

**MEMORANDUM OF UNDERSTANDING**  
(DRAFT)

This binding Memorandum of Understanding (this “MOU”) by and between \_\_\_\_\_, a \_\_\_\_\_ (collectively with its affiliates, the “Company”), and Tulsa County Board of County Commissioners (the “County”), each a “Party” and collectively the “Parties”, shall be effective as of December \_\_\_\_, 2013 (the “Effective Date”).

WHEREAS, the Company has expressed its interest and desire to acquire, develop, construct, equip and operate an approximately 1.3 million square foot distribution and fulfillment center in Tulsa County, Oklahoma (the “Project”); and

WHEREAS, the Company estimates that the Project will involve a capital investment of approximately \$160 million, and that the resulting Project will employ at least 1,020 full-time equivalent employees and 367 full-time employees by the end of 2017; and

WHEREAS, as a condition of the Company locating the Project in Tulsa County, Oklahoma, the County has agreed to offer certain governmental economic incentives, as provided in this MOU, and Oklahoma’s Local Development Act, 62 O.S. §§ 850 et seq., and 68 O.S. § 2902;

NOW, THEREFORE, in light of these premises and the mutual promises and other consideration recited below, the Company and the County hereby agree as follows:

1. The Project will be located on approximately 72 acres situated on the corner of 76<sup>th</sup> Street North and Lakewood in the unincorporated part of Tulsa County, Oklahoma near the City of Owasso. The intended site is currently owned by Owasso Land Trust LLC but will be acquired by the Company in 2014. The Company anticipates expending approximately \$160 million to acquire, construct and equip the Project, including approximately \$86.5 million in building construction and \$73.5 million in equipment, land acquisition, and other Project expenses. Construction is expected to begin in April of 2014, with full capital investment anticipated to be complete by April of 2015. The Company anticipates that the Project will begin operations in the second quarter of 2015. The Company will begin staffing the Project upon its completion in the second quarter of 2015. By December 31, 2017, the Company intends to employ at the Project at least 1,020 full-time equivalent employees and at least 367 full-time employees.
2. As a material inducement for, and as a condition to, the Company proceeding with the Project as described above in this MOU, the County has agreed to pursue on behalf of the Company under Oklahoma’s Local Development Act a tax exemption equal to 100% of the County’s portion of sales tax that would otherwise be collected due to the Company’s purchase of construction materials and equipment for the Project.
3. As a material inducement for, and as an additional condition to, the Company proceeding with the Project as described above in this MOU, the County agrees to pursue on behalf of the Company under Oklahoma’s Local Development Act a 5-year tax abatement for 100% of the ad valorem real property and business personal property taxes that the Company would otherwise incur for the Project during the tax years of 2016 through 2020. To this end, the County agrees to engage in good faith efforts to obtain, as necessary, written agreements from any other taxing entities relating to the Project granting the Company said five-year tax exemption from ad valorem taxes.
4. As a material inducement for, and as an additional condition to, the Company proceeding with the Project as described above in this MOU, the County acknowledges that the State of Oklahoma

has agreed to provide the Company, pursuant to Oklahoma’s Manufacturing Tax Exemption incentive program, with a 5-year tax abatement for 100% of the ad valorem real property and personal property taxes that the Company would otherwise incur for the Project during the tax years of 2021 through 2025.

5. As a material inducement for, and as an additional condition to, the Company proceeding with the Project as described above in this MOU, the County has agreed to construct an access road, acceleration and deceleration lanes, signalization improvements, and related work to complete the roadway projects contemplated for the Project (the “Roadway Work”), and to the extent that such costs are not otherwise paid for with funds from the Oklahoma Department of Transportation, the Cherokee Nation or an Economic Development Administration grant, the County agrees to seek any remaining required funds from the Tulsa County Vision Authority. The County agrees to coordinate with all other relevant governmental agencies to complete the Roadway Work no later than March 31, 2015.
6. As a material inducement for, and as an additional condition to, the Company proceeding with the Project as described above in this MOU, the County agrees that the following permits and fees will be the only permits and fees that the Company will be required to pay to the County with respect to the Project, and such permits and fees are based on the Company’s representations as shown below:

Permitting Fees		
Category	Cost	Based on
Building Permit	\$ 184,354.00	\$92 million project
Earth Moving Permit	\$ 175.00	Flat fee
Electrical Inspection	\$ 9,765.00	1,311,726 sq. ft.
Mechanical Inspection	\$ 9,765.00	1,311,726 sq. ft.
Plumbing Inspection	\$ 9,765.00	1,311,726 sq. ft.

The Company and the County acknowledge that, notwithstanding the foregoing, there are certain fire plan reviews and permits associated with the fire alarm and fire suppression systems of the Project (the “Fire Fees”). Additionally, there are certain impact fees associated with the water and sewer connections for the Project (the “Impact Fees”). The Company and the County acknowledge that the Fire Fees and Impact Fees are administered and imposed solely by the City of Tulsa (the “City”) and are in addition to the other fees referenced in this Section 6. The Fire Fees and Impact Fees will be addressed by a separate agreement between the Company and the City.

7. The County acknowledges that the Company’s decision to proceed with the Project as described above in this MOU is further conditioned on the grant of additional governmental economic incentives benefiting the Project from other governmental entities having jurisdiction over the Project. The incentives referenced herein from the County are made irrespective of such other incentives and, while critical to the Company’s decision to proceed with the Project as described above in this MOU, are not individually dispositive to that decision. The County therefore acknowledges that the Company’s ultimate decision to proceed with the Project is further conditioned on the grant of the other governmental economic incentives referenced in this paragraph.

8. The County acknowledges and agrees that the Company's projections set forth in Paragraph 1 above are the product of careful estimation but are necessarily preliminary as the Project budget and plans are not yet finalized.
9. The Company acknowledges that the County's promises herein are expressions of the County's intent to comply with the terms and conditions of Oklahoma's Local Development Act to secure for Company the benefits of said promises, and that the final expression of said promises shall be as set forth in the project plan required to be adopted and approved by the County pursuant to resolution, all as required under Oklahoma's Local Development Act.
10. Any amendment to or modification of this MOU must be in writing. This MOU may be executed in two or more counterparts, each of which may be signed by one or more of the Parties. Each such executed counterpart shall be an original, but all such counterparts shall constitute the same MOU. The Company's failure to perform its obligations as set forth in this MOU as a result of events or conditions beyond its control, such as, but not limited to, strikes, fires, floods, acts of God, environmental disasters, or governmental restrictions shall not be deemed a breach of this MOU. The Parties agree that the laws of the State of Oklahoma shall govern this MOU without regard to conflicts-of-law principles. This MOU shall inure to the benefit of the Company and its affiliates, successors and assigns.

*[SIGNATURES FOLLOW ON NEXT PAGE]*

IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this MOU as of the Effective Date.

**TULSA COUNTY BOARD OF COUNTY COMMISSIONERS,**

**a** \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[THE COMPANY]**

**a** \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_