

NICHOLS DISTRIBUTION, LLC

and

TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

COMMUNITY BANK, N.A., as PILOT Trustee

and

TIOGA COUNTY, NEW YORK

and

TOWN OF NICHOLS, NEW YORK

and

OWEGO-APALACHIN SCHOOL DISTRICT

and

MANUFACTURERS AND TRADERS TRUST COMPANY, as Bond Trustee

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Tioga County Industrial Development Agency  
(Nichols Distribution, LLC 2002 Facility)

Dated as of September 1, 2002

Tioga County, Town of Nichols, Owego-Apalachin School District

Section: 49

Block: 1

Lots: 6; 7; 8; 12; 13.122; 14.1; 27.24; 27.21; 4

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS AGREEMENT, dated as of September 1, 2002, is among NICHOLS DISTRIBUTION, LLC, a Minnesota limited liability company having an office c/o Best Buy Co., Inc., 7075 Flying Cloud Drive, Eden Prairie, Minnesota 55344 (the "Company"), TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 56 Main Street, Owego, New York 13827 (the "Issuer"), COMMUNITY BANK, N.A., a national banking association having an office at 15 East Pultney Street, Corning, New York 14830 (the "PILOT Trustee"), TIOGA COUNTY, NEW YORK, a New York municipal corporation having offices at 56 Main Street, Owego, NY 13827, (the "County"), the TOWN OF NICHOLS, NEW YORK, a New York municipal corporation having offices at 54 East River Road, Nichols, NY 13812, (the "Town"), OWEGO-APALACHIN SCHOOL DISTRICT, a New York central school district having offices at 36 Talcott Street, Owego, NY 13827, (the "School District"), and Manufacturers and Traders Trust Company, a New York banking corporation having an office at One M&T Plaza, Buffalo, New York 14203 (the "Bond Trustee").

WITNESSETH:

WHEREAS, the Issuer was created by Chapter 534 of the Laws of 1971 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act"); and

WHEREAS, the Issuer has agreed to acquire title to certain real property located on Berry Road (a new road) connected to and south of Stanton Hill Road, lying between Smiths Creek and Hunts Creek, in the Town of Nichols, County of Tioga, State of New York, more particularly described in Exhibit B attached hereto, and to acquire, construct, furnish, equip and improve a certain industrial development facility thereon (the "Company Facility"), more particularly described in the Lease Agreement, dated as of September 1, 2002 (the "Lease Agreement"), between the Issuer and the Company; and

WHEREAS, the Issuer has agreed to lease the Company Facility to the Company pursuant to the Lease Agreement such that title will remain in the Issuer throughout the Lease Term (as such term is defined in the Lease Agreement); and

WHEREAS, the parties hereto desire to establish with the PILOT Trustee the various funds described herein and to set forth the terms and conditions upon which the amounts required to be paid as payments in lieu of taxes, as set forth on Exhibit A attached hereto and made a part hereof (the "PILOT Payments"), will be deposited and maintained in, and withdrawn from, such funds; and

WHEREAS, pursuant to Section 874(1) of the Act, the Issuer is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments and service charges against real property located in the County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Company Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Issuer and the Company deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company to the County, the Town and the School District (hereinafter the "Taxing Authorities");

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

1. (a) The Company agrees to make payments in lieu of all real estate taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges against real property located in the County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Company Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Company Facility if the Company Facility were owned by the Company and not by the Issuer (the "Taxes on the Facility"). On the first Business Day of each year commencing in 2003 through and including 2022, the Company shall pay to the PILOT Trustee, as payments in lieu of taxes and assessments, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(b) During the term of this Agreement, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Company Facility for special improvements or special district improvements.

(c) The PILOT Trustee shall establish and maintain the following funds:

(i) The Tioga County Industrial Development Agency – Nichols Distribution, LLC PILOT Fund (the "PILOT Fund"), and such PILOT Fund, and all right, title and interest in and to all cash, property or rights transferred to or deposited in such PILOT Fund from time to time, all earnings, investments and securities held in such PILOT Fund in accordance with this Agreement and any and all proceeds of the foregoing, are hereby conveyed, transferred, pledged and assigned to, and a security interest therein is hereby granted to, the Taxing Authorities, as described herein, subject, however, to the pledge of the moneys required by Paragraph 2(b)(i), (c)(i) and (d)(i) hereof to be deposited in the Debt Service and Reimbursement Fund to the benefit of the Bond Trustee, to the pledge of the moneys required by Paragraph 2(b)(ii) hereof to be deposited in the Bond Trustee Account, PILOT Trustee Account, LOC Bank Account and Remarketing Agent Account of the Administrative Expense Fund to the benefit of the Bond Trustee, PILOT Trustee, LOC Bank and Remarketing Agent, respectively, and, in the years 2013 and 2014, to the pledge of moneys required by Paragraph 2(b)(iii) and (iv) hereof to be deposited in the Company Fund to the benefit of the Company;

