any necessary environmental and/or historic review requirements. After reviewing the evidence and finding it sufficient, a Certificate of Tax Credit shall be issued indicating the appropriate amount of the credit that Tractor Supply Company may claim for tax year 2020 based on actual job creation. In order to receive a Certificate of Tax Credit for subsequent tax years, Tractor Supply Company must submit a performance report for each year demonstrating that Tractor Supply Company continues to satisfy the eligibility criteria specified in 5 NYCRR §191.2. If Tractor Supply Company meets the eligibility criteria, Tractor Supply Company can receive tax credits based on the interim job milestones indicated in this incentive proposal up to the limits established in the "Preliminary Schedule of Benefits".

#### **V. OTHER (NON-ESD) ASSISTANCE**

##### **Community Development Block Grant - NYS Office of Community Renewal (OCR)    \$750,000**

Herkimer County is eligible to apply on behalf of "Project Boxer" for up to \$750,000 in New York State Community Development Block Grant (NYS CDBG) funds to be used for project costs related to business growth and expansion. This offer is subject to the availability of funds; compliance with program requirements and regulations; the creation of a minimum of 50 full-time equivalent jobs within two (2) years of the award, of which, a minimum of 51% must be made available to persons from low-to moderate-income families; successful completion of the application and environmental review process prior to project commencement; compliance with the Davis-Bacon Act if funds will be used for construction; and approval by the Housing Trust Fund Board of Directors. Any CDBG Program Income on-hand must be expended prior to award. If awarded, the Applicant may, upon their discretion, provide the CDBG award to "Project Boxer" in the form of a grant or loan. Up to \$16,000 of the award may be used by the Applicant for grant administration and program delivery.

##### **Employee Training Incentive Program (ETIP):**

The Employee Training Incentive Program provides refundable tax credits to New York State employers for procuring skills training that upgrades, retrain or improves the productivity of their employees. Eligible applicants may be awarded a credit of 50% of eligible training costs, up to \$10,000 per employee receiving eligible training. The business entity must create at least 10 net new jobs or make a capital investment of at least \$1 million in connection with the training, and demonstrate that it is operating predominantly in a strategic industry. A business entity must submit an initial application via Consolidated Funding Application (CFA) for approval prior to procuring eligible training. For more information visit <http://esd.ny.gov/BusinessPrograms/ETIP.html>

**Local Incentives:**

At the local level, the Herkimer County Industrial Development Agency (IDA) has identified incentives to encourage Tractor Supply Company to locate at 2576 Higby Road, Frankfort, NY 13340. These local incentives will be detailed in a separate letter by the Herkimer County IDA.

**New York State Department of Labor offers the following services and incentive for businesses:**

- Job postings on the New York State Job Bank/JobsExpress ([www.labor.ny.gov](http://www.labor.ny.gov)).
- Match and referral of qualified jobseekers.
- Access to our Talent Bank and resumes of qualified Individuals to access and review.
- Recruitment Services such as job fairs and customized recruitments.
- HR Consultation Services – technical assistance with human resources related issues.
- Issues and Hiring and Training Incentives, if appropriate and available.
  - To discuss program eligibility, contact Maria Abraham at (315) 793-2271 or [maria.abraham@labor.ny.gov](mailto:maria.abraham@labor.ny.gov).

**New York State Energy Research and Development Authority:**

Tractor Supply Company may be eligible for financial and technical assistance through NYSERDA's Commercial New Construction program. To discuss eligibility for this program, contact Steve Finkle at (518) 862-1090 ext. 3505 or [stephen.finkle@nyserda.ny.gov](mailto:stephen.finkle@nyserda.ny.gov).

**ReCharge New York:**

ReCharge NY is a low-cost power program available to businesses and not-for-profit organizations statewide for business attraction, retention and expansion purposes (<http://www.nypa.gov/rechargeny/Default.htm>). The RNY program is administered through a competitive application process that is part of New York's Consolidated Funding Application online system. Successful applicants are awarded lower-cost RNY power allocations, which are comprised of 50% hydropower and 50% market power supply. RNY allocations receive the benefit of discounted local utility delivery service. Applications are accepted and evaluated on an on-going basis, providing there is power available to allocate to businesses and not-for-profit organizations for retention, business attraction or expansion purposes.

