

INCENTIVE AGREEMENT
(Personal Property Tax)

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and among Kroger OZ3 LLC, located at 1014 Vine Street, Cincinnati, OH 45202 (“Kroger”), and Ocado Solutions USA Inc., located at Buildings One 7 Two, Trident Place, Mosquito Way, Hatfield, Herts, AL 109UL (“Ocado,” and collectively with Kroger, may be hereinafter referred to as “**Taxpayer**”), and Adams County, Colorado, a body politic and corporate under the laws of the State of Colorado, located at 4430 S. Adams County Parkway, Brighton, CO 80601 (hereinafter “County”).

WITNESSETH:

WHEREAS, **Taxpayer** has decided to establish a new, 300,000 square foot e-commerce grocery fulfillment center in Adams County, Colorado (the “Facility”) and to invest approximately \$152,000,000 in purchasing land and new equipment for the Facility; and,

WHEREAS, **Taxpayer** plans on employing 390 employees at the Facility; and,

WHEREAS, the County deems it to be in its best interests to have Taxpayer establish its Facility in Adams County and to receive revenues from the development occurring thereon upon the terms and conditions contained herein; and,

WHEREAS, **Taxpayer** has established a new business facility as defined in C.R.S. § 39-30-105(7)(e); and,

WHEREAS, the County finds that the Facility will substantially benefit the public, through the retention of employees, the generation of new jobs and the increase in tax base in the County; and,

WHEREAS, §30-11-123, C.R.S., provides for incentive payment based on personal property taxes to any taxpayer who qualifies under C.R.S. § 39-30-105(7)(e).

NOW, THEREFORE, in consideration of the foregoing promises and covenants, to be kept and performed by each of them, the parties agree as follows:

1. Incentive payment. The County agrees to make six (6) annual incentive payments to **Taxpayer** (each an “Incentive Payment” and together the “Incentive Payments”). The amount of each incentive payment shall be the lesser of: (1) \$595,202.16 for the first assessment year after a certificate of occupancy is issued for the Facility; \$553,128.20 for the second assessment year after the certificate of occupancy is issued; \$511,054.24 for the third assessment year after the certificate of occupancy is issued; \$468,980.27 for the fourth assessment year after the certificate of occupancy is issued; \$426,906.31 for the fifth assessment year after the certificate of occupancy is issued; \$384,832.35 for the sixth assessment year after the certificate of occupancy is issued; or the amount of personal property taxes levied upon the Facility. Incentive

payments shall not exceed personal property taxes levied by the County¹ upon the taxable personal property directly attributable to the Facility, located at or within such Facility, and used in connection with the operation of such Facility for the applicable property tax year. In no event shall the total amount of the incentive payments exceed \$2,940,103.53.

Proof of payment of the taxes to the County Treasurer for the Facility must be submitted each year by **Taxpayer** to the Director of the Adams County Department of Fiscal Affairs before any incentive payment is due. Proof of payment of taxes for each incentive year must be submitted by **Taxpayer** no later than December 31 of the year taxes are due. **Taxpayer understands and agrees that failure to submit payment of taxes to the Adams County Department of Fiscal Affairs by December 31 of the year taxes are due shall result in a waiver of the incentive payment due on the tax payment not presented by the December 31 deadline, and the County shall be released from its obligation to pay the incentive payment for that tax year.** Taxpayer and the County agree that proof of payment of taxes shall include, but is not limited to, cancelled check, electronic payment receipt or receipt from the County showing timely payment.

Each Incentive Payment shall be due and payable within sixty days of receipt of proof of payment of taxes. The County shall provide half of each Incentive Payment to Kroger and the other half shall be provided to Ocado. **Taxpayer** waives the right to file a protest or seek an abatement or refund for personal property taxes due to the County with respect to the tax years enumerated in the first paragraph of this Section 1.

2. Condition Precedent. The County has appropriated sufficient funds for this Agreement for the current fiscal year. Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of County funds for the purposes hereof. In the event that funds become unavailable, the County may terminate this Agreement or amend it accordingly.

3. Attorney's Fees and Costs of Suit. The parties agree that in the event any suit is brought under this Agreement, each party shall pay its own attorney's fees, costs and expenses.