(ii) The Tioga County Industrial Development Agency – Nichols Distribution, LLC Debt Service and Reimbursement Fund (the "Debt Service and Reimbursement Fund"), and such Debt Service and Reimbursement Fund shall be held for the benefit of, and pledged to, the Bond Trustee;

(iii) The Tioga County Industrial Development Agency – Nichols Distribution, LLC Sewer and Water Operation and Maintenance Fund (the “O & M Fund”), and such O & M Fund shall be held for the benefit of, and pledged to, the Town;

(iv) The Tioga County Industrial Development Agency – Nichols Distribution, LLC Grant Reimbursement Fund (the “Grant Reimbursement Fund”), and such Grant Reimbursement Fund shall be held for the benefit of, and pledged to, the County;

(v) The Tioga County Industrial Development Agency – Nichols Distribution, LLC Taxing Authorities Fund (the “Taxing Authorities Fund”), and within such fund the Town of Nichols Account, the Tioga County Account and the Owego-Apalachin School District Account, and such Accounts shall be held for the benefit of, and pledged to, the respective named Taxing Authorities;

(vi) The Tioga County Industrial Development Agency – Nichols Distribution, LLC Company Fund (the “Company Fund”), and such Company Fund shall be held for the benefit of, and pledged to, the Company; and

(viii) The Tioga County Industrial Development Agency – Nichols Distribution, LLC Administrative Expense Fund (the “Administrative Expense Fund”), and within such Fund the Bond Trustee Account, the PILOT Trustee Account, the LOC Bank Account and the Remarketing Agent Account, and such Accounts shall be held for the benefit of, and pledged to, the Bond Trustee, the PILOT Trustee, the LOC Bank and the Remarketing Agent, respectively.

(d) Terms not otherwise defined herein shall have the meanings assigned thereto in Schedule A attached to the Indenture.

(e) Upon the written direction by an Authorized Representative of the Issuer, moneys maintained by the PILOT Trustee in the funds hereunder established may be invested only in Authorized Investments. Such investments shall mature in such amounts and at such times as may be necessary to provide moneys when needed to make payments from the applicable fund. Net income or gain received and collected from such investments shall be credited and losses charged to the applicable fund.

(f) At least ten (10) days prior to the first Business Day of each month, the PILOT Trustee shall notify the Issuer of the amount of such net investment income or gain received and collected subsequent to the first Business Day of the previous month and the amounts then available in the various funds hereunder established.

(g) Upon the written direction by an Authorized Representative of the Issuer, the PILOT Trustee shall sell at the best price reasonable obtainable by it, or present for redemption or exchange, any obligations in which moneys shall have been invested to the extent necessary to provide cash in the respective funds established hereunder required to make any payments to be made therefrom or to facilitate transfers of moneys or securities between various funds. The PILOT Trustee shall not be liable for any losses incurred as a result of actions taken in good faith in accordance with this Paragraph 1(g) or any losses

incurred as a result of any actions taken in the absence of instructions required by this Paragraph 1(g). As soon as practicable, but in no event more than three (3) Business Days, after any such sale, redemption or exchange, the PILOT Trustee shall give notice thereof to the Issuer.

(h) The Trustee shall not be liable for any loss arising from, or any depreciation in the value of, any obligations in which moneys under this Agreement shall be invested. The investments authorized by this Paragraph 1 shall at all times be subject to the provisions of applicable law, as amended from time to time.

(i) Authorized Investments held in any funds hereunder shall be valued at the lesser of cost or market price, inclusive of accrued interest.

2. (a) Immediately upon their receipt by the PILOT Trustee, the PILOT Payments, as calculated pursuant to Exhibit A attached hereto and made a part hereof and Paragraph 1(a) hereof, shall be deposited to the PILOT Fund.

