

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of February 24, 2016, by and between MIDWESTERN PET FOODS INC, an Indiana corporation authorized to do business in New York, having its principal offices at 9634 Hedden Road, Evansville, Indiana 47725 ("Midwestern") and TWO BROTHERS PROPERTY, LLC d/b/a TWO BROTHERS PET FOODS, LLC, an Indiana limited liability company authorized to do business in New York, having its principal offices at 9634 Hedden Road, Evansville, Indiana 47725 ("Two Brothers") (Midwestern and Two Brothers are hereinafter collectively, the "Company") and the TIOGA 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 56 Main Street, Owego, New York 13827 (the "Agency,") collectively, (the "Parties.")

WITNESSETH:

WHEREAS, Title 1 of Article 18-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 1969 Laws 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 534 of the 1971 Laws of the State of New York, as amended by Chapter 883 of the 1974 Laws of the State of New York, constituting Section 912 of said General Municipal Law (said Chapter and Enabling Act being hereinafter referred to as the "Act") created the Agency, which is empowered under the Act to undertake the providing, financing and leasing of the project described below; and

WHEREAS, the Agency and the Company have agreed to a lease and leaseback transaction, on real property more particularly described in Exhibit "A" attached hereto, to facilitate the following: (A) (1) the renovation on approximately 15.9 acres of land located at 702 Broad Street Extension, Waverly, in the Town of Barton, County of Tioga and State of New York (the "Land") of a 7,000+/- square foot office building and a 147,330+/- square foot manufacturing building (the "Facility") and (2) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project"), all of the foregoing to be leased by the Company as a manufacturing facility for pet food, and any other directly or indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); (C) the lease of the Project by the Company to the Agency; and (D) the leaseback of the Project by the Agency to the Company or such other person(s) or entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency will lease the Project from the Company pursuant to a certain lease agreement (the "Lease Agreement,") and the Agency will lease the Project to the Company pursuant to a certain leaseback agreement (the "Leaseback Agreement"); and

WHEREAS, the Agency is exempt from the payment of taxes and assessments imposed upon real property, and the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the Town of Barton (the "Town"), the Waverly Central School District (the "School District") and the County of Tioga (the "County") in lieu of general tax levies on the Project.

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 understand that, upon acquisition of a leasehold interest in the Project by the Agency and the filing of an Equalization and Assessment Form RP-412-a (the "Exemption Form") with respect to the Project, and for so long thereafter as the Agency shall have a leasehold interest in the Project, the Project shall be assessed by the various taxing entities having jurisdiction over the Project, 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 a leasehold interest in the Project and the filing of the Exemption Form. The Parties hereto understand that the Project 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 acquires a leasehold interest in the Project and an Exemption Form is filed. The Company shall be required to pay all taxes and assessments lawfully levied and/or assessed against the Project, including taxes and assessments levied for the current tax year and all subsequent years until the Project 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 Project, including the preparation and filing of the Exemption Form.

2. During the period the Agency has a leasehold interest in the Project, the Company agrees to pay to the Agency, to be distributed to the Town, the County and the School District,

the payments in lieu of taxes as indicated on Exhibit "B" attached hereto. Commencing with the eleventh year, and until such time as the Project is conveyed by the Agency to the Company, the Company shall pay the actual taxes of the Project that would have been imposed but for the Agency's tax exemption.

3. During the term of this Agreement, the Company retains the right to contest the assessment on the Project.

4. 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 or entity; and

B. Without proof of demand.

5. The Parties 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 Project.

6. Pursuant to Section 858 (15) of the General Municipal Law, the Agency agrees to give the Town, the School District and the County a copy of this 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 taxing jurisdiction responsible for preparing the tax rolls for said jurisdiction, together with a request that said officer or officers submit to the Agency, 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.

7. The Company agrees to pay the amounts due hereunder to each particular taxing jurisdiction in any calendar year to the Agency within the period that such taxing entity allows the payment of taxes levied in such calendar year without penalty, but no later than five (5) days prior to the due date. The Company shall be entitled to receive receipts for such payments.

8. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this Agreement when due, the Company shall pay the same, together with a late-payment penalty equal to five percent (5%) of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall thereafter pay a late-payment penalty of one percent (1%) 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 percent (1%) per month, or (b)

the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

9. Pursuant to Section 874(6) of the General Municipal Law, if the Company defaults in performing any of its obligations, covenants or agreements under this Agreement and the Agency or any taxing jurisdiction employs attorneys or incurs other expenses 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 therefor, 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.