4. Assignment. None of the rights, duties and obligations of **Taxpayer** hereunder may be assigned without the prior written consent of the County; provided, however, Taxpayer may assign this Agreement to any entity controlling, controlled by, or under common control with either Taxpayer, and to any joint venture between Taxpayer or any affiliates thereof, and shall provide the County with written notice within thirty (30) days of the effective date of that assignment.

5. Term of Agreement. The term of this Agreement shall not exceed six (6) years of assessments.

6. Entire Agreement, Amendments. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations, other than those

¹ Taxes levied by other taxing entities such as school districts, municipalities, special districts, etc., are not County funds and are, therefore, not included in this calculation.

contained herein. This Agreement may be amended only by written agreement between **Taxpayer** and the County acting pursuant to County Board authorization.

7. Remedies. This Agreement shall be interpreted according to, and shall be governed by, the laws of the State of Colorado, whose courts shall have exclusive jurisdiction over any claim or cause of action arising hereunder. Venue for any suit arising under this Agreement shall be in Adams County, Colorado.

8. Severability. The parties agree that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions held to be invalid.

9. Effective Date. This Agreement shall become effective and binding upon the parties immediately upon execution by all parties hereto.

10. Jobs for Adams County Residents. For purposes of this Agreement, "Employee" will have the meaning set forth in C.R.S. 39-30-105(7)(f). **Taxpayer** has represented that it plans to employ at the Facility three hundred eighteen (318) Employees by the end of 2022; three hundred thirty-four (334) Employees by the end of 2023; three hundred fifty-two (352) Employees by the end of 2024; three hundred seventy-one (371) Employees by the end of 2025; three hundred ninety (390) Employees by the end of 2026; and three hundred ninety employees during 2027. The obligations of the County under this Agreement are expressly conditioned upon compliance by **Taxpayer** with this representation. **Taxpayer** agrees to work with the Adams County Workforce and Business Center on recruiting and posting new job opportunities in an effort to give Adams County residents first access to open positions at the Facility. **Taxpayer** agrees to make available to the County reasonably sufficient records of employment to establish compliance with this Section 10, at the request of the County upon thirty (30) days' written notice to Taxpayer. The County agrees to use adequate safeguards to maintain the security and confidentiality of sensitive or private information provided by the Taxpayer. The County agrees to redact from any record that is sought to be disclosed any information not required to be disclosed under Colorado public records law.

11. Warranty. **Taxpayer** represents and warrants that the establishment of the Facility that is contemplated herein qualifies for tax incentives under applicable Colorado law.

12. Force Majeure. Any delay in the performance shall not be a breach of this Agreement if such delay has been caused by or is the result of any acts of God; acts of the public enemy; insurrections; riots; embargoes; non-Taxpayer labor disputes, including strikes, lockouts, job actions, or boycotts; unforeseeable shortages of materials or energy; fires; explosions; floods; pandemics; epidemics; or other unforeseeable causes beyond the control and without the fault or negligence of the party whose performance is delayed. Such party shall give prompt notice to the other party of such cause for delay and shall take reasonable steps to resume performance as soon as possible. The time for performance shall be extended for a period equal to the period of delay due to the reasons as set forth in this paragraph.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

14. Notices. Except as otherwise provided in this Agreement, any notice, payment, statement, or demand required or permitted to be given under this Agreement by any party to the other may be effected by personal delivery in writing or by certified mail, postage prepaid return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each Party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for the County, to:

Adams County
Adams County Government Center
4430 South Adams County Parkway
Brighton, Colorado 80601
Attn:

If intended for the Taxpayer, to:

The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202
Attn: Tax Department, Economic Development

Ocado Solutions USA, Inc.
Buildings One 7 Two, Trident Place
Mosquito Way, Hatfield
Herts, AL 10 9UL
Attn: Mr. Richard Exact, Finance & Risk
Director

With a copy to:

Vorys, Sater, Seymour and Pease LLP
52 E. Gay St.
Columbus, Ohio 43215
Attn: Scott J. Ziance

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to execute this Agreement on their behalf.

Ocado Solutions USA Inc.

Joshua Ballance
By: Joshua Ballance
Title: Director

Subscribed and sworn to before me this 2nd day of September, 2021, by
Joshua Ballance.

Jayceon Lyndon
Notary Public

My commission expires: 9/30/2025