(b) PILOT Payments held in the PILOT Fund as required by Paragraph 2(a) hereof shall be applied for the following purposes in the priority in which listed (including curing any deficiencies in deposits, transfers or payments required in prior months), the requirements of each Fund, deposit, transfer or payment to be fully satisfied, leaving no deficiencies, prior to any deposit, transfer or payment later in priority, unless as otherwise specifically provided below:

(i) FIRST, on the first Business Day of each year (or on such date as the PILOT Payments are actually received) beginning in 2003 through and including 2012, but only while Bonds are outstanding, to the Debt Service and Reimbursement Fund: moneys (the "Bond PILOT Payments") in an amount equal to the Debt Service Payments to become due in February of such year and in each month thereafter through and including January of the following year (the "PILOT Year"), with the interest component thereof being calculated at the Maximum Rate on the Issuer's outstanding Bonds (the "Maximum Annual Debt Service Amount", and the Debt Service Payment to become due in a particular month with the interest component thereof being so calculated at the Maximum Rate shall be the "Maximum Monthly Debt Service Amount"); which Maximum Annual Debt Service Amount shall be disbursed as follows:

(1) On the first Business Day of each month beginning in February 2003 through and including the Maturity Date, and on the Maturity Date irrespective of whether or not the Maturity Date is the first Business Day of the month, if the PILOT Trustee has received notice from the Bond Trustee pursuant to Section 5.06(c) of the Indenture that Fleet National Bank (the "LOC Bank") has honored a draw request under its Letter of Credit (the "Letter of Credit"), to the Bond Trustee for deposit in the Reimbursement Account of the Issuer Facility Payments Fund, moneys in an amount equal to such draw; provided, however, that if the PILOT Trustee has received notice from the Bond Trustee pursuant to Section 5.06(c) of the Indenture that the LOC Bank has not honored a draw request under its Letter of Credit, then to the Bond Trustee for deposit in the Bond Fund, an amount equal to the Debt Service Payment then due and payable with respect to the Bonds; and

(2) Immediately after the transfer described above in Paragraph 2(b)(i)(1), to the PILOT Fund, the difference between the amount transferred to the Bond Trustee as a Debt Service Payment and the Maximum Monthly Debt Service Amount for such month;

(ii) SECOND, on the first Business Day of each month beginning in February 2003 and continuing, with respect to the Bond Trustee, the LOC Bank and the Remarketing Agent, through and including the Maturity Date, and on the Maturity Date irrespective of whether or not the Maturity Date is the first Business Day of the month, and, with respect to the PILOT Trustee, throughout the term of this Agreement, to the Bond Trustee Account, the PILOT Trustee Account, the LOC Bank Account and the Remarketing Agent Account of the Administrative Expense Fund: an amount equal to the fees and expenses of the Bond Trustee, the PILOT Trustee, the LOC Bank and the Remarketing Agent, respectively, incurred in the previous month, as certified by each of the Bond Trustee, the PILOT Trustee, the LOC Bank and the Remarketing Agent, respectively, on the last Business Day of the preceding month, and such amounts shall be then immediately transferred from the Bond Trustee Account, the PILOT Trustee Account, the LOC Bank Account and the Remarketing Agent Account of the Administrative Expense Fund to the Bond Trustee, PILOT Trustee, LOC Bank and Remarketing Agent, respectively;

(iii) THIRD, on the first Business Day in January 2013 only, and only if the Company has, as of that date, made all payments required by such date to be made pursuant to Paragraph 1(a) hereof, to the Company Fund: \$300,000, which amount shall be immediately transferred from the Company Fund to the Company;

(iv) FOURTH, on the first Business Day in January 2014 only, and only if the Company has, as of that date, made all payments required by such date to be made pursuant to Paragraph 1(a) hereof, to the Company Fund: \$600,000, which amount shall be immediately transferred from the Company Fund to the Company;

(v) FIFTH, on the first Business Day of each month beginning in February 2003 through and including January 2013, to the O & M Fund: \$8,333.33, which amount (or such part thereof as may actually be deposited into the O & M Fund on such date) shall be immediately transferred from the O & M Fund to the Town;

(vi) SIXTH, on the first Business Day of each month beginning in February 2003, to the Grant Reimbursement Fund: \$2,500 (the "Reimbursement Payment"), which amount (or such part thereof as may actually be deposited into the Grant Reimbursement Fund on such date) shall be immediately transferred from the Grant Reimbursement Fund to the County; provided, however, that in no event shall the sum of the Reimbursement Payments transferred pursuant to this subsection exceed \$600,000; and

