

## PROJECT COMPLETION AND RECAPTURE AGREEMENT

THIS PROJECT COMPLETION AND RECAPTURE AGREEMENT (the "Project Completion and Recapture Agreement" or "Agreement"), dated as of August 1, 2017 is made by and between **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), an industrial development agency and a public benefit corporation of the State of New York having its principal office at 420 E. German Street, Herkimer, New York 13350 (the "Agency") and the **TRACTOR SUPPLY COMPANY**, a Delaware corporation, or its assignee, with offices at 5401 Virginia Way, Brentwood, Tennessee 37027 (the "Company").

### WITNESSETH:

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

WHEREAS, the 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, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, housing, 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 Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other 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 mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Company has requested that the Agency undertake a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 142 acre parcel of land located in the Route 5S Business Park in the Town of Frankfort, New York and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), (2) the construction on, under and over the Land of an approximately 930,500 square foot warehouse and distribution center, with potential expansion at the Company's option up to 1,230,000 square feet, and related facilities and improvements, including without limitation, offices, a water tank, electric transformers and parking for vehicles and truck trailers (collectively, the "Improvements") and (3) the acquisition and installation of machinery, equipment and other personal property (the "Equipment") in, on, around, over and under the Improvements and the Land (the Land, the Improvements and the Equipment being collectively referred to as the "Facility"); (B) the granting

of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes and exemptions from real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) of the Facility to Agency and leaseback of the Facility to the Company or such other person as may be designated by the Company and agreed upon the Agency; and

WHEREAS, in order to provide such Financial Assistance to the Company under the Act, the Agency requires, among other things, that the Company and the Agency enter into certain lease/leaseback transactions and other associated agreements dated of even date herewith (collectively, the "Transaction Documents"); and

WHEREAS, based upon representations made by the Company in its Application for Financial Assistance, the Agency determined that the Project will promote employment opportunities and prevent economic deterioration in Herkimer County; and

WHEREAS, the Agency has appointed the Company as the Agency's agent for the purposes of acquiring the Land and the Equipment, constructing and equipping the Improvements and completing the Facility and has authorized the Company to appoint sub-agents for such purposes; and

WHEREAS, pursuant to a Lease Agreement dated of even date herewith between the Company as Lessor and the Agency as Lessee (the "Lease Agreement"), the Company has agreed to lease the Facility to the Agency for a term (the "Lease Term") commencing on the Closing Date (as defined in the hereinafter defined Leaseback Agreement) and ending on the earlier to occur of (a) the Lease Expiration Date (as defined in the Leaseback Agreement) or (b) the termination of the Leaseback Agreement; and

WHEREAS, pursuant to the leaseback agreement dated of even date herewith (the "Leaseback Agreement"), the Agency is leasing the Facility back to the Company for the Lease Term; and

WHEREAS, the Agency wishes to condition the Financial Assistance upon the Company completing the Facility as described.

NOW THEREFORE, for good and valuable consideration and in consideration of the Agency entering into the Lease Agreement and Leaseback Agreement, the Company hereby covenants and agrees as follows:

1. Representations and Covenants. Based upon the actual knowledge of Ben Parrish, Executive Vice President and General Counsel of the Company and Clay Teter - Senior Vice President - Real Estate and Construction of the Company, the Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) It has power to enter into and to execute and deliver this Project Completion and Recapture Agreement.
  - (b) Neither the execution and delivery of this Project Completion and Recapture Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Project Completion and Recapture Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.
  - (c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of a plant facility or another commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.
  - (d) From and after the Closing Date, the operation of the Facility will conform in all material respects with applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d), arising after the Closing Date.
  - (e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.
  - (f) The Financial Assistance (as defined in this Agreement) provided by the Agency is part of a larger package of incentives provided by the Agency and other governmental agencies and there is a likelihood that the Company would not have undertaken the Project without the entire package of incentives being provided to it.
2. Project Obligation. (a) The financial assistance granted by the Agency is conditioned, in part, upon the Company's substantially completing the first phase of the Facility (i.e., an approximately 930,000 square foot distribution center) substantially as represented in its Application (the "Project Obligation") within approximately three years of the date of this Project Completion and Recapture Agreement. If the Company does not meet the Project Obligation by June 30<sup>th</sup>, 2020, the Company may be subject to recapture of the Financial Assistance as provided in Section 4 below. After receipt by the Agency of the Company Final Project Report (more particularly described below) confirming substantial compliance with the Project Obligation, the Company shall have no further obligation with respect to the

