

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of December 23, 2021, by and between SPARK JC, 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/leaseback transaction on 58.354+/- acres of land located at 601 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York, 605 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York, 629 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York, and 635 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York, more particularly described on Exhibit "A" attached hereto, (the "Land") to facilitate the construction, rehabilitation, renovation and equipping of a mixed-use development project including, but not limited to, retail, office and commercial space (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-five (25) 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 Town of Union (the “Town”), the Village of Johnson City (the “Village”), 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" subject to the following:

The parties acknowledge that the PILOT payments as set forth in Exhibit "B" include only the following properties and tax map Numbers:

1. 601 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York (Tax Map No. 127.77-2-36);
2. 605 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York (Tax Map No. 143.05-1-2); and
3. 629 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York (Tax Map No. 143.05-1-1).

635 Harry L Drive in the Village of Johnson City, Town of Union, Broome County, New York (Tax Map Number 143.21-3-21 is subject to a ground lease with JC Penney pursuant to which JC Penney makes all tax payments levied against this tax map parcel. In the event that the JC Penney ground lease is terminated, this tax map parcel shall be added to this PILOT Agreement at a rate equal to the same cost per square foot as the other three tax map parcels subject to this Agreement.

In the event any portion of the project site is subdivided, or if additional parcels are created and are wholly owned and operated by the Company, an affiliate of the Company or an unrelated third party, the buildings constructed thereon and such parcels will be added to the PILOT at a rate equal to the same cost per square foot as the other parcels covered under this PILOT Agreement.

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 a mixed-use development

building 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 Land 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 thereafter 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. In the event of a sale of all or substantially all of the Project prior to December 23, 2031, the Company may not assign, transfer, or convey the PILOT Agreement or this Leaseback Agreement without the consent of the Agency. Thereafter, the assignment, transfer or conveyance of the PILOT Agreement and this Leaseback Agreement shall be in conformity with Section 6.3 of the Leaseback Agreement. It is understood that in the event of a conveyance of all or substantially all of the Project to a mortgage lender (by foreclosure or deed in lieu of foreclosure) or to a purchaser from such mortgage lender, then such purchaser shall continue to have all of the benefits of the PILOT Agreement without consent of the Agency.

13. 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.

14. All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by 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: Douglas Matthews
Spark JC, LLC
320 North Jensen Road
Vestal, New York 13850

Marc Newman
Spark JC, LLC
601 Gates Road, Suite 1
Vestal, New York 13850

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

15. 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.

16. 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 December

23, 2046.

17. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. In addition, the parties may transmit signed copies of this Agreement by e-mail and/or facsimile and all parties intend to be bound by the signatures on any document which is transmitted by e-mail and/or facsimile. Each party is aware that the other party will rely on the e-mail and/or facsimile transmitted signatures, and all parties hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

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

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Stacey M. Duncan, Executive Director

SPARK JC, LLC

By: TREETER PROPERTIES JC, LLC

Its: Member

By: 

Douglas Matthews, Member

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On the 23rd day of December, 2021, 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 the 23rd day of December, 2021, before me, the undersigned, personally appeared DOUGLAS 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

HEATHER M. CORNELL
Notary Public-State of New York
No. 01CO6021106
Qualified in Broome County
Commission Expires March 8, 2023

EXHIBIT "A"

SCHEDULE "A"

PARCEL I

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING SITUATED IN THE VILLAGE OF JOHNSON CITY, TOWN OF UNION, COUNTY OF BROOME, AND STATE OF NEW YORK, CONTAINING APPROXIMATELY 47.54 ACRES, MORE OR LESS OF LAND, BOUNDED AND DESCRIBED AS FOLLOWS:

FROM A POINT IN THE NORTHERLY RIGHT OF WAY LINE OF HARRY L. DRIVE AT THE INTERSECTION FORMER WITH THE WESTERLY RIGHT OF WAY LINE OF REYNOLDS ROAD, SOUTH $86^{\circ} 20' 00''$ WEST, A DISTANCE OF 162.15 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING PROCEEDING THE FOLLOWING COURSES AND DISTANCES:

SOUTH $86^{\circ} 20' 00''$ WEST, A DISTANCE OF 12.58 FEET;
THENCE NORTH $01^{\circ} 14' 08''$ WEST, A DISTANCE OF 703.81 FEET;
THENCE SOUTH $88^{\circ} 45' 52''$ WEST, A DISTANCE OF 160.00 FEET;
THENCE SOUTH $01^{\circ} 14' 08''$ EAST, A DISTANCE OF 148.41 FEET;
THENCE SOUTH $88^{\circ} 45' 52''$ WEST, A DISTANCE OF 410.00 FEET;
THENCE NORTH $01^{\circ} 14' 08''$ WEST, A DISTANCE OF 41.79 FEET;
THENCE SOUTH $88^{\circ} 45' 52''$ WEST, A DISTANCE OF 344.00 FEET;
THENCE SOUTH $01^{\circ} 14' 08''$ EAST, A DISTANCE OF 127.07 FEET;
THENCE ALONG A CURVE TO THE LEFT OF RADIUS 150.00 FEET, A DISTANCE OF 41.97 FEET;
THENCE SOUTH $46^{\circ} 53' 49''$ EAST, A DISTANCE OF 166.20 FEET;
THENCE ALONG A CURVE TO THE LEFT OF RADIUS 600.00 FEET, A DISTANCE OF 192.59 FEET;
THENCE SOUTH $01^{\circ} 14' 08''$ EAST, A DISTANCE OF 196.00 FEET;
THENCE SOUTH $87^{\circ} 51' 25''$ WEST, A DISTANCE OF 58 FEET, PLUS OR MINUS;
THENCE NORTH $02^{\circ} 50' 00''$ WEST, A DISTANCE OF 171.00 FEET;
THENCE SOUTH $87^{\circ} 10' 00''$ WEST, A DISTANCE OF 310.05 FEET;
THENCE NORTH $03^{\circ} 53' 00''$ WEST, A DISTANCE OF 1566.34 FEET;
THENCE NORTH $87^{\circ} 04' 00''$ EAST, A DISTANCE OF 55.77 FEET;
THENCE NORTH $07^{\circ} 27' 00''$ EAST, A DISTANCE OF 33.38 FEET;
THENCE NORTH $00^{\circ} 17' 00''$ EAST, A DISTANCE OF 39.32 FEET;

THENCE SOUTH 86° 07' 00" WEST, A DISTANCE OF 25.00 FEET;
THENCE NORTH 07° 27' 00" EAST, A DISTANCE OF 62.00 FEET;
THENCE NORTH 86° 07' 00" EAST, A DISTANCE OF 25.00 FEET;
THENCE NORTH 07° 27' 00" EAST, A DISTANCE OF 122.99 FEET;
THENCE NORTH 84° 45' 00" EAST, A DISTANCE OF 28.81 FEET;
THENCE NORTH 01° 41' 00" EAST, A DISTANCE OF 196.81 FEET;
THENCE NORTH 11° 13' 00" EAST, A DISTANCE OF 90.82 FEET;
THENCE SOUTH 88° 10' 00" EAST, A DISTANCE OF 154.38 FEET;
THENCE NORTH 25° 48' 54" EAST, A DISTANCE OF 76.61 FEET;
THENCE SOUTH 88° 10' 00" EAST, A DISTANCE OF 75.05 FEET;
THENCE NORTH 01° 47' 00" WEST, A DISTANCE OF 385.32 FEET;
THENCE NORTH 85° 57' 00" EAST, A DISTANCE OF 801.56 FEET;
THENCE SOUTH 03° 44' 43" EAST, A DISTANCE OF 326.69 FEET;
THENCE SOUTH 88° 45' 52" WEST, A DISTANCE OF 758.16 FEET;
THENCE SOUTH 01° 14' 08" EAST, A DISTANCE OF 164.38 FEET;
THENCE SOUTH 88° 45' 52" WEST, A DISTANCE OF 53.28 FEET;
THENCE SOUTH 01° 03' 00" EAST, A DISTANCE OF 254.54 FEET;
THENCE SOUTH 84° 45' 00" WEST, A DISTANCE OF 30.46 FEET;
THENCE SOUTH 01° 14' 08" EAST, A DISTANCE OF 203.33 FEET;
THENCE NORTH 88° 45' 52" EAST, A DISTANCE OF 504.73 FEET;
THENCE NORTH 01° 14' 08" WEST, A DISTANCE OF 82.00 FEET;
THENCE NORTH 88° 45' 52" EAST, A DISTANCE OF 353.08 FEET;
THENCE SOUTH 04° 41' 04" EAST, A DISTANCE OF 248.38 FEET;
THENCE ALONG A CURVE TO THE RIGHT OF RADIUS 2,251.83 FEET, A DISTANCE OF 268.44 FEET;
THENCE SOUTH 02° 08' 45" WEST, A DISTANCE OF 349.98 FEET;
THENCE SOUTH 01° 14' 08" EAST, A DISTANCE OF 857.49 FEET;
THENCE SOUTH 88° 45' 52" WEST, A DISTANCE OF 111.86 FEET;
THENCE ALONG A CURVE TO THE RIGHT OF RADIUS 119.00 FEET, A DISTANCE OF 62.59 FEET;
THENCE SOUTH 01° 14' 08" EAST, A DISTANCE OF 136.54 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL EASEMENTS, RIGHTS AND PRIVILEGES AS THEY AFFECT REAL PROPERTY, AND SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "RECIPROCAL OPERATION AND EASEMENT AGREEMENT" DATED AS OF DECEMBER 6, 1971, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION AND INTERSTATE PROPERTIES, INC., RECORDED DECEMBER 8, 1971 IN BOOK 1179 OF DEEDS AT PAGE 899, AND SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "CONSTRUCTION AGREEMENT" DATED AS OF DECEMBER 6, 1971, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION AND INTERSTATE PROPERTIES, INC., RECORDED DECEMBER 8, 1971 IN BOOK 1179 OF DEEDS AT PAGE 948, AND IN THAT CERTAIN CONSTRUCTION OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED AUGUST 10, 1977 BETWEEN INTERSTATE PROPERTIES AND SEARS, ROEBUCK AND CO., RECORDED ON AUGUST 16, 1977 IN BOOK 1261 OF DEEDS AT PAGE 491, EACH AS AMENDED BY THE AMENDMENT OF CONSTRUCTION AGREEMENT AND RECIPROCAL OPERATION AND EASEMENT AGREEMENT FOR OAKDALE MALL DATED AUGUST 10, 1977, RECORDED IN LIBER 1261 PAGE 701, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION, INTERSTATE PROPERTIES, INC., THIRD WOODWARD ASSOCIATES AND SEARS, ROEBUCK AND CO.