(vii) SEVENTH, on the first Business day of each month beginning in February 2003 through and including January 2023, to the Taxing Authorities Fund: an amount equal to one-twelfth (1/12) of the total Taxes on the Facility that would become due and payable during the tax year in which such month occurs if the Company and not the Issuer were the owner of the Company Facility (the "Tax Payment"), with each Taxing Authority's proportionate share of such Tax Payment being deposited into the Tioga County Account, the Town of Nichols Account and the Owego-Apalachin School District Account,

as the case may be, each of which amounts (or such parts thereof as may actually be deposited into the Tioga County Account, the Town of Nichols Account and the Owego-Apalachin School District Account, respectively, on such date) shall be immediately transferred from the respective Accounts in the Taxing Authorities Fund to the respective Taxing Authorities; and

(viii) EIGHTH, on the last Business Day of each PILOT Year, commencing in January 2004 and through and including January 2023, but only to the extent that all deposits, transfers or payments required by subsections (i)-(vii) of this Paragraph 2(b) have been made and all requirements with respect thereto have been fully and completely satisfied (including the curing of any deficiencies in such deposits, transfers or payments required in prior months), to the Taxing Authorities Fund: an amount equal to the balance remaining on such date in the PILOT Fund, which amount shall be divided on a pro rata basis in accordance with each Taxing Authority's proportionate share of the Tax Payment and deposited as so divided into the Tioga County Account, the Town of Nichols Account and the Owego-Apalachin School District Account, as the case may be, each of which amounts shall be immediately transferred from the respective Accounts in the Taxing Authorities Fund to the respective Taxing Authorities.

(c) In the event the PILOT Trustee receives notice from the Bond Trustee pursuant to the provisions of Section 5.06(c) of the Indenture that the LOC Bank has honored, or refused to honor, a draw request on the Letter of Credit in an amount greater than the Maximum Monthly Debt Service Amount for the current month, subsections (i)(1) and (2) of Paragraph 2(b) above shall be replaced with the following provisions until the LOC Bank has been reimbursed in full for the amount of the honored draw request or the Bondholders have been paid in full, as the case may be:

(i) FIRST, upon receipt of such notice, and thereafter immediately upon receipt of moneys in the PILOT Fund, to the Debt Service and Reimbursement Fund: all amounts then or thereafter in the PILOT Fund; and all amounts in the Debt Service and Reimbursement Fund shall then be immediately disbursed in the following manner:

(1) if the PILOT Trustee has received notice from the Bond Trustee pursuant to Section 5.06(c) of the Indenture that the LOC Bank has honored a draw request on the Letter of Credit, to the Bond Trustee for deposit in the Reimbursement Account of the Issuer Facility Payments Fund, moneys in a total amount equal to such draw; provided, however, that if the PILOT Trustee has received notice from the Bond Trustee pursuant to Section 5.06(c) of the Indenture that the LOC Bank has not honored a draw request, in whole or in part, on the Letter of Credit, then to the Bond Trustee for deposit in the Bond Fund, moneys in a total amount equal to the Credit Issuer Facility Deficiency; and

(2) all amounts remaining in the Debt Service and Reimbursement Fund after the completion of the transfers required by Paragraph 2(c)(i)(1) shall be immediately transferred to the PILOT Fund.

(d) In the event the PILOT Trustee receives notice from the Bond Trustee pursuant to the provisions of Section 5.16(f) of the Indenture that a draw on the Letter of Credit has occurred with respect to a tender of Bonds, subsections (i)(1) and (2) of Paragraph

2(b) above shall be replaced with the following provisions until the LOC Bank has been reimbursed in full for the amount of the draw on the Letter of Credit:

(i) FIRST, upon receipt of notice from the Bond Trustee pursuant to Section 5.16(f) of the Indenture, and thereafter immediately upon the receipt of moneys, to the Debt Service and Reimbursement Fund: all amounts then or thereafter in the PILOT Fund, and all amounts in the Debt Service and Reimbursement account shall be disbursed in the following manner:

(1) upon receipt of notice from the Bond Trustee pursuant to Section 5.16(f) of the Indenture and thereafter immediately upon the receipt of moneys or when moneys otherwise become available, to the Bond Trustee for deposit in the Reimbursement Account of the Purchase Fund, all amounts in the Debt Service and Reimbursement Fund, until the sum of all amounts transferred to the Bond Trustee for deposit in the Reimbursement Account of the Purchase Fund equals the amount of the draw on the Letter of Credit with respect to such tender as stated on such notice; provided, however, that under no circumstances shall the amount remaining in the Debt Service and Reimbursement Fund after any such transfer be less than the sum of the Maximum Monthly Debt Service Amounts to become due for the remainder of the current PILOT Year;