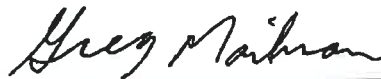
**VI. SUMMARY**

<b>Total ESD Assistance:</b>	<b>\$3,000,000</b>
<b>Total Non-ESD Assistance:</b>	<b>\$750,000</b>
 <b>TOTAL – ALL INCENTIVES</b>	 <b>\$3,750,000</b>

**Expiration of Proposed Offer:**

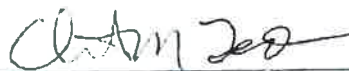
This proposal expires 60 (sixty) days from the date of this offer unless endorsed below and received by ESD prior to the expiration date.

APPROVED BY:



Date: 2/28/17

Greg Mallman, Deputy Director  
Economic Incentives  
Albany, NY 12245  
Phone: (518) 292-5743



Date: 3/2/17

Christian Leo, President  
Office of Community Renewal  
New York State Homes & Community Renewal  
38-40 State St., Hampton Plaza  
Albany, NY 12207  
Phone: (518) 474-2057

ACCEPTED BY:



Date: 3.7.2017

Tractor Supply Company  
Colin Yankee  
Sr. Vice President Distribution & Logistics  
Brentwood, TN 37027  
Phone: (615) 440-4000

**Reviewed and Approved by  
TSC Legal Department**

By A. J. R. Date 3/6/17

\* Please see the following Affirmation page, which must be completed, signed and notarized for this Incentive Proposal to be considered accepted.

Tractor Supply Company  
Incentive Proposal

Page 7  
February 28, 2017

AFFIRMATION

STATE OF ~~NEW YORK~~ Tennessee )  
COUNTY OF ~~Williamson~~ ) ss.

The undersigned, being duly sworn, deposes and says:

1. Benjamin F. Parnish, Jr. am the Executive Vice President/Counsel of Tractor Supply Company the "Recipient", a corporation that is duly organized and validly existing under the laws of Delaware, and is authorized to do business and is in good standing in the State of New York.
2. I have read and know the contents of the Incentive Proposal prepared by the New York State Urban Development Corporation (d/b/a Empire State Development ("ESD")) dated the 7th day of November, 2016 and revised December 30, 2016 and February 28, 2017.
3. I have reviewed all of the information provided by the Recipient to ESD to assist in ESD's preparation of the Incentive Proposal, including information provided on Recipient's behalf by third party consultants.
4. I know all of the information provided by Recipient or its third-party consultants to be true and complete in all material respects. To the extent such information involves projections about future performance; these projections have been prepared in good faith, based upon reasonable assumptions.
5. Recipient did not make a decision to undertake the project described in the Incentive Proposal prior to February 28, 2016.
6. Recipient hereby accepts the terms of the Incentive Proposal.
7. Receipt of the Incentive Proposal was a material factor in Recipient's decision to undertake the above referenced project.
8. Recipient agrees to allow the Department of Taxation and Finance to share Recipient tax information with Empire State Development.
9. Recipient authorizes the Commissioner of Labor to disclose, to employees of both the New York State Department of Labor, the New York State Department of Economic Development, and the Urban Development Corporation, (d/b/a Empire State Development), all records filed by the Recipient in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refilling surveys. The use of information and records released pursuant to this authorization shall be limited to government purposes concerning the Recipient and assistance described in this incentive proposal to monitor compliance with worker protection laws and with the conditions and requirements associated with the financial assistance being requested; and the use of information and records released pursuant to this authorization shall be limited to government purposes concerning the certification of this company for Excelsior Jobs Program benefits under Article 17 of the Economic Development Law, monitoring compliance with Excelsior Jobs Program requirements, including compliance with worker protection laws, and reviewing the performance of the Excelsior Jobs Program.
10. Recipient certifies, under penalty of perjury, that to the best of Recipient's knowledge, Recipient is in substantial compliance with all environmental, worker protection, and local, state and federal tax laws.
11. Recipient agrees to allow the Department of Labor to contact Recipient's Human Resources department (or other relevant department) for the purpose of listing open jobs on the New York State Job Bank.

