

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of February 24, 2020, by and between SPARK BROOME, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, with an address for the transaction of business located at 320 North Jensen Road, Vestal, New York 13850 (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 FIVE South College Drive, Suite 201, Binghamton, New York 13905 (the "Agency").

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 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, renovate, 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 or renovation, 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 Broome County Industrial Development Agency (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 18-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, to facilitate the redevelopment, renovation, subdivision, repurposing and equipping of an inside plaza located within the former Sears Building situate at 501 Reynolds Road in the Village of Johnson City, Town of Union, Broome County, New York (the "Project"), and to lease the Project from 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 back to the Company pursuant to a certain leaseback agreement (the "Leaseback Agreement") for a term not to exceed twenty-two (22) 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 leasing of the Project, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the Village of Johnson City (the "Village"), the Town of Union (the "Town"), the Johnson City Central School District (the "School District") and the County of Broome (the "County") while occupying the Project 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 the acquisition by lease of the Project by the Agency and the filing of an Application for Real Property Tax Exemption Form RP-412-a (the "Exemption Form") with respect to the Project, and for so long thereafter as the Agency has 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 Village, the Town, the School District and the County as exempt on their respective assessment rolls prepared subsequent to the acquisition by the Agency by lease of 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 each tax year in which the Project shall be tax exempt, the Company agrees to pay to the Village, the Town, the School District and the County, the PILOT payments as shown on the PILOT Schedule attached hereto as Exhibit "B."

3. The Village, the Town, the County, and the School District shall separately bill the Company for each in-lieu-of payment due hereunder. For the purposes of this 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.

4. Should the Company use the Project for other than an inside plaza or allied purposes such as defined in Article 18-A of the General Municipal Law or acquire title during the term of this Agreement to the leased Project from the Agency, this Agreement shall terminate

immediately and the Premises 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 Agreement.

5. 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.

6. 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 Project.

7. Pursuant to Section 858 (15) of the General Municipal Law, the Agency agrees to give the Village, the Town, the School District and the County 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 taxing jurisdiction 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.

8. The Company agrees to pay the amounts due hereunder to each particular taxing jurisdiction in any calendar year to the appropriate receiver of taxes within the period that such taxing entity allows the payment of taxes levied in such calendar year without penalty. The

Company shall be entitled to receive receipts for such payments.

9. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this PILOT Agreement when due, 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.

10. 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 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 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.

11. Notwithstanding the foregoing, the Agency reserves the right to terminate, modify, or recapture any benefits provided to the Company pursuant to this PILOT Agreement, as well as any other benefit provided to the Company, in accordance with the policy of the Agency set forth in Exhibit "C" attached hereto.

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. All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express or other similar overnight delivery service, to the respective addresses of the parties hereinafter set forth or to such other place(s) as any of the parties hereto may, from time to time, designate by written notice to the other.

If to the Agency: Broome County Industrial Development Agency  
FIVE South College Drive  
Suite 201  
Binghamton, New York 13905

Attn: Executive Director

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: Spark Broome, LLC  
320 North Jensen Road  
Vestal, New York 13850

Attn: Douglas G. Matthews, Member

Copy to: Howard M. Rittberg, Esq.  
Levene, Gouldin & Thompson, LLP  
450 Plaza Drive  
Vestal, New York 13850


14. The Village, 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.

15. 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, 2042.

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

SPARK BROOME, LLC

By:   
Douglas G. Matthews, Member

BROOME COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Stacey M. Duncan, Executive Director







EXHIBIT "A"

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Union, County of Broome and State of New York, bounded and described as follows:

From a point in the northerly R.O.W. line of Harry L. Road at the intersection formed with the westerly R.O.W. line of Reynolds Road, proceeding the following courses and distances:

North  $01^{\circ} 14' 08''$  West, a distance of 1,023.40 feet;

Running thence North  $02^{\circ} 08' 45''$  East, a distance of 349.98 feet;

Thence, along a curve to the left of radius 2,251.83 feet, a distance of 268.44 feet;

Thence North  $04^{\circ} 41' 04''$  West, a distance of 248.38 feet to the point of beginning.

