

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "PILOT Agreement"), dated as of December 12<sup>th</sup> 2007, by and between **SCANNELL PROPERTIES #96, LLC**, an Indiana limited liability company, duly organized and validly existing, and registered as a foreign limited liability company under the laws of the State of New York with an address for the transaction of business located at 800 East 96<sup>th</sup> Street, Suite 175, Indianapolis, Indiana, 46240 (the "Company") and the **BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public-benefit corporation duly organized and validly existing under the laws of the State of New York with an office for the transaction of business located at 44 Hawley Street, P.O. Box 1510, Binghamton, New York 13902 (the "Agency"), with the Company and the Agency being collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, Title 1 of Article 31-A, as amended, of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

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

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

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 564 of the Laws of 1970 of the State (collectively, the "Act") created the Agency, which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, the Agency was created as a public benefit corporation pursuant to and for the purposes specified in Title 1 of Article 31-A of the General Municipal Law; and

WHEREAS, the Company has agreed to a lease and lease-back transaction, on the real property more particularly described on **Exhibit "A"** attached hereto (the "Land"), to facilitate the construction and equipping of a distribution warehouse facility located at 299 Broome Corporate Parkway in the Town of Conklin, Broome County, New York (the Land and the improvements to be constructed thereon will hereinafter be collectively referred to as the "Facility"), and to lease the Facility from the Agency; and

WHEREAS, the Agency will lease the Facility to the Company for a term of ten (10) years; and

WHEREAS, the Agency is exempt from the payment of taxes and assessments imposed upon real property, and as a further condition related to the acquisition of the Facility, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the

Town of Conklin (the "Town"), the Susquehanna Valley Central School District (the "School District") and the County of Broome (the "County") (collectively, the "Taxing Authorities") while occupying the Facility in lieu of general tax levies.

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

1. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the Parties hereto understand that, upon acquisition of a leasehold estate in Land by the Agency and the filing of an Equalization and Assessment Form RP-412-a ("Exemption Form") with respect to the Facility, and for so long thereafter as the Agency shall hold leasehold title to the Facility, the Facility shall be assessed by the various taxing entities having jurisdiction over the Facility, including, without limitation, the Town, the School District and the County as exempt on their respective assessment rolls prepared subsequent to the acquisition by the Agency of its leasehold estate in and to the Land and the filing of the Exemption Form. The Parties hereto understand that the Facility shall not be entitled to such exempt status on any tax roll until the first tax year following the tax status date subsequent to the date upon which the Agency became the holder of a leasehold estate in the Land, as evidenced by the recordation of a Memorandum of Lease in favor of the Agency covering the Land, and an Exemption Form is filed with all required Taxing Authorities ("Exemption Date"). The Company shall be required to pay all taxes and assessments lawfully levied and/or assessed against the Facility, including taxes and assessments levied for the current tax year and all subsequent years until the Facility is entitled to exempt status on the tax roll. The Agency will cooperate with the Company to obtain and preserve the tax exempt status of the Facility, including the preparation and filing of the Exemption Form with all required Taxing Authorities.

2. During the period the Facility is leased by the Agency, pursuant to a lease agreement with the Company, the Company agrees to pay to the Town, the County and the School District the following percentages of taxes that would otherwise be levied on said property if the same was subject to real property taxation: for the period from December 12, 2007 through February 12, 2009, one hundred percent (100%) of the taxes that would otherwise have been levied on the real property described in **Exhibit "A"**; for the period from February 13, 2009 through February 12, 2014, twenty-five percent (25%) of the taxes that would otherwise be levied on the real property described in **Exhibit "A"** attached hereto; for the period from February 13, 2014 through February 12, 2019, fifty percent (50%) of the taxes that would otherwise be levied on the real property described in **Exhibit "A"** attached hereto; and thereafter full taxes shall be paid on the assessed value of the real property described in **Exhibit "A"** attached hereto.

3. As long as this PILOT Agreement is in effect, the Agency and the Company agree that the Company shall be deemed to be the owner of the Facility for purposes of filing and instituting, and shall have the right to file and institute administrative and judicial review of assessments of the Facility pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time. However, the Parties hereto agree that no review of the assessments of the Facility, administrative or judicial, shall be permitted except in connection with a review of the assessments of the entire tax map parcel upon which the Facility is situated. In the event that the assessment of the Facility is reduced, by settlement or court determination, as a result of any such judicial review so that the Company would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if the Company was the owner of the Facility, the Company shall be entitled to receive a refund or refunds of the payments in lieu of taxes paid pursuant to this PILOT Agreement, adjusted for the payment

percentages set forth in the Schedule of Payments in Paragraph 2 above.