  
Signature

Subscribed and sworn to before me  
this 1st day of March, 2017

  
Notary Public



Reviewed and Approved by  
TSC Legal Department

By S. West Date 3/3/17

## **ENVIRONMENTAL AND HISTORIC REVIEW REQUIREMENTS**

Approval of funding by ESD, a public benefit corporation of the State of New York, requires compliance with environmental and historic review requirements under New York State regulations. The information below provides a brief guide to the review processes. If you have any questions about the required documentation or how to proceed in these areas, please contact ESD's Planning & Environmental Review Office at (212) 803-3252 or 3253. **Physical work on an ESD-funded project may not be started prior to the completion of any necessary environmental, historic and/or smart growth review.**

### **Environmental Review under State Environmental Quality Review Act (SEQRA)(6 NYCRR Part 617)**

- Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of a site or structure require review under SEQRA. Certain listed activities are not subject to any review because they involve actions with little, if any, environmental impact, referred to as "Type II" Actions. Conversely, SEQRA also includes a list of actions that are assumed to be more apt to result in impacts, referred to as "Type I" Actions, which are subject to formal review. If a proposed action is neither listed on the Type II or Type I lists, it is referred to as an "Unlisted Action" and is also subject to review under SEQRA.
- The applicant must demonstrate compliance with SEQRA if the project does not meet the definition of a Type II Action. If SEQRA review is required for the project, the review must be completed by a lead agency such as a municipal planning or zoning board, common council, county Industrial development agency, or state regulatory or funding agencies.
- Please note that if the project consists of more than one phase, a SEQRA review must be completed for all known or reasonably foreseeable phases of the project, not only the phase that is the subject of ESD funding. An environmental review of only a portion of a project constitutes improper segmentation under SEQRA and is not accepted except in special circumstances.
- Required SEQRA documentation:

If the project has already been determined to have no significant effect on the environment, the following two documents must be provided:

1. Environmental Assessment Form (EAF) –Short EAF or Full EAF, as appropriate for the project. All parts must be fully completed and approved by the lead agency that reviewed the project; and
2. Negative Declaration

(Note: If the project was approved by a lead agency on or after October 7, 2013, the new EAFs must be used and a separate Negative Declaration form is not required.)

If a Positive Declaration was made for the project, indicating that the project may have a significant adverse impact on the environment, the following documents must be provided:

1. Draft and Final Environmental Impact Statement (DEIS and FEIS) – digital copy is preferable; and
2. Lead Agency Statement of Findings

- If your SEQRA review has not yet been completed, please provide in an addendum to this application information about the status of the review and designated lead agency for the review, and submit "Part 1" of a Short EAF or Full EAF as appropriate for your project. Subsequent EAF Parts are completed by the lead agency based upon the information you include in Part 1.

For further information about SEQRA, please visit the New York State Department of Environmental Conservation's web site at <http://www.dec.ny.gov>.

#### **Historic Review**

- Projects involving a building, structure, district, or site, including underground or underwater sites, listed on or eligible for listing on the State or National Register of Historic Places (S/NRHP) must be evaluated by the State Historic Preservation Office (SHPO) of the New York State Office of Parks, Recreation and Historic Preservation in accordance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law.
- Buildings that are more than 50 years old and/or those that are historically, architecturally, or culturally significant, as well as project locations wholly or partially within an identified archeologically-sensitive area or a land area that typically contains archeological resources, may meet the eligibility criteria for S/NRHP listing.
- The applicant must demonstrate compliance with Section 14.09. In order to initiate the SHPO consultation process, the applicant must submit the project for review by SHPO through the Cultural Resources Information System (CRIS) found at <https://cris.parks.ny.gov/Default.aspx>. Upon completion of the SHPO consultation process, SHPO will determine whether or not the project will have an adverse impact on historical or cultural resources and will provide a letter of comment on the project.
- Required SHPO documentation:
  - Letter of No Adverse Impact determination or
  - Letter of Resolution – required if SHPO determines that the project will have an Adverse Impact on historic or cultural resources.

## **EXHIBIT C**

### **Electrical Specifications**

1. 277/480 Volt, 3 Phase, 4W WYE
2. Estimated Connected Load 3500 KW
3. Estimated Demand 2700 KW
4. Estimated Peak Monthly Usage 1,882,362 KWH
5. Two service locations will be needed on site to support 3,000 to 4,000 amp Main Switch Gear.