Project Obligation and shall not be liable for any of the recapture payments described below because of the Company's failure to meet the Project Obligation.

(b) The Company shall submit to the Agency a certificate attesting to the substantial completion of the Project Obligation, together with copies of all Certificates of Occupancy (the "Final Project Report") within forty-five (45) days of receiving a Certificate of Occupancy for the first phase of the Facility. Absent manifest error, the Final Project Report shall be deemed conclusive evidence that the Project Obligation has been met.

3. Employment Obligation. (a) The Company further acknowledges that the Financial Assistance was also granted based, in part, upon the representation that the Company would employ 170 New Full-time Permanent Employees (as hereinafter defined) at the Facility by June 30, 2020 (the "Initial Employment Obligation") and would employ 350 New Full-time Permanent Employees at the Facility on or before June 30, 2024 (the "Employment Obligation"). For purposes of this Project Completion and Recapture Agreement the phrase "New Full-time Permanent Employee" shall mean (i) a full-time, permanent, private-sector employee on the Company's payroll, who has worked at the Facility for a minimum of 35 hours per week for more than six (6) months of a year and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on the Company's payroll, who have worked at the Facility for a combined minimum of 35 hours per week for more than six (6) months of a year and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties.

(b) The Company shall file annually with the Agency within sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the Facility and certain other matters, including as required under Applicable Law, the said annual employment report (the "Annual Report") to be in substantially the form annexed hereto as Exhibit B. The information in the Annual Report shall be used, among other purposes, to determine the number of New Full-time Permanent Employees at the Facility.

4. Remedies. (a) If the Project Obligation is not substantially met on or before June 30<sup>th</sup>, 2020, the Agency may notify the Company in writing of its intention to recapture the items of Financial Assistance specified on Exhibit C attached hereto and made a part hereof and the Company will have thirty (30) days to respond to the letter citing the reason or reasons the Company failed to achieve the Project Obligation, including any request to appear before the Agency. If the Agency then determines that the Company's reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may:

(1) Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Herkimer County to take no action;  
or

(2) Reduce the Financial Assistance granted to the Company in an amount proportionate to the percentage for the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured); or

(3) Take such other remedies as permitted under the Agency's Tax Exempt Policy (as in effect on the date hereof) which is incorporated herein by reference.

(b) If the Initial Employment Obligation or the Employment Obligation is not met on or before June 30<sup>th</sup>, 2020 or June 20, 2024, respectively, the Agency may notify the Company in writing of its intention to recapture the items of Financial Assistance specified on Exhibit C attached hereto and made a part hereof and the Company will have thirty (30) days to respond to the letter citing the reason or reasons the Company failed to achieve the Initial Employment Obligation or the Employment Obligation, as the case may be, including any request to appear before the Agency. If the Agency then determines that the Company's reasons for failing to achieve the Initial Employment Obligation or the Employment Obligation, as the case may be, are not acceptable to the Agency, the Agency, at its sole discretion, may:

(1) Take no action if it is determined that the reason or reasons for failing to achieve the Initial Employment Obligation or the Employment Obligation, as the case may be, are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Herkimer County to take no action; or

(2) Reduce the items of Financial Assistance granted to the Company in accordance with Exhibit C attached hereto;

(3) Take such other remedies as permitted under the Agency's Tax Exempt Policy (as in effect on the date hereof) which is incorporated herein by reference; or

(4) Without limiting the generality of Section 4(b)(3) hereof, if the Initial Employment Obligation is not met, the Agency may defer recapturing the items of Financial Assistance specified on Exhibit C attached hereto until June 30, 2024 and, if the Employment Obligation is not met by June 30, 2024, recapture the items of Financial Assistance specified on Exhibit C attached hereto retroactively from June 30, 2020.