From the point of beginning proceeding the following courses and distances:

South  $88^{\circ} 45' 52''$  West, a distance of 353.08 feet;

Thence South  $01^{\circ} 14' 08''$  East, a distance of 82.00 feet;

Thence South  $88^{\circ} 45' 52''$  West, a distance of 504.73 feet;

Thence North  $01^{\circ} 14' 08''$  West, a distance of 203.33 feet;

Thence North  $84^{\circ} 45' 00''$  East, a distance of 30.46 feet;

Thence North  $01^{\circ} 03' 00''$  West, a distance of 254.54 feet;

Thence North  $88^{\circ} 45' 52''$  East, a distance of 53.28 feet;

Thence North  $01^{\circ} 14' 08''$  West, a distance of 164.38 feet;

Thence North  $88^{\circ} 45' 52''$  East, a distance of 758.16 feet;

Thence South  $03^{\circ} 44' 43''$  East, a distance of 28.82 feet;

Thence South  $01^{\circ} 15' 00''$  West, a distance of 142.59 feet;

Thence South  $03^{\circ} 44' 43''$  East, a distance of 90.68 feet;

EXHIBIT "A" (Continued)

Thence along a curve to the left of radius 5,769.58 feet, a distance of 94.57 feet (94.87 feet measured);

Thence South 04° 41' 04" East, a distance of 186.44 feet to the point of beginning.

TOGETHER with the benefits and subject to the burdens as set forth in reciprocal operation and easement agreement made by and between Montgomery Ward Development Corporation and Interstate Properties, recorded in Liber 1179 Page 899, and in Construction Agreement made by and between Montgomery Ward Development Corporation and Interstate Properties, recorded in Liber 1179, Page 948, as modified by agreement made by and between New York State Electric & Gas Corporation, Interstate Properties, Inc., and Third Woodward Associates recorded in Liber 1243 Page 858, and as amended by Amendment of Construction Agreement and of Reciprocal Operation and Easement Agreement for Oakdale Mall (Four Party Agreement) made by and between Montgomery Ward Development Corporation, Interstate Properties, Third Woodward Associates, and Sears, Roebuck and Co., recorded in Liber 1261, Page 701.

Also, together with the benefits and subject to the burdens as set forth in Construction, Operation and Reciprocal Easement Agreement made by and between Interstate Properties, and Sears, Roebuck and Co., recorded in Liber 1261 Page 491, and in First Amendment to Construction, Operation and Reciprocal Easement Agreement made by and between Interstate Properties, and Sears, Roebuck and Co., recorded in Liber 1267 Page 125.

EXHIBIT "B"

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

PILOT Schedule

Property Address: 501 Reynolds Rd, Johnson City NY  
 Property Owner: Spark Broome, LLC