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

5. Should the Company (i) use the Facility for other than office/distribution/warehouse or allied purposes such as defined in Article 31-A of the General Municipal Law, (ii) fail to retain substantially the number of jobs anticipated by the project, when such job reductions are not reflective of the Company’s normal business cycle and/or local and national economic conditions, or (iii) acquire its reversionary interest in the Agency’s leasehold estate in the Facility at any time during the term of this PILOT Agreement, this PILOT Agreement shall terminate immediately and the Facility shall be returned to the non-exempt portion of the tax roll and be subject to taxation thereafter, including any portion of a tax year not otherwise covered by this PILOT Agreement.

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

A. Without requiring any notice of non-payment or of default to the Company, the Agency, or to any other person;

B. Without proof of demand.

7. The Parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-A of the Real Property Tax Law does not entitle the Agency to an exemption from special assessments and special ad valorem levies such as, but without limitation, charges for metered water and sewer rent. The Company hereby agrees to pay

all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.

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

9. The Company agrees to pay the amounts due hereunder to each particular Taxing Authority in any calendar year to the appropriate receiver of taxes within the period that such Taxing Authority allows the payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts for such payments.

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

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

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

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

- A. Sale or foreclosure of the Facility and departure of the Company from Broome County;
- B. Significant change in the use of the Facility and/or business activities of the Company; and

C. Significant employment reductions not reflective of the Company's normal business cycle and/or local and national economic conditions.

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

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

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

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

**IF TO THE AGENCY:**

Broome County Industrial Development Agency  
44 Hawley Street  
P.O. Box 1510  
Binghamton, New York 13902  
Attn: Executive Director

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



**IF TO THE COMPANY:**

Scannell Properties #96, LLC  
800 East 96<sup>th</sup> Street  
Suite 175  
Indianapolis, Indiana 46240  
Attn: James C. Carlino

Copies to: Howard M. Rittberg, Esq.  
Levene, Gouldin & Thompson, LLP  
P.O. Box F-1706  
Binghamton, New York 13902

FedEx Ground Package System, Inc.  
Attention: Supervisor, General Accounting  
1000 FEDEX Drive  
Moon Township, Pennsylvania 15108  
Re: Binghamton, NY - #139

FedEx Ground Package System, Inc.  
Attention: Real Estate Department  
1000 FEDEX Drive  
Moon Township, Pennsylvania 15108  
Re: Binghamton, NY - #139

15. The Town, County, School District, Agency and the Company as used herein shall include their successors and assigns.

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

SCANNELL PROPERTIES #96, LLC

By: [Signature]  
James C. Carlino, Manager

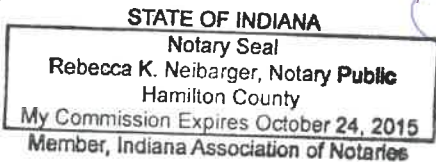
**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: [Signature]  
Richard D'Attilio, Executive Director

STATE OF INDIANA :  
: ss.:  
COUNTY OF MARION :

As of the 13 day of December, 2007, before me, the undersigned, personally appeared James C. Carlino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public



STATE OF NEW YORK :  
: ss.:  
COUNTY OF BROOME :

As of the 12th day of December, 2007, before me, the undersigned, personally appeared RICHARD D'ATTILIO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

JOSEPH B. MEAGHER  
Notary Public, State of New York  
Broome County 02ME4974837  
Commission Expires Nov. 26, 20 10

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Conklin, County of Broome and State of New York, bounded and described as follows:

BEGINNING at a point of Intersection of the westerly highway boundary of Broome Corporate Parkway (County Route 322 – 100 feet wide) with the southerly highway boundary of Carlin Road (49.5 feet wide); thence,

1. South 15°52'37" East, along the westerly highway boundary of Broome County Parkway, a distance of 508.07 feet to a point of curvature; thence,
2. Southerly, along a curve to the right, having a radius of 833.00 feet, an arc length of 318.29 feet to a point; thence,
3. North 76°40'20" West, along the northerly line of lands now or formerly owned by Coolidge Binghamton LLC (tax map #194.011-01-029), a distance of 1004.62 feet to a point; thence,
4. North 3°37'27" West, along the easterly line of lands now or formerly owned by George Perry & Sallyanne Rice (tax map #194.011-01-02), a distance of 492.77 feet to a point; thence,
5. North 84°35'30" East, along the southerly highway boundary, a distance of 554.98 feet to the PLACE AND POINT OF BEGINNING.

BEING 13.782 ACRES