

## PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), made as of February 24, 2020 by and between the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation 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"), and SPARK BROOME, LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with an office for the transaction of business located at 320 North Jensen Road, Vestal, New York 13850 (the "Company").

### W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 564 of the 1970 Laws of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Enabling Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of an inside plaza; and

WHEREAS, by Resolution, adopted on October 16, 2019 (the "Resolution"), the Agency has conferred on the Company, in connection with the Project, certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the redevelopment, renovation, subdivision, repurposing and equipping of the Project, (b) an exemption from mortgage tax, and (c) a partial abatement from real property taxes through a "payment in lieu of tax agreement" with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, the sales and use tax exemption, the mortgage tax exemption, and the partial abatement from real property taxes benefits, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company, as included within its Application for Financial Assistance dated August 14, 2019, a copy of which is available for review at the office of the Agency during regular business hours, that (i) the purchase of goods and services relating to the Project and subject to Broome County local sales and use taxes are estimated in an amount up to \$2,500,000.00, and, therefore, the value of the Broome County sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$200,000.00, (ii) that real property tax abatement benefits to be provided to the Company over the twenty-two (22) year benefit period of the anticipated payment-in-lieu-of-tax agreement are estimated to be approximately \$1,946,857.22, and (iii) that a mortgage tax abatement benefit in an amount not to exceed \$90,000.00; and

WHEREAS, the Company proposes to lease the Project to the Agency, and the Agency desires to rent the Project from the Company pursuant to the terms and conditions set forth in a certain Lease Agreement dated as of February 24, 2020 (the "Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to lease the Project back to the Company and the Company desires to rent the Project from the Agency, pursuant to the terms and conditions set forth in a certain Leaseback Agreement dated as of February 24, 2020 (the "Leaseback Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of-taxes for the Project, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement dated as of February 24, 2020 (the "PILOT Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to redevelop, renovate, subdivide, repurpose and equip the Project and to undertake the Project, the Agency and the Company will enter into an Agency Agreement, dated as of February 24, 2020 (the "Agency Agreement"); and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution, and as more particularly described in the Lease Agreement, Leaseback Agreement, PILOT Agreement, and Agency Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. PURPOSE OF PROJECT. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Lease Agreement, Leaseback Agreement, PILOT Agreement and Agency Agreement in order to, promote, develop, encourage and assist in the redevelopment, renovation, subdivision, repurposing and equipping of the Project, to advance job opportunities, health, general prosperity and economic welfare of the people of the Village of Johnson City, Town of Union, Broome County, New York, and to otherwise accomplish the public purpose of the Act.

2. PILOT AGREEMENT. The parties hereto understand and agree that Exhibit "A" to this Agreement contains a copy of the PILOT Agreement to be entered into by and

between the Company and the Agency.

3. TERMINATION, MODIFICATION AND/OR RECAPTURE OF ANY FINANCIAL ASSISTANCE. It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and the Agency Agreement in order to provide Financial Assistance to the Company for the Project and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project:

A. In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a determination by the Agency resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or any of its agents or subagents receive, any Financial Assistance from the Agency, and it is determined by the Agency that:

1. the Company, or its agents or subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption; or
2. the sales and use tax exemption is in excess of the amounts authorized by the Agency to be taken by the Company, or its agents or subagents, if any; or
3. the sales and use tax exemption is for property or services not authorized by the Agency as part of the Project; or
4. the Company has made a material, false or misleading statement, or omitted any information which, if included, would have rendered any information in its application for Financial Assistance, or supporting documentation, false or misleading in any material respect.

In order for the Agency to determine the foregoing, the Company shall provide annually to the Agency a certified statement and documentation, if required. Exhibit "B" contains the form of annual certification as so required as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company.