(2) on the first Business Day of each month beginning in February 2003 through and including the Maturity Date, and on the Maturity Date irrespective of whether or not the Maturity Date is the first Business Day of the month, to the extent Bonds (other than Pledged Bonds) are Outstanding, if the PILOT Trustee has received notice from the Bond Trustee pursuant to Section 5.06(c) of the Indenture that the LOC Bank has honored a draw request under the Letter of Credit, to the Bond Trustee for deposit in the Reimbursement Account of the Issuer Facility Payments Fund, moneys in an amount equal to such draw; provided, however, that if the PILOT Trustee has received notice from the Bond Trustee pursuant to Section 5.06(c) of the Indenture that the LOC Bank has not honored a draw request under its Letter of Credit, then to the Bond Trustee for deposit in the Bond Fund, an amount equal to Debt Service Payments then due and payable with respect to the Bonds (other than Pledged Bonds); and

(3) immediately after the transfer described above in Paragraph 2(d)(i)(2), to the extent the amount transferred to the Bond Trustee is less than the Maximum Monthly Debt Service Amount for such month, the difference between the amount transferred to the Bond Trustee and the Maximum Monthly Debt Service Amount shall be available for transfer to the Bond Trustee for deposit in the Reimbursement Account of the Purchase Fund; and

(4) all amounts remaining in the Debt Service and Reimbursement Fund after the completion of the transfers required by Paragraph 2(d)(i)(1)-(3) shall be immediately transferred to the PILOT Fund.

(e) In the event the PILOT Trustee receives notice from the LOC Bank that the rating assigned by Standard & Poor's Ratings Group, a Division of McGraw-Hill, Inc. ("S&P"), to the unsecured long-term debt of Best Buy Co., a Minnesota corporation



("Best Buy"), is B or below (without regard to any bond insurance, letter of credit or similar arrangement supporting the payment when due of the principal of and interest on such unsecured long-term debt), or that such unsecured long-term debt is no longer rated by S&P, subsections (vi)-(viii) of Paragraph 2(b), above, shall be replaced with the following provisions until the earlier to occur of (1) the LOC Bank or the Issuer shall notify the PILOT Trustee that the rating assigned by S&P to the unsecured long-term debt of Best Buy is higher than B (without regard to any bond insurance, letter of credit or similar arrangement supporting the payment when due of the principal of and interest on such unsecured long-term debt), or (2) the Bonds shall have been paid in full and all obligations of the Issuer under the Reimbursement Agreement shall have been satisfied:

(vi) SIXTH, all amounts remaining in the PILOT Fund after the completion of the transfers required by subsections (i)-(v) of this Paragraph 2(b) shall be retained in the PILOT Fund.

3. In the event that title to the Company Facility or any part thereof is transferred from the Issuer to the Company at such time in reference to any taxable status date as to make it impossible to place such Company Facility or part thereof on the tax rolls of the Town of Nichols, Owego-Apalachin School District, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Company Facility is or may be wholly or partially located, as the case may be, by such taxable status date, the Company hereby agrees to pay at the first time taxes or assessments are due following the taxable status date at which such Company Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Company Facility or part thereof had it been on the tax rolls from the time the Company took title until the date of the tax rolls following the taxable status date as of which such Company Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Agreement to the respective Taxing Authorities relating to any period of time after the date of transfer of title to the Company. The provisions of this Paragraph 3 shall survive the termination or expiration of the Lease Agreement.

4. In the event the Company Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall continue notwithstanding any such legislative change or judgment and shall not be diminished or reduced in any way. However, there shall be deducted from any taxes then due any amounts paid pursuant to this Agreement to the respective Taxing Authorities relating to any period of time after the effective date of such amendment, legislative change or judgment.

5. The Company, in recognition of the benefits provided under the terms of this Agreement including, but not limited to, the formula for payments in lieu of taxes set forth in Exhibit A hereto, and for as long as the Lease Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485 or 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Article 18-A of the General Municipal Law) with respect to the Company Facility. The Company, however, reserves any such rights with respect to all

special ad valorem levies, special assessments and service charges levied against the Company Facility referred to in Paragraph 1(e).