## **EXHIBIT D**

### **Water Tank Specifications**

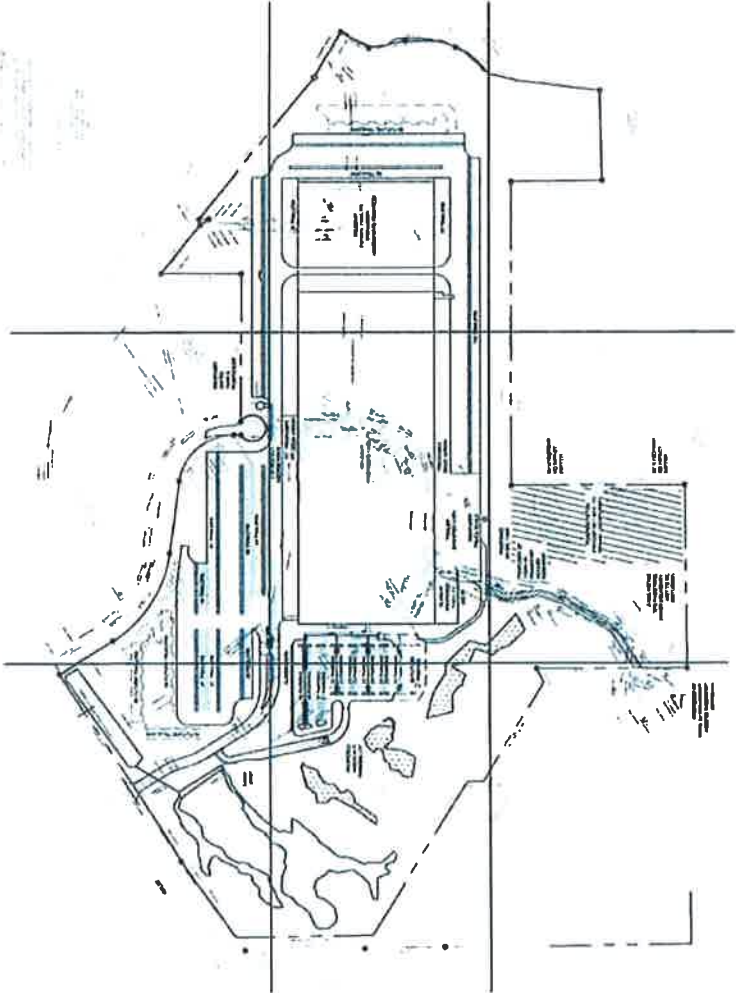
- 300,000 gallon welded, insulated, and heated tank, including foundations
- Fill line to the tank from the tank that borders the Property
- 2000-2500 GPM Diesel Pump, and all related apparatus, at the tank to support the Purchaser's fire protection system
- A heated/ventilated pump house of concrete walls or masonry construction adjacent to the tank to house the pump

## **EXHIBIT E**

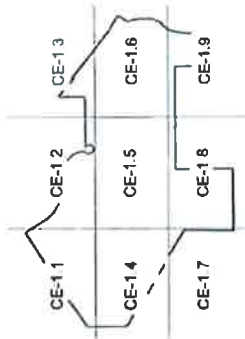
### **Site Plan**

(The Site Plan attached as Exhibit E is preliminary, is subject to change at Purchaser's sole option and is being used to show, among other things, the approximate location of the new access road referred to in Section 13 of this Agreement.)

1. ALL DIMENSIONS ARE IN FEET AND INCHES.  
 2. DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
 3. FINISH GRADE IS TO BE DETERMINED BY THE FIELD ENGINEER.  
 4. EXISTING CONDITIONS ARE SHOWN FOR REFERENCE ONLY.  
 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, AS APPLICABLE.



KEY PLAN



PROPOSED IMPROVEMENTS

ITEM	QUANTITY	UNIT	PRICE	TOTAL
1. ASPHALT PAVEMENT	10,000	SQ. YD.	1.50	15,000.00
2. CONCRETE CURBS	1,000	LINEAL FT.	1.00	1,000.00
3. GRAVEL FILL	5,000	CY	1.20	6,000.00
4. EROSION CONTROL	100	SQ. YD.	0.50	50.00
5. SIGNAGE	10	NO.	100.00	1,000.00
6. LIGHTING	50	NO.	20.00	1,000.00
7. FENCE	1,000	LINEAL FT.	0.50	500.00
8. UTILITIES	100	LINEAL FT.	1.00	100.00
9. TOTAL				39,500.00

NEW FACILITY FOR  
**PROJECT BOXER**  
 TOWNSHIP 3 NORTH, RANGE 10 WEST  
 OVERALL SITE  
 HORIZONTAL LAYOUT  
**CE-1.0**  
 PRELIMINARY - NOT FOR CONSTRUCTION

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