The findings made by the Agency with respect to Sections 3(A)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 3 may potentially be determined by the Agency in accordance with the Agency's Policy for Termination, Modification and/or Recapture of Agency Benefits for the modification of any PILOT to require increased payments. If the Agency makes a determination to recapture benefits, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company, and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such

amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that, in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

B. In accordance with the Resolution, the Company further covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$2,500,000.00 and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3(A) of this Agreement, cannot exceed \$200,000.00.

C. The Company acknowledges and understands that a determination to recapture benefits made with respect to Section 3(A) of this Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. SURVIVAL. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. NOTICES. 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.

To the Agency

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

Attn: Executive Director

with a copy to:

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

To the Company:

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

Attn: Douglas G. Matthews

with a copy to:

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

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section.

6. AMENDMENTS. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. SEVERABILITY. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement, or the application thereof, shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard or reference to its conflict of laws principles.

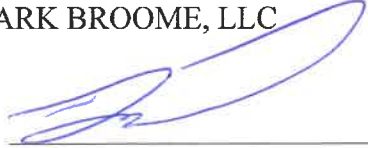
9. SECTION HEADINGS. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BROOME COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Stacey M. Duncan, Executive Director

SPARK BROOME, LLC

By:   
Douglas G. Matthews, Member



STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On February 24, 2020, before me, the undersigned, personally appeared STACEY M. DUNCAN, 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 she executed the same in her capacity, and that by her 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, 2022

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On February 24, 2020, before me, the undersigned, personally appeared DOUGLAS G. MATTHEWS, 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

JERRIE L. SCHUTT  
Commission Number: 01SC6026674  
Qualified in Broome County - NY State  
Commission Exp. Date: June 21, 2023

EXHIBIT “A”

(SEE ATTACHED PILOT AGREEMENT)

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



STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On this 24<sup>th</sup> day of February, 2020, before me, the undersigned, personally appeared STACEY M. DUNCAN, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On this 24<sup>th</sup> day of February, 2020, before me, the undersigned, personally appeared DOUGLAS G. MATTHEWS, 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

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 PILOT 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 174.081966	Payment at Town Tax Rate 229.124059	Payment at JC Village Tax Rate 258.471111	Payment at JC School Tax Rate 361.92139388	County Tax	Town Tax	JC School Tax	Annual 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
2	\$3,000,000	100%	\$153,796.38	\$22,786.63	\$3,819.95	\$46,922.29	\$80,267.51	\$3,000,000.00	\$22,786.63	\$3,819.95	\$46,922.29	\$80,267.51	\$153,796.38				\$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
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
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
6	\$6,500,000	54%	\$188,048.33	\$27,861.44	\$4,670.68	\$57,372.34	\$98,143.87	\$6,500,000.00	\$51,375.70	\$8,612.61	\$106,792.96	\$180,974.51	\$346,755.78				\$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	\$182,784.25	\$350,223.34				\$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
9	\$6,500,000	60%	\$212,989.61	\$31,555.87	\$5,290.02	\$64,979.93	\$111,157.78	\$6,500,000.00	\$57,931.44	\$9,879.58	\$108,998.60	\$185,458.22	\$357,262.83				\$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	\$110,068.58	\$188,322.80	\$360,335.46				\$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
12	\$6,500,000	62%	\$229,347.30	\$33,980.34	\$5,696.46	\$69,972.39	\$119,698.12	\$6,500,000.00	\$54,536.34	\$9,142.46	\$112,301.36	\$192,108.09	\$368,008.25				\$138,740.96
13	\$6,500,000	67%	\$231,640.77	\$34,320.14	\$5,753.42	\$70,672.11	\$120,895.10	\$6,500,000.00	\$55,081.70	\$9,239.88	\$113,424.38	\$194,029.17	\$371,769.13				\$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
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
16	\$6,500,000	73%	\$179,909.54	\$41,471.69	\$6,952.30	\$85,398.61	\$146,086.94	\$6,500,000.00	\$56,750.74	\$9,513.68	\$116,861.25	\$199,908.45	\$383,034.11				\$103,124.57
17	\$6,500,000	73%	\$182,708.64	\$41,886.41	\$7,021.83	\$86,252.59	\$147,547.81	\$6,500,000.00	\$57,318.24	\$9,608.82	\$118,025.86	\$201,907.53	\$386,864.45				\$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	\$9,704.90	\$119,210.16	\$203,926.61	\$390,733.10				\$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				\$84,999.48
20	\$6,500,000	84%	\$334,199.73	\$49,515.38	\$8,300.75	\$101,962.19	\$174,421.41	\$6,500,000.00	\$59,055.04	\$9,899.97	\$121,606.28	\$208,025.53	\$398,586.83				\$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	\$59,645.59	\$9,999.97	\$122,822.35	\$210,105.79	\$402,572.70				\$43,353.98
22	\$6,500,000	95%	\$384,704.57	\$56,998.25	\$9,555.17	\$117,370.93	\$200,780.32	\$6,500,000.00	\$60,242.05	\$10,098.56	\$124,050.57	\$212,206.84	\$406,598.43				\$21,893.76
TOTALS			\$5,220,754.17	\$773,512.41	\$129,671.43	\$1,592,819	\$2,734,751.73		\$1,061,960.81	\$178,026.86	\$2,186,792.24	\$3,740,831.48	\$7,167,611.39				\$1,946,857.22