6. Except as otherwise provided herein, any notice, certificate, request or other communication required to be given by or under this Agreement shall be deemed to have been duly given when delivered, and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested, or when received by telecopy (with confirming copies via overnight courier) addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

The Issuer:

Tioga County Industrial Development Agency  
56 Main Street  
Owego, New York 13827  
Telecopier: (607) 687-1435  
Attention: Chairman

The Company:

Nichols Distribution, LLC  
c/o Best Buy Co., Inc.  
7075 Flying Cloud Drive  
Eden Prairie, Minnesota 55344  
Telecopier: (952) 995-7899  
Attention: Legal/Real Estate Department

The PILOT Trustee:

Community Bank, N.A.  
331 W. Pulteney Street  
Corning, New York 14830  
Telecopier: (607) 937-3364  
Attention: Trust Officer

The County:

Tioga County  
56 Main Street  
Owego, NY 13827  
Telecopier: (607) 223-7018  
Attention: Deputy Director of Economic Development and Planning

The Town:

Town of Nichols  
54 East River Road  
Nichols, NY 13812  
Telecopier: (607) 699-3835  
Attention: Supervisor

The School District:

Owego-Apalachin School District  
36 Talcott Street  
Owego, NY 13827  
Telecopier: (607) 687-6313  
Attention: Superintendent

The Bond Trustee:

Manufacturers and Traders Trust Company  
One M&T Plaza  
7<sup>th</sup> Floor  
Buffalo, New York 14203  
Telecopier: (716) 842-4474  
Attention: Corporate Trust Department

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third business day after mailing.

7. Failure by the Issuer in any instance to insist upon the strict performance of any one or more of the obligations of the Company under this Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Issuer of any of the Company's defaults or breaches hereunder or of any of the rights and remedies of the Issuer by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Company's obligations hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company or receipt by the PILOT Trustee of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the PILOT Trustee may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or equity.

8. This Agreement shall become effective as of the Closing Date. All taxes, assessments, special assessments, service charges, special ad valorem levies, or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company when due. Upon termination of the Lease Agreement and conveyance of title to the Company Facility to the Company, this Agreement shall terminate.

9. Whenever the Company fails to comply with any provision of this Agreement, the Issuer may, but shall not be obligated to, take whatever action at law or in equity as may appear necessary or desirable to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement.

10. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

11. The Company agrees to hold the Issuer harmless from and against any liability arising from any default by the Company in performing its obligations hereunder or any expense incurred under this Agreement, including any expenses of the Issuer, including without limitation reasonable attorneys' fees.

12. This Agreement may be modified only by written instrument duly executed by the parties hereto.

13. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

14. If any provision of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

15. (a) The PILOT Trustee shall be under no obligation to institute any suit, or to take any remedial action under this Agreement or under any other Bond Document or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers under this Agreement, or under any other Bond Document, until it shall be indemnified to its satisfaction against any and all reasonable compensation for services, costs and expenses, outlays, and reasonable counsel fees and expenses and other disbursements, and against any and all loss, claim, damage, expense or liability not due to its willful misconduct or gross negligence; provided, however, that the PILOT Trustee shall nevertheless be obligated to receive and deposit moneys and to make payments (from the sources herein specified) at the times and in the manner specified in this Agreement.

(b) The PILOT Trustee may resign and thereby become discharged from the duties hereunder for any reason by giving written notice by registered or certified mail, postage prepaid, to the Issuer, the Company, the Taxing Authorities and the Bond Trustee, but such resignation shall not take effect until the appointment and acceptance thereof of a successor PILOT Trustee. If at any time the PILOT Trustee shall resign effective prior to appointment and acceptance of a successor PILOT Trustee, be dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the PILOT Trustee or of its property or affairs, the position of PILOT Trustee shall thereupon become vacant. If the position of PILOT Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the PILOT

Trustee shall resign, the Issuer shall appoint a successor PILOT Trustee and shall use its best efforts to obtain acceptance of such successor PILOT Trustee within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Bond Trustee and the Taxing Authorities.

(c) The PILOT Trustee may be removed at any time by an instrument in writing filed with the PILOT Trustee and signed by the Issuer. Such removal shall become effective only upon the appointment, by the Issuer, of and acceptance of such appointment by a successor PILOT Trustee. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Bond Trustee and the Taxing Authorities.

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

NICHOLS DISTRIBUTION, LLC

By: CA Scheidner  
Name: Charles A. Scheidner  
Title: Senior Vice President - Logistics

TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: William J. Woods, Jr.  
Title: Chairman

COMMUNITY BANK, N.A., as PILOT Trustee

By: \_\_\_\_\_  
Name: Robert Jewell  
Title: Trust Officer

TIOGA COUNTY

By: \_\_\_\_\_  
Name:  
Title:

TOWN OF NICHOLS

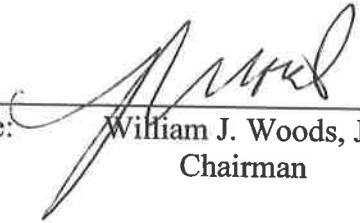
By: \_\_\_\_\_  
Name:  
Title:

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

NICHOLS DISTRIBUTION, LLC

By: \_\_\_\_\_  
Name:  
Title:

TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By:  \_\_\_\_\_  
Name: William J. Woods, Jr.  
Title: Chairman

COMMUNITY BANK, N.A., as PILOT Trustee

By: \_\_\_\_\_  
Name: Robert Jewell  
Title: Trust Officer

TIOGA COUNTY

By: \_\_\_\_\_  
Name:  
Title:

TOWN OF NICHOLS

By: \_\_\_\_\_  
Name:  
Title:

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NICHOLS DISTRIBUTION, LLC

By: \_\_\_\_\_  
Name:  
Title:

TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: William J. Woods, Jr.  
Title: Chairman

COMMUNITY BANK, N.A., as PILOT Trustee

By:  \_\_\_\_\_  
Name: Robert Jewell  
Title: Trust Officer

TIOGA COUNTY

By: \_\_\_\_\_  
Name:  
Title:

TOWN OF NICHOLS

By: \_\_\_\_\_  
Name:  
Title:



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

NICHOLS DISTRIBUTION, LLC

By: \_\_\_\_\_  
Name:  
Title:

TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: William J. Woods, Jr.  
Title: Chairman

COMMUNITY BANK, N.A., as PILOT Trustee

By: \_\_\_\_\_  
Name:  
Title:

TIOGA COUNTY

By: *Peter L. Ward*  
Name: Peter L. Ward  
Title: Chairman



TOWN OF NICHOLS

By: \_\_\_\_\_  
Name:  
Title:

APPROVED  
AS TO FORM BY  
TIOGA COUNTY LAW DEPT

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

NICHOLS DISTRIBUTION, LLC

By: \_\_\_\_\_  
Name:  
Title:

TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: William J. Woods, Jr.  
Title: Chairman

COMMUNITY BANK, N.A., as PILOT Trustee

By: \_\_\_\_\_  
Name:  
Title:

TIOGA COUNTY

By: \_\_\_\_\_  
Name:  
Title:

TOWN OF NICHOLS

By: James Branston  
Name: JAMES BRANSTON  
Title: TOWN SUPERVISOR

999A  
101  
101

OWEGO-APALACHIN SCHOOL DISTRICT

By: 

Name: Mr. Michael Bowen  
Title: President, Board of Education

MANUFACTURERS AND TRADERS TRUST COMPANY, as Bond Trustee

By:   
Name: Michelle M. Wojciechowicz  
Title: Trust Officer

EXHIBIT A

Payment Schedule for In-Lieu-of-Taxes Payment:

On the first Business Day of January in:

|            |             |   |
|------------|-------------|---|
| 2003 ..... | \$1,500,000 |   |
| 2004 ..... | \$1,500,000 |   |
| 2005 ..... | \$1,500,000 |   |
| 2006 ..... | \$1,500,000 |   |
| 2007 ..... | \$1,500,000 |   |
| 2008 ..... | \$1,500,000 |   |
| 2009 ..... | \$1,500,000 |   |
| 2010 ..... | \$1,500,000 |   |
| 2011 ..... | \$1,500,000 |   |
| 2012 ..... | \$1,500,000 |   |
| 2013 ..... | \$1,500,000 |   |
| 2014 ..... | \$1,500,000 |   |
| 2015 ..... | \$600,000   |   |
| 2016 ..... | \$600,000   |   |
| 2017 ..... | \$600,000   | <i>or</i>   |
|            | \$850,000   | if total square footage of the Company Improvements equals or exceeds 1,000,000 square feet |
| 2018 ..... | \$600,000   | <i>or</i>   |
|            | \$850,000   | if total square footage of the Company Improvements equals or exceeds 1,000,000 square feet |
| 2019 ..... | \$600,000   | <i>or</i>   |
|            | \$850,000   | if total square footage of the Company Improvements equals or exceeds 1,000,000 square feet |
| 2020 ..... | \$600,000   | <i>or</i>   |
|            | \$850,000   | if total square footage of the Company Improvements equals or exceeds 1,000,000 square feet |
| 2021 ..... | \$600,000   | <i>or</i>   |
|            | \$850,000   | if total square footage of the Company Improvements equals or exceeds 1,000,000 square feet |
| 2022 ..... | \$600,000   | <i>or</i>   |
|            | \$850,000   | if total square footage of the Company Improvements equals or exceeds 1,000,000 square feet |

EXHIBIT B

## Legal Description of Real Property

**BEGINNING** at  $\frac{3}{4}$ " rebar set this survey at the intersection of the southerly line of Stanton Hill Road and the southwesterly line of Berry Road.