EXCEPTING THEREFROM TITLE TO ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND AS APPROPRIATED BY THE STATE OF NEW YORK PURSUANT TO A NOTICE OF APPROPRIATION DATED MARCH 30, 1994 AND RECORDED ON MARCH 30, 1994 IN BOOK 01836 PAGE 0465 OF BOOK OF DEEDS AND AS DESCRIBED ON MAP NO. 1 AS PARCEL NO. 1.

EXCEPTING THEREFROM TITLE TO THE BUILDING AND IMPROVEMENTS LOCATED ON THE PARCEL DESCRIBED AND COVERED BY THE LEASE BETWEEN INTERSTATE PROPERTIES, AS LANDLORD, AND J.C. PENNEY PROPERTIES, INC., AS TENANT, DATED APRIL 28, 1983 AND A MEMORANDUM OF SAID LEASE DATED APRIL 28, 1983 AND WHICH WAS RECORDED ON MAY 12, 1983 IN LIBER 1372 PAGE 372.

PARCEL II

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND, LYING AND BEING SITUATED IN THE VILLAGE OF JOHNSON CITY, TOWN OF UNION, COUNTY OF BROOME, AND STATE OF NEW YORK, CONTAINING APPROXIMATELY 0.604 ACRES, MORE OR LESS OF LAND, BOUNDED AND DESCRIBED AS FOLLOWS:

FROM A POINT IN THE NORTHERLY RIGHT OF WAY LINE OF HARRY L. DRIVE AT THE INTERSECTION FORMED WITH THE WESTERLY RIGHT OF WAY LINE OF REYNOLDS ROAD, SOUTH 86° 20' 00" WEST, A DISTANCE OF 162.15 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING PROCEEDING THE FOLLOWING COURSES AND DISTANCES:

NORTH 01° 14' 08" WEST, A DISTANCE OF 136.54 FEET;

THENCE ALONG A CURVE TO THE LEFT OF RADIUS OF 119.00 FEET, A DISTANCE OF 62.59 FEET;

THENCE NORTH 88° 45' 52" EAST, A DISTANCE OF 111.86 FEET;

THENCE SOUTH 01° 14' 08" EAST, A DISTANCE OF 165.91 FEET;