(c) Upon the receipt by the Agency of any amount of Financial Assistance pursuant to this Section 4, the Agency shall redistribute such amount within thirty (30) days of such receipt to the taxing entity that would have received such amount but for the granting by the Agency of the Financial Assistance.

5. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions.



6. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested or by any nationally recognized overnight delivery service that will provide the sender with documentary evidence of such delivery, addressed as follows:

To the Agency:       Herkimer County Industrial Development Agency  
420 East German Street  
Herkimer, New York 13350  
Attn: Stephen R. Smith, Executive Director

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

To the Company:       Tractor Supply Company  
5401 Virginia Way  
Brentwood, Tennessee 37027  
Attn: Clay Teter, Senior Vice President - Real Estate  
and Construction

With a Copy To:       Tractor Supply Company  
Office of General Counsel  
5401 Virginia Way  
Brentwood, Tennessee 37027

7. Binding Effect. This Project Completion and Recapture Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and permitted assigns.
8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
9. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.
10. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
11. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State of New York.

12. Survival of Obligation. This Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 of the Leaseback Agreement and all indemnities shall survive any termination or expiration of the Leaseback Agreement as to matters occurring during the period of the Company's occupancy of the Facility.
13. Section Headings Not Controlling. The headings of the several sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.
14. Merger of the Agency.
- (a) Nothing contained in this Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and political and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.
- (b) As of the date if any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company's such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.
15. No Assignment. This agreement may not be assigned by the Company except with the written consent of the Agency, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent from the Agency shall be required if an assignment of this Agreement is made by the Company to the Company's parent, any direct or indirect subsidiary or affiliate of the Company, or a successor to the Company by way of merger, consolidation, corporate reorganization, or the purchase of all or substantially all of the Company's assets.
16. Agreement to Pay Attorney's Fees and Expenses. In the event the Company should default under any of the provisions of this Project Completion and Recapture Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

17. No Additional Waiver Implied By One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
18. Payment in Lieu of Tax Agreement. A copy of the Payment in Lieu of Tax Agreement by and between the Agency and the Company is attached as Exhibit D. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a table describing the amount of payments in lieu of taxes to be made.
19. Force Majeure. Notwithstanding anything in this Project Completion and Recapture Agreement to the contrary, if by reason of force majeure the Company shall be unable in whole or in part to carry out its obligations under this Project Completion and Recapture Agreement and if the Company shall give notice and full particulars of such force majeure in writing to the Agency, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Project Completion and Recapture Agreement (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, cyber-attacks, acts of terrorism, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not sue to its fault. The Company shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

**[Signature page follows]**



**IN WITNESS WHEREOF**, the Company and the Agency have executed and delivered this Project Completion and Recapture Agreement as of the day and year first above written.

**HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: Vincent J. Bono  
**Vincent J. Bono, Chairman**

**TRACTOR SUPPLY COMPANY**

By: \_\_\_\_\_  
**Clay Teter, Senior Vice President - Real Estate  
and Construction**

**SPECIAL PROJECT CERTIFICATION**

As required under Section 859-a (6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

**TRACTOR SUPPLY COMPANY**

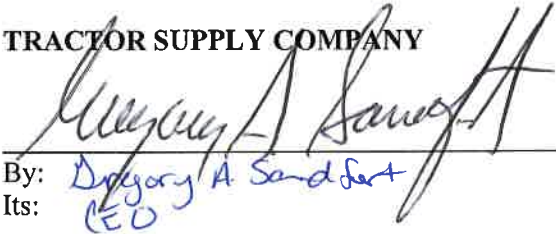
By: \_\_\_\_\_  
**Clay Teter, Senior Vice President - Real Estate  
and Construction**

IN WITNESS WHEREOF, the Company and the Agency have executed and delivered this Project Completion and Recapture Agreement as of the day and year first above written.

**HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: Vincent J. Bono  
Its: Chairman

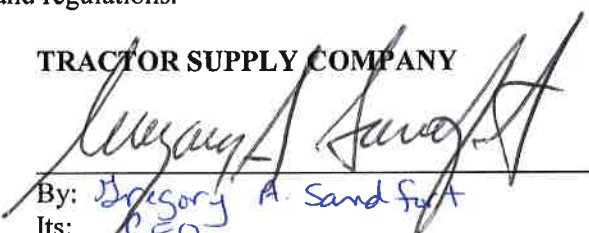
**TRACTOR SUPPLY COMPANY**

By:   
Its: CEO

**SPECIAL PROJECT CERTIFICATION**

As required under Section 859-a (6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

**TRACTOR SUPPLY COMPANY**

By:   
Its: CEO

**Reviewed and Approved by  
TSC Legal Department**

By:  Date: 7/28/17

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

On this 1 day of August, 2017, before me, a notary public in and for said State, did personally appear **Vincent J. Bono**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Anthony G. Hallak  
Notary Public

ANTHONY G. HALLAK  
Notary Public, State of New York  
No.: 4234403  
Qualified in Oneida County  
Commission Expires May 23, 2018

STATE OF NEW YORK )  
COUNTY OF ) ss.:

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, a notary public in and for said State, did personally appear **Vincent J. Bono**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF TENNESSEE )  
COUNTY OF ) ss.:

On this 28th day of July, 2017, before me, a notary public in and for said State, did personally appear Gregory H. Sanford, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Debra James  
Notary Public



STATE OF TENNESSEE                    )  
COUNTY OF                                ) ss.:

On this \_\_\_ day of \_\_\_\_\_, 2017, before me, a notary public in and for said State, did personally appear **Clay Teter**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

[Not Applicable, see page 10]



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

All of that tract or parcel of land situate in the Town of Frankfort, County of Herkimer and State of New York being more particularly described as follows:

Beginning at an iron rod found at the intersection of the southerly line of Higby Road and the westerly line of Ring Road running thence along the westerly line of Ring Road the following nineteen courses; S00°50'58"E 257.91', a curve to the left having a radius of 780.00' and a chord of S06°25'01"E 151.35' an arc length of 151.59', S75°19'26"W 10.02', S14°40'34"E 10.00', N75°19'26"E 9.81', a curve to the left having a radius of 780.00' and a chord of S13°15'32"E 14.68' an arc length of 14.68', a curve to the left having a radius of 295.00' and a chord of S18°53'54"E 52.45' an arc length of 52.52', a curve to the left having a radius of 640.00' and a chord of S32°15'51"E 184.01' an arc length of 184.65', S49°01'21"W 10.02', S40°58'39"E 10.00', N49°01'21"E 10.02', a curve to the left having a radius of 640.00' and a chord of S46°00'09"E 102.15' an arc length of 102.26', S50°26'03"E 330.39', a curve to the right having a radius of 240.00' and a chord of S30°52'17"E 161.87' an arc length of 165.11', S80°01'50"W 9.95', S09°58'10"E 10.00', N80°01'50"E 9.95', on a curve to the right having a radius of 240.00' and a chord of S11°48'22"W 168.41' an arc length of 172.07', and S32°15'29"W 30.70', thence through the lands of Herkimer County IDA and crossing Ring Road on a cul-de sac having a radius of 60.00' and a chord of S58°50'41"E 59.87' an arc length of 314.31' to the southwest corner of the lands of Cobblecote Associates, LLC thence along the southerly line of Cobblecote Associates, LLC S57°48'52"E 670.45' to an iron rod found and along the easterly line of the lands of Cobblecote Associates, LLC N32°11'08"E 353.53' to an iron rod set in the westerly line of New York State Route 5, thence along the westerly line of New York State Route 5 the following six courses; S20°08'55"E 277.92', S01°37'03"E 48.39', N31°47'14"E 45.00', S20°05'39"E 816.84' to a granite monument, S29°24'28"E 80.44' and S27°57'36"E 154.92' to an iron rod found, thence along the northwesterly line of the lands of Cross Properties, Inc. the following eight courses following generally along a stream, S61°31'53"W 145.87', S19°57'39"W 162.15' to an iron rod found, S32°27'39"W 161.00', S57°38'40"W 66.78' to an iron rod found, S57°38'40"W 65.30', S77°38'40"W 128.70', S45°38'40"W 132.00' and S38°52'07"W 363.73' to an iron pipe found in the northerly line of the lands of Mario Restive, thence along the northerly line of the lands of Restive N59°27'03"W 406.93', thence along the southeasterly line of the lands of Mark Nicastro N31°05'56"E 400.37', thence along the northeasterly line of the lands of Nicastro N58°08'16"W 1377.84', thence along the northwesterly line of the lands of Nicastro S31°39'20"W 765.20', thence along the northeasterly line of the lands of Nicastro N58°42'55"W 829.00' thence through the lands of Herkimer County IDA the following three courses; N31°41'35"E 665.89', N27°09'53"W 1482.83' and N31°02'25"E 521.38' to the southerly line of Higby Road thence along the southerly line of Higby Road the following three courses; N87°06'54"E 491.83' to an iron rod set and S89°16'16"E 303.01' crossing the end of Ring Road to an iron rod found and N89°16'50"E 702.68' to the point of beginning, containing 141.857 acres.

**EXHIBIT B**

ANNUAL STATUS REPORT

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

**CREATED JOBS**

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
<b>Full Time</b>					
<b>Part Time</b>					

**Officer's Certification**

I, the Undersigned, duly elected and appointed \_\_\_\_\_ (*Title*) of Tractor Supply Company., a business corporation (the "Company") do hereby certify, pursuant to the requirements of a Project Completion and Recapture Agreement dated as of August 1, 2017 by and between the Company and Herkimer County Industrial Development Agency, the following:

- (A) That all information provided on this form is complete, true and accurate, and
- (B) That the salary and fringe benefit averages or ranges for categories of jobs created described in the Company's Application are still complete, true and accurate in all material respects.

\_\_\_\_\_  
(Officer's Signature)

## **EXHIBIT C**

### **Recapture of PILOT and Sales Tax.**

The Recapture Schedule for a Payment in Lieu of Taxes Agreement and Sales Tax is as follows:

Within two (2) years of Certificate of Occupancy:	100%
Within three (3) years:	80%
Within four (4) years:	60%
Within five (5) years:	40%
Within six (6) years:	30%
Within seven (7) years:	20%
Within eight (8) years:	10%
Eight years or more:	0%

**EXHIBIT D**

Payment in Lieu of Tax Agreement

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

TRACTOR SUPPLY COMPANY

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

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Dated as of August 1, 2017

Herkimer County Industrial Development Agency  
420 E. German Street  
Herkimer, New York 13350

and

Tractor Supply Company  
5401 Virginia Way  
Brentwood, Tennessee 37027



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

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of the 1<sup>st</sup> day of August, 2017 is by and between **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 420 E. German Street, Herkimer, New York 13350 (the "Agency") and **TRACTOR SUPPLY COMPANY**, a Delaware corporation, or its assignee, with offices at 5401 Virginia Way, Brentwood, Tennessee 37027 (the "Company").