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.

EXHIBIT "B"

FORM OF ANNUAL EMPLOYMENT AND SALARY AND FRINGE BENEFITS AND  
RELATED PROJECT INFORMATION CERTIFICATION LETTER

Re: New Project Verification Dear \_\_\_\_\_:

The Broome County Industrial Development Agency (the "Agency") is currently providing assistance in connection with the your project in the (municipality)

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the Agency by \_\_\_\_\_. If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address: Project Name:

Company contact: Contact phone number:  
(Please correct any information above)

### **Financing Information**

Has the Agency provided project financing assistance through issuance of a bond or note)

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued \_\_\_\_\_
- Outstanding principal balance of such bond or note at \_\_\_\_\_
- Principal paid during \_\_\_\_\_
- Outstanding principal balance of such bond or note at \_\_\_\_\_

Interest rate on mortgage as of \_\_\_\_\_ Final maturity date of the bond or note

Is the Company a not-for-profit? \_\_\_\_\_

### **Sales Tax Abatement Information**

Did your company receive Sales Tax Abatement on your Project during \_\_\_\_\_

Yes No

If so, please provide the amount of sales tax savings received \_\_\_\_\_

**(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)**

### **Mortgage Recording Tax Information**

Did your company receive Mortgage Tax Abatement on your Project during \_\_\_\_\_

Yes      No

*(NOTE: Only be applicable the year that a mortgage was placed upon the project)*

The amount of the mortgage recording tax that was abated during \_\_\_\_\_

### **Job Information**

Number of full time equivalent employees ("FTE") existing jobs by category and average Hourly wage for each **before IDA status**

<b>Category</b>	<b>FTE</b>	<b>Average Hourly Wage</b>
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

***Current number of FTE employees for \_\_\_\_\_ by category and average hourly wage.***

<b>Category</b>	<b>FTE</b>	<b>Average Hourly Wage</b>
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

***Number of FTE jobs created during \_\_\_\_\_ as a result of the assistance received through the IDA by category and average hourly wage.***

<b>Category</b>	<b>FTE</b>	<b>Average Hourly Wage</b>
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs retained during \_\_\_\_\_ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Total annual payroll for \_\_\_\_\_

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Number of FTE construction jobs created during \_\_\_\_\_ Number of FTE construction jobs during \_\_\_\_\_

\_\_\_\_\_ Capital Investment Real Estate Construction

Machinery and Equipment Other Taxable Expenses \_\_\_\_\_

Other Non-Taxable Expenses \_\_\_\_\_ Total Capital Investment



I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to avoidance of the agreement and potential claw back of benefits.

Signed: \_\_\_\_\_ (authorized company representative)

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