\* WITH PILOT

\* WITHOUT PILOT

PILOT Year	501 Reynolds Rd, Johnson City, NY Assessment	Percentage of PILOT Assessment to be Paid	Annual PILOT Payment TOTAL plus 1% annually	Annual PILOT PAID TO COUNTY	Annual PILOT PAID TO TOWN	Annual PILOT PAID TO VILLAGE	Annual PILOT PAID TO JC SCHOOL	Taxable Assessment	Payment at County Tax Rate 174.081066	Payment at Town Tax Rate 207.183050	Payment at JC Village Tax Rate 358.4770	Payment at JC School Tax Rate 613.215930	Total Rate 1174.950966	Annual Difference	TOTAL
1	\$3,000,000	100%	\$152,273.64	\$22,561.02	\$3,782.12	\$46,457.71	\$79,472.79	\$3,000,000.00	\$22,561.02	\$3,782.12	\$46,457.71	\$79,472.79	\$152,273.64	\$0.00	\$0.00
2	\$3,000,000	100%	\$153,796.38	\$22,786.63	\$3,818.95	\$46,922.29	\$80,267.81	\$3,000,000.00	\$22,786.63	\$3,819.95	\$46,922.29	\$80,267.81	\$153,796.38	\$0.00	\$0.00
3	\$3,000,000	100%	\$155,334.35	\$23,014.50	\$3,858.15	\$47,391.51	\$81,070.19	\$3,000,000.00	\$23,014.50	\$3,858.15	\$47,391.51	\$81,070.19	\$155,334.35	\$0.00	\$0.00
4	\$3,000,000	100%	\$156,887.69	\$23,244.64	\$3,896.73	\$47,865.43	\$81,880.89	\$3,000,000.00	\$23,244.64	\$3,896.73	\$47,865.43	\$81,880.89	\$156,887.69	\$0.00	\$0.00
5	\$3,000,000	100%	\$158,456.57	\$23,477.09	\$3,935.69	\$48,344.08	\$82,699.70	\$3,000,000.00	\$23,477.09	\$3,935.69	\$48,344.08	\$82,699.70	\$158,456.57	\$0.00	\$0.00
6	\$6,500,000	54%	\$188,048.53	\$27,861.44	\$4,670.68	\$57,372.34	\$98,143.87	\$6,500,000.00	\$51,373.70	\$8,612.61	\$105,792.96	\$180,974.51	\$346,755.78	\$158,707.46	\$158,707.46
7	\$6,500,000	54%	\$189,928.81	\$28,140.05	\$4,717.39	\$57,946.06	\$99,125.31	\$6,500,000.00	\$51,889.46	\$8,698.74	\$106,850.89	\$182,784.15	\$350,223.34	\$160,294.53	\$160,294.53
8	\$6,500,000	54%	\$191,828.10	\$28,421.45	\$4,764.57	\$58,525.52	\$100,116.56	\$6,500,000.00	\$52,408.35	\$8,785.72	\$107,919.40	\$184,612.10	\$353,725.58	\$161,897.47	\$161,897.47
9	\$6,500,000	60%	\$212,983.61	\$31,555.87	\$5,290.02	\$64,979.93	\$113,157.78	\$6,500,000.00	\$52,932.44	\$8,873.58	\$108,998.60	\$186,458.72	\$357,262.83	\$144,279.22	\$144,279.22
10	\$6,500,000	60%	\$215,113.45	\$31,871.43	\$5,342.92	\$65,629.73	\$112,269.36	\$6,500,000.00	\$53,461.76	\$8,962.32	\$110,088.58	\$188,322.80	\$360,835.46	\$145,722.01	\$145,722.01
11	\$6,500,000	60%	\$217,264.58	\$32,190.15	\$5,396.35	\$66,286.03	\$113,397.06	\$6,500,000.00	\$53,996.38	\$9,051.94	\$111,189.47	\$190,206.03	\$364,443.81	\$147,179.23	\$147,179.23
12	\$6,500,000	62%	\$219,347.30	\$33,880.34	\$5,696.46	\$69,972.39	\$119,688.12	\$6,500,000.00	\$54,536.34	\$9,142.46	\$112,301.36	\$192,108.09	\$368,088.25	\$138,740.96	\$138,740.96
13	\$6,500,000	62%	\$221,640.77	\$34,320.14	\$5,753.42	\$70,672.11	\$120,895.10	\$6,500,000.00	\$55,081.70	\$9,233.88	\$113,424.38	\$194,029.17	\$371,769.13	\$140,128.37	\$140,128.37
14	\$6,500,000	68%	\$254,175.70	\$37,658.94	\$6,313.14	\$77,547.37	\$132,656.25	\$6,500,000.00	\$55,632.52	\$9,326.22	\$114,558.62	\$195,969.46	\$375,486.83	\$121,311.13	\$121,311.13
15	\$6,500,000	68%	\$256,717.45	\$38,035.53	\$6,376.27	\$78,322.85	\$133,982.81	\$6,500,000.00	\$56,188.85	\$9,419.48	\$115,704.21	\$197,929.16	\$379,241.69	\$122,524.24	\$122,524.24
16	\$6,500,000	73%	\$279,909.54	\$41,471.69	\$6,921.83	\$86,252.59	\$147,547.81	\$6,500,000.00	\$57,750.74	\$9,513.68	\$116,861.25	\$199,908.45	\$383,034.11	\$109,124.57	\$109,124.57
17	\$6,500,000	73%	\$282,708.64	\$41,886.41	\$7,021.83	\$86,252.59	\$147,547.81	\$6,500,000.00	\$57,318.24	\$9,608.82	\$118,029.86	\$201,907.53	\$386,864.45	\$104,155.81	\$104,155.81
18	\$6,500,000	78%	\$306,575.20	\$45,422.50	\$7,614.62	\$93,534.13	\$160,003.95	\$6,500,000.00	\$57,891.43	\$9,704.50	\$119,210.16	\$203,926.61	\$390,733.10	\$84,157.90	\$84,157.90
19	\$6,500,000	78%	\$309,640.95	\$45,876.73	\$7,690.76	\$94,469.47	\$161,603.99	\$6,500,000.00	\$58,470.34	\$9,801.95	\$120,402.26	\$205,965.87	\$394,640.43	\$84,990.48	\$84,990.48
20	\$6,500,000	84%	\$334,199.73	\$49,515.38	\$8,300.75	\$101,962.19	\$174,422.41	\$6,500,000.00	\$59,055.04	\$9,899.87	\$121,606.28	\$208,025.53	\$398,586.83	\$64,387.10	\$64,387.10
21	\$6,500,000	89%	\$359,218.72	\$53,222.22	\$8,922.16	\$109,595.33	\$187,479.01	\$6,500,000.00	\$59,645.39	\$9,998.97	\$122,822.35	\$210,105.79	\$402,572.70	\$43,353.98	\$43,353.98
22	\$6,500,000	95%	\$384,704.57	\$56,998.25	\$9,555.17	\$117,970.93	\$200,780.32	\$6,500,000.00	\$60,242.05	\$10,098.96	\$124,050.57	\$212,206.84	\$406,598.43	\$21,893.76	\$21,893.76
TOTALS			\$5,220,754.17	\$773,512.41	\$129,671.49	\$1,592,819	\$2,714,751.73		\$1,061,960.81	\$178,026.86	\$2,186,792.24	\$3,740,831.48	\$7,167,611.39	\$1,946,857.22	\$1,946,857.22