THENCE SOUTH 86° 20' 00" WEST, A DISTANCE OF 162.15 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH ALL EASEMENTS, RIGHTS AND PRIVILEGES AS THEY AFFECT REAL PROPERTY, AND SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "RECIPROCAL OPERATION AND EASEMENT AGREEMENT" DATED AS OF DECEMBER 6, 1971, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION AND INTERSTATE PROPERTIES, INC., RECORDED DECEMBER 8, 1971 IN BOOK 1179 OF DEEDS AT PAGE 899, AND SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "CONSTRUCTION AGREEMENT" DATED AS OF DECEMBER 6, 1971, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION AND INTERSTATE PROPERTIES, INC., RECORDED DECEMBER 8, 1971 IN BOOK 1179 OF DEEDS AT PAGE 948, AND IN THAT CERTAIN CONSTRUCTION OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED AUGUST 10, 1977 BETWEEN INTERSTATE PROPERTIES AND SEARS, ROEBUCK AND CO., RECORDED ON AUGUST 16, 1977 IN BOOK 1261 OF DEEDS AT PAGE 491, EACH AS AMENDED BY THE AMENDMENT OF CONSTRUCTION AGREEMENT

AND RECIPROCAL OPERATION AND EASEMENT AGREEMENT FOR OAKDALE MALL, DATED AUGUST 10, 1977, RECORDED IN LIBER 1261, PAGE 701, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION, INTERSTATE PROPERTIES, INC., THIRD WOODWARD ASSOCIATES AND SEARS, ROEBUCK AND CO.

EXCEPTING THEREFROM TITLE TO ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND AS APPROPRIATED BY THE STATE OF NEW YORK PURSUANT TO A NOTICE OF APPROPRIATION DATED MARCH 30, 1994 AND RECORDED ON MARCH 30, 1994 IN BOOK 01836 PAGE 0465 OF BOOK OF DEEDS AND AS DESCRIBED ON MAP NO. 1 AS PARCEL NO. 1.

EXCEPTING THEREFROM TITLE TO THE BUILDING AND IMPROVEMENTS LOCATED ON THE PARCEL DESCRIBED AND COVERED BY THE LEASE BETWEEN INTERSTATE PROPERTIES, INC. AS LANDLORD, AND MARINE MIDLAND BANK-SOUTHERN, AS TENANT, DATED NOVEMBER 13, 1975 AND A MEMORANDUM OF SAID LEASE DATED NOVEMBER 13, 1975 AND WHICH WAS RECORDED ON DECEMBER 31, 1975 IN LIBER 1234 PAGE 413.

PARCEL III

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND 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 RIGHT OF WAY LINE OF HARRY L. ROAD AT THE INTERSECTION FORMED WITH THE WESTERLY RIGHT OF WAY LINE OF REYNOLDS ROAD, AS SAID REYNOLDS ROAD EXISTED ON NOVEMBER 1, 1973, SOUTH 86° 20' 00" WEST, A DISTANCE OF 197.48 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING, PROCEEDING THE FOLLOWING COURSES AND DISTANCES:

1. SOUTH 86° 20' 20" WEST, A DISTANCE OF 241.54 FEET;
2. ALONG A CURVE TO THE LEFT OF RADIUS 1,172.92 FEET, A DISTANCE OF 73.01 FEET;
3. SOUTH 86° 07' 56" WEST, A DISTANCE OF 135.02 FEET;
4. SOUTH 86° 20' 00" WEST, A DISTANCE OF 15.62 FEET;
5. SOUTH 87° 10' 00" WEST, A DISTANCE OF 148.50 FEET;
6. NORTH 01° 14' 08" WEST, A DISTANCE OF 234.00 FEET;
7. ALONG A CURVE TO THE RIGHT OF RADIUS 600.00 FEET, A DISTANCE OF 192.59 FEET;
8. NORTH 46° 53' 49" WEST, A DISTANCE OF 166.20 FEET;
9. ALONG A CURVE TO THE RIGHT OF RADIUS 150.00 FEET, A DISTANCE OF 41.97 FEET;
10. NORTH 01° 14' 08" WEST, A DISTANCE OF 127.07 FEET;
11. NORTH 88° 45' 52" EAST, A DISTANCE OF 344.00 FEET;
12. SOUTH 01° 14' 08" EAST, A DISTANCE OF 41.79 FEET;
13. NORTH 88° 45' 52" EAST, A DISTANCE OF 410.00 FEET;
14. NORTH 01° 14' 08" WEST, A DISTANCE OF 148.41 FEET;
15. NORTH 88° 45' 52" EAST, A DISTANCE OF 160.00 FEET;
16. SOUTH 01° 14' 08" EAST, A DISTANCE OF 703.81 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL EASEMENTS, RIGHTS AND PRIVILEGES AS THEY AFFECT REAL PROPERTY, AND AS SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED, "RECIPROCAL OPERATION AND EASEMENT AGREEMENT", DATED AS OF DECEMBER 6, 1971, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION AND INTERSTATE PROPERTIES, INC., RECORDED DECEMBER 8, 1971 IN BOOK 1179 OF DEEDS AT PAGE 899, AND AS SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED, "CONSTRUCTION AGREEMENT", DATED AS OF DECEMBER 6, 1971, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION AND INTERSTATE PROPERTIES, INC., RECORDED DECEMBER 8, 1971 IN BOOK 1179 OF DEEDS AT PAGE 943, AS AMENDED AS SET FORTH IN THE AMENDMENT OF CONSTRUCTION AGREEMENT AND RECIPROCAL OPERATION AND EASEMENT AGREEMENT FOR OAKDALE MALL, DATED AUGUST 10, 1977, RECORDED IN LIBER 1261, PAGE 701, BY AND BETWEEN MONTGOMERY WARD DEVELOPMENT CORPORATION, INTERSTATE PROPERTIES, INC., THIRD WOODWARD ASSOCIATES AND SEARS ROEBUCK AND CO. LESS AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PREMISES THAT MAY HAVE BEEN TAKEN BY CONDEMNATION FOR ROAD WIDENING OF REYNOLDS ROAD.

The Property may also be described as follows, pursuant to a survey made by Edward Ripic, Jr. licensed land surveyor of Williams and Edsall Land Surveyors, PC dated July 20, 2021:

BEGINNING at a 5/8" rebar with New York State D.O.T. cap at the intersection of the north line of Harry L. Drive and the west line of Reynolds Road. Thence the following 7 courses along the north line of Harry L. Drive;

THENCE S 86°32'04" W for a distance of 174.72 feet to a 3/4" rebar set with cap;

THENCE N 87°22'01" W for a distance of 288.04 feet to a 3/4" rebar set with cap;

THENCE S 44°27'43" W for a distance of 39.39 feet to a 3/4" rebar set with cap;

THENCE S 85°45'54" W for a distance of 44.05 feet to a 3/4" rebar set with cap;

THENCE S 87°49'38" W for a distance of 194.24 feet to a 3/4" rebar set with cap;

THENCE N 37°49'45" W for a distance of 35.93 feet to a mag spike set;

THENCE S 87°35'30" W for a distance of 93.48 feet to a 3/4" rebar set with cap;

THENCE N 03°26'06" W for a distance of 169.61 feet to a 5/8" rebar;

THENCE S 87°02'34" W passing through a 5/8" rebar at 100.68 feet for a total distance of 303.88 feet to a point near the center of Finch Hollow Creek;

THENCE N 03°48'33" W passing through a 1" pipe at 643.68 feet for a total distance of 843.68 feet to a 3/4" rebar set with cap;

THENCE N 03°56'17" W for a distance of 724.59 feet to a 5/8" rebar with cap;

THENCE N 86°33'15" E for a distance of 57.43 feet to a 5/8" rebar;

THENCE N 06°37'03" E for a distance of 32.55 feet to a 1 1/2" pipe;

THENCE N 00°00'56" E for a distance of 39.75 feet to a 3/4" rebar set with cap;

THENCE S 85°51'31" W for a distance of 25.00 feet to a 3/4" rod;

THENCE N 07°43'52" E for a distance of 61.76 feet to a 3/4" rebar set with cap;

THENCE N 85°51'31" E for a distance of 25.76 feet to a 1/2" rebar with cap;

THENCE N 07°08'01" E for a distance of 122.36 feet to a 3/4" rebar;

THENCE N 83°49'08" E for a distance of 28.63 feet to a 5/8" rod;

THENCE N 01°57'52" E for a distance of 196.50 feet to a 3/4" rebar set with cap;

THENCE N 11°27'17" E for a distance of 90.82 feet to a 3/4" rebar set with cap;

THENCE S 87°55'43" E for a distance of 154.38 feet to a 5/8" rebar with cap;