10. 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 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.

11. 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 closure of the Project and departure of the Company from Tioga County;
- B. Significant change in the use of the Project 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 the 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.

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

IF TO THE AGENCY: Tioga County Industrial Development Agency
56 Main Street
Owego, New York 13827
Attn: Chairman

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

IF TO THE COMPANY: Midwestern Pet Foods Inc
9634 Hedden Road
Evansville, Indiana 47725
Attn: Jeffrey J. Nunn

Two Brothers Property, LLC d/b/a
Two Brothers Pet Foods, LLC
9634 Hedden Road
Evansville, Indiana 47725
Attn: Jeffrey J. Nunn

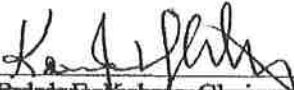
With Copies to: Stephan E. Weitzel, Esq.
Ziemer Stayman Weitzel Shoulders LLP
20 NW First Street
9th Floor
Evansville, Indiana 47706

13. The Town, the County, the School District, the Agency and the Company as used herein shall include their successors and assigns. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, any future owners of the Project and the Company's successors and assigns.

14. This Agreement shall remain in effect until termination or expiration of the Leaseback Agreement from the Agency to the Company which, by its terms, expires February 24, 2026.

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


TIOGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
~~Kevin Dougherty, Vice Chairman~~
Kevin Dougherty, Vice Chairman

MIDWESTERN PET FOODS INC.

By: 
Jeffrey J. Nunn, President

TWO BROTHERS PROPERTY, LLC d/b/a
TWO BROTHERS PET FOODS, LLC

By: Midwestern Pet Foods Inc, its Manager
By: 
Jeffrey J. Nunn, President

STATE OF NEW YORK :
: ss:
COUNTY OF TIOGA :

On this 23rd day of February, 2016, before me, the undersigned, personally appeared ~~ROBERTO BOCCASSINI~~ 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.



Notary Public

JOSEPH B. MEAGHER
Notary Public, State of New York
Broome County 02ME4974837
Commission Expires Nov. 26, 2018

STATE OF INDIANA :
: ss.:
COUNTY OF VANDERBURGH :

On February 22, 2016, before me, the undersigned, personally appeared JEFFREY J. NUNN, 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/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 and that such individual made such appearance before the undersigned in the city/town/village of Evansville, State of Indiana.



Notary Public

Expires: 10/25/19

EXHIBIT "A"

DESCRIPTION OF LAND

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Barton, County of Tioga, State of New York and more particularly bounded and described as follows:

BEGINNING at a granite monument found at the northeasterly corner of New York State Department of Transportation appropriation for Route 17 (Southern Tier Expressway) (MAP 1003R-1, Parcel 1003) and on the westerly boundary of lands now or formerly of the "Town of Barton" (Liber 360, Page 235), said monument also being N 05° 27' 40" W, a distance of 43.26 feet from a granite monument at the southeasterly corner of the aforementioned NYS DOT parcel and the southwesterly corner of said "Town of Barton" lands;

THENCE N 81° 39' 50" W, along the northerly boundary of NYS Route 17, a distance of 294.01 feet to a monument found at the southeasterly corner of lands now or formerly of "Grand Union Co." (Liber 491, Page 349);

THENCE along the easterly boundary of said "Grand Union Co." lands, the following five (5) courses and distances:

- 1.) Along a curve to the left having a radius of 393.07 feet, an arc distance of 214.32 feet, and producing a chord of N 13° 25' 02" E, a distance of 211.67 feet to an iron pin found;
- 2.) N 02° 12' 10" W, a distance of 366.34 feet to a point;
- 3.) S 87° 47' 50" W, a distance of 10.00 feet to a point;
- 4.) Along a curve to the right having a radius of 383.07 feet, an arc distance of 406.01 feet, and producing a chord of N 28° 13' 41" E, a distance of 388.04 feet to a point in the centerline of track;
- 5.) N 28° 15' 00" W, a distance of 11.79 feet to the southeasterly corner of lands now or formerly of "Dange, Inc." (Liber 396, Page 1132);

THENCE N 24° 45' 00" E, along the easterly boundary of said "Dange, Inc." lands, passing through an iron pin found 0.28 foot distance and passing through another iron pin found at an additional distance of 7.70 feet, an overall distance of 105.60 feet to a point in the southerly boundary of lands now or formerly of "Consolidated Rail Corporation";