EXHIBIT "C"

(SEE ATTACHED AGENCY POLICY FOR  
TERMINATION, MODIFICATION AND/OR RECAPTURE OF AGENCY BENEFITS)

**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
POLICY FOR TERMINATION, MODIFICATION  
AND/OR RECAPTURE OF AGENCY BENEFITS**

The goal of this Policy is to establish and provide a procedure as required by Section 875 of the New York State General Municipal Law for the termination, modification and/or recapture of Broome County Industrial Development Agency (the “Agency”) benefits provided to an applicant in order to induce such applicant to undertake a project in Broome County. For purposes of this policy, Agency benefits shall include any or all of the following:

- (i) exemptions from New York State and local sales and use tax;
- (ii) an exemption from the New York State mortgage recording tax; and/or
- (iii) an abatement from real property taxes provided through a payment-in-lieu-of-tax (“PILOT”) Agreement.

The Agency reserves the right to terminate, modify, or recapture Agency benefits if :

- (i) an applicant or its sub-agency (if any) authorized to make purchases for the benefit of the project is not entitled to the sales and use tax exemption benefits;
- (ii) sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the applicant or its sub-agents;
- (iii) sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project;
- (iv) the applicant has made material, false, or misleading statements in its application for financial assistance;
- (v) the applicant has committed a material violation of the terms and conditions of a Project Agreement; and/or
- (vi) there is a material shortfall in job creation and retention projections as set forth in its application.

Upon the occurrence of any of the above conditions, the Agency Board may, upon

recommendation of the Executive Director, terminate, modify and/or recapture the Agency benefits provided to a specific project. Prior to undertaking such action, the Agency shall give written notice of its intention to terminate, modify and/or recapture Agency benefits to the applicant specifying the reasons why the Agency is considering such action. The applicant shall have twenty (20) days to respond to the Agency, either in writing or in person, providing such information and documentation as it deems appropriate for the Board to consider prior to making its decision. All such recaptured Agency benefits shall be redistributed to the appropriately affected taxing jurisdictions unless agreed to otherwise by such jurisdictions.

Notwithstanding the foregoing, the Agency retains the right to terminate Agency benefits as otherwise provided in project transaction documents including, but not limited to, failure of the applicant to make timely PILOT payments, to provide required reports, or to cooperate with Agency personnel in providing data regarding project progress.



COMPLIANCE AGREEMENT

LESSOR: BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency")

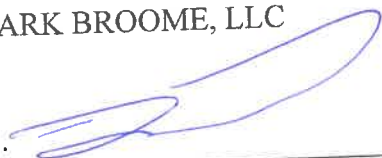
LESSEE: SPARK BROOME, LLC (the "Company")

PROPERTY: Village of Johnson City, Town of Union, Broome County, New York

The undersigned, in consideration of the Agency leasing a parcel of land located at 501 Reynolds Road, Village of Johnson City, Town of Union, Broome County, New York (the "Premises") from the Company and leasing the Premises back to the Company agrees, if requested by the Agency or someone acting on behalf of said Agency, either prior to or after closing, to fully cooperate and adjust for clerical errors contained in any and all closing documents deemed necessary or desirable in the reasonable discretion of the Agency to effectuate the closing designated as Broome County Industrial Development Agency 2020 Lease-Lease Back Transaction (Spark Broome, LLC Project), and to pay any and all recording and filing fees associated therewith.

The undersigned does hereby so agree and covenant in order to assure that the closing documentation executed this date will conform and be acceptable to the Agency. In the event the undersigned fails or refuses to fully cooperate as contemplated herein, same shall be a default under the closing documentation of even date herewith signed by the undersigned.

SPARK BROOME, LLC

By:   
Douglas G. Matthews, Member

Dated: February 24, 2020