### **W I T N E S S E T H:**

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 410 of the Laws of 1970 of the State of New York, as amended, constituting Section 898 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company has executed and delivered a Leaseback Agreement, dated of even date herewith, with the Agency to acquire a leasehold interest in certain real property located in the Town of Frankfort, New York, more particularly described in Exhibit "A" attached to hereto (the "Land"), and to construct on, under and over the Land an approximately 930,500 square foot warehouse and distribution center, with potential expansion at the Company's option up to 1,230,000 square feet, and related facilities and improvements, including without limitation, offices, a water tank, electric transformers and parking for vehicles and truck trailers (collectively, the "Improvements") and to acquire and install machinery, equipment and other personal property (the "Equipment") in, on, around, over and under the Improvements and the Land (the Land, the Improvements and the Equipment being collectively referred to as the "Facility"); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility pursuant to the terms and conditions contained in the Leaseback Agreement dated of even date herewith; and

WHEREAS, the Agency has agreed to accept a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, the Facility shall be exempt from real property taxes,

general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company ("Exempt Taxes") commencing as of the assessment roll of the Town of Frankfort based on the first taxable status date subsequent to the date hereof, provided, however, that the Company acknowledges and agrees that such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, notwithstanding the exemption from taxation, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact be obligated to make payments in lieu of such taxes as provided in this Agreement; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for such payments-in-lieu-of-taxes by the Company to the Town of Frankfort, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Herkimer County, the Frankfort School District (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

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

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

1. The Company shall pay to each Taxing Authority all special assessments and ad valorem levies lawfully assessed against the Facility and coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.
2. The Company shall not be required to pay payments in lieu of taxes with regard to Phase 1 of the Facility (i.e. 930,500 square foot portion of the Project Facility) until after the first tax status date that occurs three years after a certificate of occupancy has been issued for Phase 1. The payments in lieu of taxes on Phase 1 shall be equal to the taxes that would have been levied on the Facility if it were not leased by the Agency (i) reduced by 75 percent in years 4 through and including 6 following the issuance of a certificate of occupancy for Phase 1 of the Facility; and (ii) reduced by 50 percent in years 7 through and including 10 following the issuance of a certificate of occupancy for Phase 1 of the Facility. For convenience, a schedule of the due dates for PILOT payments hereunder premised on a certificate of occupancy in October 2018 is set forth in Schedule A, attached hereto. If the actual date of the certificate of occupancy warrants an initial taxable status date earlier or later than March 1, 2022 (which date is the

first taxable status date occurring three years after the date of the certificate of occupancy), then the attached schedule should be adjusted accordingly.

3. If the Company 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"), Phase 2 shall be exempt from all Exempt Taxes and shall not require any payments in lieu of Exempt Taxes until after the first taxable status date following a certificate of occupancy is issued for Phase 2, at which time payments in lieu of taxes on Phase 2 shall be equal to the taxes that would have been levied on Phase 2 if the Facility were not leased by the Agency, reduced by 50 percent and continuing for 10 years thereafter.
4. The Company shall pay to each Taxing Authority with regard to Phase 1 of the Facility:

- (a) in lieu of general real property taxes for the Facility, the Company shall pay the following percentages of the real property taxes which would be due if the Facility were not exempt from taxation on the tax rolls of the Taxing Jurisdictions:

Year Following Issuance of C/O	%
1	0
2	0
3	0
4	25
5	25
6	25
7	50
8	50
9	50
10	50
11 (and each successive year of the term of the lease pursuant to the Lease Agreement, subject to adjustment for Phase 2)	100

- (b) Upon receipt of a bill from the Agency, Company shall make payments in lieu of taxes through the Agency based upon calculations of payments due furnished in writing by the Agency to the Company. Payments shall be made to coincide with each individual Taxing Jurisdiction's schedule due dates for payment of taxes. The Agency shall accept payment from the Subtenant (if any).