**THENCE** S  $31^{\circ} 42' 27''$  E along the southwesterly line of said Berry Road, a distance of 70.57' to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** southeasterly along the southwesterly line of said Berry Road and along a 4483.44' radius curve to the left, an arc length of 405.00' (having a chord of S  $34^{\circ} 17' 43''$  E 404.86') to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** S  $36^{\circ} 53' 00''$  E along the southwesterly line of said Berry Road, a distance of 279.57' to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** southerly along the westerly line of said Berry Road and along a 392.04' radius curve to the right, an arc length of 469.38' (having a chord of S  $02^{\circ} 35' 02''$  E 441.84') to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** S  $31^{\circ} 42' 56''$  W along the northwesterly line of said Berry Road, a distance of 222.15' to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** southerly along the westerly line of said Berry Road and along a 458.04' radius curve to the left, an arc length of 280.64' (having a chord of S  $14^{\circ} 09' 47''$  W 276.27') to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** southerly along the westerly line of said Berry Road and along a 392.04' radius curve to the right, an arc length of 449.85' (having a chord of S  $29^{\circ} 29' 00''$  W 425.57') to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** southwesterly along the northwesterly line of said Berry Road and along a 458.04' radius curve to the left, an arc length of 447.25' (having a chord of S  $34^{\circ} 22' 59''$  W 429.69') to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** S  $06^{\circ} 24' 37''$  W along the westerly line of said Berry Road, a distance of 145.72' to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** southwesterly along the northwesterly line of said Berry Road and along a 392.04' radius curve to the right, an arc length of 485.02' (having a chord of S  $41^{\circ} 51' 10''$  W 454.67') to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** S  $77^{\circ} 17' 44''$  W along the northerly line of said Berry Road, a distance of 966.54' to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** N  $57^{\circ} 18' 25''$  W a distance of 479.07' to a  $\frac{3}{4}$ " rebar with cap, set this survey.

**THENCE** S 54° 41' 21" W a distance of 78.30' to a ¾" rebar with cap, set this survey.

**THENCE** N 35° 18' 39" W a distance of 193.83' to a ¾" rebar with cap, set this survey.

**THENCE** N 57° 18' 25" W a distance of 673.29' to a ¾" rebar with cap, set this survey.

**THENCE** N 54° 04' 25" W a distance of 367.24' to a ¾" rebar with cap, set this survey.

**THENCE** N 46° 59' 25" W a distance of 42.00' to a ¾" rebar with cap, set this survey.

**THENCE** N 43° 00' 40" E a distance of 163.65' to a ¾" rebar with cap, set this survey.

**THENCE** N 46° 59' 25" W a distance of 198.52' to a ¾" rebar with cap, set this survey.

**THENCE** N 29° 46' 58" E a distance of 345.90' to a ¾" rebar with cap, set this survey.

**THENCE** N 41° 59' 45" E a distance of 295.33' to a ¾" rebar with cap, set this survey.

**THENCE** N 49° 14' 01" E a distance of 656.13' to a ¾" rebar with cap, set this survey.

**THENCE** S 85° 34' 00" E a distance of 665.70' to a ¾" rebar with cap, set this survey.

**THENCE** N 04° 47' 38" W a distance of 53.06' to a ¾" rebar with cap, set this survey in the southerly line of Stanton Hill Road.

**THENCE** easterly along the southerly line of Stanton Hill Road and along a 1101.11' radius curve to the left, an arc length of 247.22' (having a chord of N 80° 28' 12" E 246.70') to a ¾" rebar with cap, set this survey.

**THENCE** N 69° 55' 36" E along the southerly line of Stanton Hill Road, a distance of 77.77' to a ¾" rebar with cap, set this survey.

**THENCE** N 64° 19' 23" E along the southerly line of Stanton Hill Road, a distance of 129.12' to a ¾" rebar with cap, set this survey.

**THENCE** northeasterly along the southeasterly line of Stanton Hill Road and along a 1093.11' radius curve to the left, an arc length of 190.74' (having a chord of N 58° 14' 20" E 190.49') to a ¾" rebar with cap, set this survey.

**THENCE** N 53° 14' 24" E along the southeasterly line of Stanton Hill Road, a distance of 924.65' to a ¾" rebar with cap, set this survey.

**THENCE** S 75° 34' 45" E along the southerly line of Stanton Hill Road, a distance of 95.35' to the **POINT OF BEGINNING**.

**CONTAINING** 138.35 acres.