THENCE N 26°03'11" E for a distance of 76.61 feet to a 5/8" rebar with cap;

THENCE S 87°55'43" E for a distance of 75.05 feet to a 3/4" rebar set with cap;

THENCE N 01°32'43" W for a distance of 388.04 feet to a 3/4" rebar set with cap;

THENCE N 85°58'16" E for a distance of 798.39 feet to a 3/4" rod on the west line of Reynolds Road;

THENCE S 03°45'44" E for a distance of 332.11 feet to a 3/4" rebar set with cap;

THENCE S 89°00'30" W for a distance of 756.69 feet to a mag spike;

THENCE S 00°59'30" E for a distance of 164.38 feet to a mag spike;

THENCE S 89°00'30" W for a distance of 53.28 feet to a mag spike;

THENCE S 00°48'22" E for a distance of 254.54 feet to a mag spike;

THENCE S 84°59'38" W for a distance of 30.46 feet to a mag spike;

THENCE S 00°59'30" E for a distance of 203.33 feet to a 3/4" rebar with cap;

THENCE N 89°00'30" E for a distance of 504.73 feet to a mag spike;

THENCE N 00°59'30" W for a distance of 82.00 feet to a 5/8" rebar with cap;

THENCE N 89°00'30" E for a distance of 354.19 feet to a mag spike on the west line of Reynolds Road;

THENCE S 04°42'05" E for a distance of 242.88 feet to a 3/4" rebar set with cap;

THENCE along a curve turning to the right having a radius of 2251.83 feet, an arc length of 268.44 feet, and a chord of S 01°17'11" E, 268.28 feet to a 3/4" rebar set with cap;

THENCE S 02°07'44" W for a distance of 349.98 feet to a 3/4" rebar set with cap;

THENCE S 01°15'08" E for a distance of 315.57 feet to a 3/4" rebar set with cap;

THENCE S 07°41'44" W for a distance of 57.90 feet to a 3/4" rebar set with cap;

THENCE S 01°14'46" E for a distance of 651.80 feet to the Point of Beginning;

CONTAINING 58.354 Acres.

EXHIBIT “B”