- (c) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Company shall pay the late payment penalty and interest set forth in Section 874 of the Act; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.
5. The Company will make PILOT Payments to each Taxing Authority hereunder during the Exemption Term by making the required payment to such Taxing Authority no later than the last day during which real property taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.
6. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.
7. Notwithstanding anything in this Agreement to the contrary, the parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Leaseback Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.
8. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any Exempt Taxes, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any year during the Exemption Term, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.
9. This Agreement shall be binding upon the successors and assigns of the parties.
10. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or

service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

11. All amounts payable by the Company hereunder will be paid to the respective Taxing Authorities and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.
12. Notwithstanding anything in this Agreement to the contrary, in the event that the Agency fails or refuses to timely perform any of Seller's Undertakings (as defined in that certain Agreement of Purchase, Sale and Development dated May 16, 2017 by and between the Agency and the Company), Company shall have the right, but not the obligation, to undertake any or all of Seller's Undertakings and the documented costs and expenses so paid or reasonably incurred by Company and mutually agreed upon by the Agency and Company shall be a credit, dollar for dollar, against the amounts payable by the Company pursuant to this PILOT Agreement, but in no event earlier than year 4 of this PILOT Agreement.
13.
  - (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.
  - (b) This agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.



- (c) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or by any nationally recognized overnight delivery service that will provide the sender with documentary evidence of such delivery, addressed as follows:

To the Agency:       Herkimer County Industrial Development Agency  
420 East German Street  
Herkimer, New York 13350  
Attn: Stephen R. Smith, Executive Director

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

To the Company:       Tractor Supply Company  
5401 Virginia Way  
Brentwood, Tennessee 37027  
Attn: Clay Teter, Senior Vice President—Real Estate and  
Construction

With a Copy To:       Tractor Supply Company  
Office of the General Counsel  
5401 Virginia Way  
Brentwood, Tennessee 37027

Provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

- (e) This Agreement shall be governed by and constructed in accordance with the laws of the State of New York.

**[Signature page follows]**

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

**HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
**Vincent J. Bono, Chairman**

**TRACTOR SUPPLY COMPANY**

By: \_\_\_\_\_  
**Clay Teter, Senior Vice President - Real Estate  
and Construction**

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

On this 1<sup>st</sup> day of August, 2017, before me, a notary public in and for said State, did personally appear **Vincent J. Bono**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

ANTHONY G. HALLAK  
Notary Public, State of New York  
No.: 4234403  
Qualified in Oneida County  
Commission Expires May 23, 2019

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

**HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

\_\_\_\_\_  
By: Vincent J. Bono  
Its: Chairman

**TRACTOR SUPPLY COMPANY**

  
\_\_\_\_\_  
By: Gregory A. Sandfort  
Its: Chief Executive Officer

**Reviewed and Approved by  
TSC Legal Department**

By S Weir Date 7/28/17

STATE OF TENNESSEE   )  
COUNTY OF                    ) ss.:

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, a notary public in and for said State, did personally appear **Clay Teter**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her 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

[Not Applicable, see page 10]



STATE OF TENNESSEE     )  
COUNTY OF                 ) ss.:

On this 28<sup>th</sup> day of July, 2017, before me, a notary public in and for said State, did personally appear Gregory A. Sandfort, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Debra James  
Notary Public



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

All of that tract or parcel of land situate in the Town of Frankfort, County of Herkimer and State of New York being more particularly described as follows:

Beginning at an iron rod found at the intersection of the southerly line of Higby Road and the westerly line of Ring Road running thence along the westerly line of Ring Road the following nineteen courses; S00°50'58"E 257.91', a curve to the left having a radius of 780.00' and a chord of S06°25'01"E 151.35' an arc length of 151.59', S75°19'26"W 10.02', S14°40'34"E 10.00', N75°19'26"E 9.81', a curve to the left having a radius of 780.00' and a chord of S13°15'32"E 14.68' an arc length of 14.68', a curve to the left having a radius of 295.00' and a chord of S18°53'54"E 52.45' an arc length of 52.52', a curve to the left having a radius of 640.00' and a chord of S32°15'51"E 184.01' an arc length of 184.65', S49°01'21"W 10.02', S40°58'39"E 10.00', N49°01'21"E 10.02', a curve to the left having a radius of 640.00' and a chord of S46°00'09"E 102.15' an arc length of 102.26', S50°26'03"E 330.39', a curve to the right having a radius of 240.00' and a chord of S30°52'17"E 161.87' an arc length of 165.11', S80°01'50"W 9.95', S09°58'10"E 10.00', N80°01'50"E 9.95', on a curve to the right having a radius of 240.00' and a chord of S11°48'22"W 168.41' an arc length of 172.07', and S32°15'29"W 30.70', thence through the lands of Herkimer County IDA and crossing Ring Road on a cul-de sac having a radius of 60.00' and a chord of S58°50'41"E 59.87' an arc length of 314.31' to the southwest corner of the lands of Cobblecote Associates, LLC thence along the southerly line of Cobblecote Associates, LLC S57°48'52"E 670.45' to an iron rod found and along the easterly line of the lands of Cobblecote Associates, LLC N32°11'08"E 353.53' to an iron rod set in the westerly line of New York State Route 5, thence along the westerly line of New York State Route 5 the following six courses; S20°08'55"E 277.92', S01°37'03"E 48.39', N31°47'14"E 45.00', S20°05'39"E 816.84' to a granite monument, S29°24'28"E 80.44' and S27°57'36"E 154.92' to an iron rod found, thence along the northwesterly line of the lands of Cross Properties, Inc. the following eight courses following generally along a stream, S61°31'53"W 145.87', S19°57'39"W 162.15' to an iron rod found, S32°27'39"W 161.00', S57°38'40"W 66.78' to an iron rod found, S57°38'40"W 65.30', S77°38'40"W 128.70', S45°38'40"W 132.00' and S38°52'07"W 363.73' to an iron pipe found in the northerly line of the lands of Mario Restive, thence along the northerly line of the lands of Restive N59°27'03"W 406.93', thence along the southeasterly line of the lands of Mark Nicastro N31°05'56"E 400.37', thence along the northeasterly line of the lands of Nicastro N58°08'16"W 1377.84', thence along the northwesterly line of the lands of Nicastro S31°39'20"W 765.20', thence along the northeasterly line of the lands of Nicastro N58°42'55"W 829.00' thence through the lands of Herkimer County IDA the following three courses; N31°41'35"E 665.89', N27°09'53"W 1482.83' and N31°02'25"E 521.38' to the southerly line of Higby Road thence along the southerly line of Higby Road the following three courses; N87°06'54"E 491.83' to an iron rod set and S89°16'16"E 303.01' crossing the end of Ring Road to an iron rod found and N89°16'50"E 702.68' to the point of beginning, containing 141.857 acres.

**SCHEDULE A**

PILOT Year	Town Assessment Roll Year	Town/County Tax Year (Calendar)	Town/County Payment Due Date	School Tax Year (Fiscal)	School Payment Date
1	2022	2023	31-Jan-23	2022-23	30-Sep-22
2	2023	2024	31-Jan-24	2023-24	30-Sep-23
3	2024	2025	31-Jan-25	2024-25	30-Sep-24
4	2025	2026	31-Jan-26	2025-26	30-Sep-25
5	2026	2027	31-Jan-27	2026-27	30-Sep-26
6	2027	2028	31-Jan-28	2027-28	30-Sep-27
7	2028	2029	31-Jan-29	2028-29	30-Sep-28
8	2029	2030	31-Jan-30	2029-30	30-Sep-29
9	2030	2031	31-Jan-31	2030-31	30-Sep-30
10	2031	2032	31-Jan-32	2031-32	30-Sep-31