THENCE N 86° 52' 17" E, along the last mentioned boundary, a distance of 862.50 feet to the northwesterly corner of lands now or formerly of "Sherman" (Liber 403, Page 342);

THENCE S 19° 20' 00" W, along the westerly boundary of said "Sherman" lands, along the westerly boundary of lands now or formerly of "Minier" (Liber 408, Page 14) and "Tobey" (Liber 408, Page 549), and continuing along a westerly boundary of the aforesaid "Town of Barton" lands, a distance of 649.00 feet;

THENCE continuing along the boundary of the aforementioned "Town of Barton" lands, the following six (6) courses and distances:

- 1.) N 80° 10' 02" W, a distance of 194.00 feet to a point;
- 2.) S 49° 35' 47" W, a distance of 374.49 feet to a monument found;
- 3.) N 87° 37' 59" W, a distance of 45.58 feet to a monument found;
- 4.) S 66° 40' 56" W, a distance of 63.33 feet to a monument found;
- 5.) S 38° 26' 53" W, a distance of 75.59 feet to a monument found;
- 6.) S 06° 46' 37" E, a distance of 206.51 feet to the point or place of beginning.

SUBJECT TO ANY AND ALL COVENANTS, EASEMENTS, RESTRICTIONS, AND OTHER MATTERS OF RECORD, INCLUDING:

- 1.) Agreement, covenants, and reservations contained in the deed from Rushton D. Smith and Katie Smith to Byram L. Winters dated July 14, 1906 and recorded July 16, 1906, in Liber 147 of Tioga County Deeds at Page 406.
- 2.) Agreements, covenants and reservations contained in the deed from William Cornell and Lucy I. Carey to Byram L. Winters dated January 17, 1907, and recorded January 28, 1907, in Liber 149 of Tioga County Deeds at Page 186.
- 3.) Agreements, covenants, and reservations contained in the deed from Waverly-Sayre Company to Chamber of Commerce of Waverly dated November 23, 1907, and recorded December 2, 1907, in Liber 152 of Tioga County Deeds at Page 10.
- 4.) Agreements, covenants, and reservations contained in the deed from Chamber of Commerce of Waverly to the Quaker Oats Company dated June 26, 1913, and recorded December 6, 1913, in Liber 161 of Tioga County Deeds at Page 525.
- 5.) Agreements, covenants, and reservations contained in the deed from Tioga Mill and Elevator Company to Chamber of Commerce of Waverly dated July 31, 1913 and recorded December 6, 1913, in Liber 161 of Tioga County Deeds at Page 529.
- 6.) Agreements, covenants, and reservations contained in the deed from Chamber of Commerce of Waverly Inc. to Kasco Mills Inc., dated October 27, 1944, and recorded October 30, 1944,

in Liber 233 of Tioga County Deeds at Page 183.

- 7.) Agreements among The Quaker Oats Company, Tioga Mill & Elevator Company, Chamber of Commerce of Waverly and Byram L. Winters dated July 31, 1913, and recorded October 24, 1913, Liber 161 of Tioga County Deeds at page 445.
- 8.) Permanent easement granted by Hagen Pet Foods, Inc. to the Tioga County Industrial Development Agency, dated September 23, 1997, and recorded November 14, 1997 in Liber 604 of Tioga County Deeds at Page 197.
- 9.) Financing Statement (UCC-1) between Hagen Pet Foods, Inc., and Prime Alliance Bank, Inc. filed June 19, 2014, in the office of the Tioga County Clerk.

BEING THE SAME premises described in a deed from Agway, Inc. to Hagen Pet Foods, Inc., dated June 12, 1997 and recorded June 12, 1997 in Liber 597 of Deeds at Page 161 in the Tioga County Clerk's Office.

EXHIBIT "B"

PILOT SCHEDULE

EXHIBIT "B"

PILOT SCHEDULE

Year	PILOT percentage	PILOT estimated payment amount	Estimated Real Property Tax*
1	0%	\$0	\$67,518
2	10%	\$6,886	\$68,868
3	20%	\$14,049	\$70,245
4	30%	\$21,494	\$71,849
5	40%	\$29,232	\$73,081
6	50%	\$37,271	\$74,542
7	60%	\$45,619	\$76,032
8	70%	\$54,286	\$77,552
9	80%	\$63,282	\$79,103
10	90%	\$72,616	\$80,685
11	100%	\$82,298	\$82,298
Total		\$427,033	\$821,573