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

PILOT Schedule

Property Address: Harry L. Drive, and Reynolds Rd, Johnson City NY

Property Owner: Spark IC, LLC

* WITH PILOT

* WITHOUT PILOT

PILOT Year	Annual PILOT Payment TOTAL	Annual PILOT PAID TO COUNTY	Annual PILOT PAID TO TOWN	Annual PILOT PAID TO JC VILLAGE	Annual PILOT PAID TO JC SCHOOL	Assessed Full Value at 4.02% Tax Rate	Full Value	Payment at County Tax Rate 172.10977	Payment at Town Tax Rate 25.78785	Payment at JC Village Tax Rate 363.518	Payment at JC School Tax Rate 613.215939	Total rate 1174.63156	Tax Annual Difference	TOTAL
1	\$489,000	\$71,649.43	\$10,735.50	\$151,332.82	\$255,282.26	\$572,969	\$14,252,960.00	\$98,613.56	\$14,775.64	\$208,284.54	\$351,353.72	\$673,027.46		\$184,027.46
2	\$489,000	\$71,649.43	\$10,735.50	\$151,332.82	\$255,282.26	\$572,969	\$14,252,960.00	\$99,599.70	\$14,923.39	\$210,367.39	\$354,867.26	\$679,757.73		\$190,757.73
3	\$489,000	\$71,649.43	\$10,735.50	\$151,332.82	\$255,282.26	\$572,969	\$14,252,960.00	\$100,595.69	\$15,072.63	\$212,471.06	\$358,415.93	\$686,555.31		\$197,555.31
4	\$489,000	\$71,649.43	\$10,735.50	\$151,332.82	\$255,282.26	\$572,969	\$14,252,960.00	\$101,601.65	\$15,223.36	\$214,595.77	\$362,000.09	\$693,420.87		\$204,420.87
5	\$489,000	\$71,649.43	\$10,735.50	\$151,332.82	\$255,282.26	\$572,969	\$14,252,960.00	\$102,617.67	\$15,375.59	\$216,741.73	\$365,620.09	\$700,355.07		\$211,355.07
6	\$613,987	\$89,962.81	\$13,479.46	\$190,013.05	\$320,531.67	\$653,369	\$16,252,960.00	\$118,187.33	\$17,708.45	\$249,626.86	\$421,093.78	\$806,616.41		\$192,629.41
7	\$632,977	\$92,745.27	\$13,896.37	\$195,889.96	\$330,445.39	\$653,369	\$16,252,960.00	\$119,369.20	\$17,885.53	\$252,123.13	\$425,304.71	\$814,682.57		\$181,705.57
8	\$652,553	\$95,613.60	\$14,316.14	\$201,948.23	\$340,665.03	\$673,469	\$16,752,960.00	\$124,271.84	\$18,620.11	\$262,478.14	\$442,772.52	\$848,142.62		\$195,589.62
9	\$672,735	\$98,570.71	\$14,769.22	\$208,194.03	\$351,201.04	\$673,469	\$16,752,960.00	\$125,514.56	\$18,806.32	\$265,102.92	\$447,200.24	\$856,624.04		\$183,889.04
10	\$693,542	\$101,619.40	\$15,226.01	\$214,633.26	\$362,063.33	\$693,569	\$17,252,960.00	\$130,553.21	\$19,561.28	\$275,745.19	\$465,152.62	\$891,012.30		\$197,470.30
11	\$714,991	\$104,762.16	\$15,696.91	\$221,271.17	\$373,260.77	\$693,569	\$17,252,960.00	\$131,858.74	\$19,756.89	\$278,502.65	\$469,804.14	\$899,922.42		\$184,931.42
12	\$737,104	\$108,002.21	\$16,182.37	\$228,114.57	\$384,804.85	\$713,669	\$17,752,960.00	\$137,036.88	\$20,532.75	\$289,439.54	\$488,253.51	\$935,262.68		\$198,158.68
13	\$759,901	\$111,342.48	\$16,682.86	\$235,169.65	\$396,706.02	\$713,669	\$17,752,960.00	\$138,407.25	\$20,738.08	\$292,333.94	\$493,136.04	\$944,615.31		\$184,714.31
14	\$783,404	\$114,786.19	\$17,198.84	\$242,443.22	\$408,975.75	\$733,769	\$18,252,960.00	\$143,728.45	\$21,535.37	\$303,572.99	\$512,095.13	\$980,931.95		\$197,527.95
15	\$807,663	\$118,340.68	\$17,731.43	\$249,950.75	\$421,640.15	\$733,769	\$18,252,960.00	\$145,165.73	\$21,750.72	\$306,608.72	\$517,216.09	\$990,741.27		\$183,078.27
16	\$832,611	\$121,996.12	\$18,279.13	\$257,671.51	\$434,664.24	\$753,869	\$18,752,960.00	\$150,633.65	\$22,570.00	\$318,157.68	\$536,697.93	\$1,028,059.27		\$195,448.27
17	\$858,362	\$125,769.21	\$18,844.47	\$265,640.77	\$448,107.54	\$773,969	\$19,252,960.00	\$156,196.42	\$23,403.49	\$329,906.95	\$556,517.69	\$1,066,024.55		\$207,662.55
18	\$884,909	\$129,658.94	\$19,427.28	\$273,856.38	\$461,966.39	\$794,069	\$19,752,960.00	\$161,855.37	\$24,251.40	\$341,859.39	\$576,680.18	\$1,104,646.34		\$219,737.34
19	\$912,777	\$133,668.96	\$20,028.12	\$282,326.07	\$476,253.85	\$814,169	\$20,252,960.00	\$167,611.89	\$25,113.92	\$354,017.89	\$597,190.27	\$1,143,933.95		\$231,656.95
20	\$940,492	\$137,803.09	\$20,647.55	\$291,057.88	\$490,983.48	\$834,269	\$20,752,960.00	\$173,467.34	\$25,991.26	\$366,385.37	\$618,052.89	\$1,183,896.86		\$243,404.86
21	\$969,579	\$142,064.99	\$21,286.13	\$300,059.55	\$506,168.33	\$854,369	\$21,252,960.00	\$179,423.15	\$26,883.64	\$378,964.80	\$639,273.04	\$1,224,544.63		\$254,965.63
22	\$999,566	\$146,458.75	\$21,944.46	\$309,339.75	\$521,823.03	\$874,469	\$21,752,960.00	\$185,480.73	\$27,791.27	\$391,759.18	\$660,855.79	\$1,265,886.97		\$266,320.97
23	\$1,030,481	\$150,988.49	\$22,623.17	\$318,907.14	\$537,962.20	\$894,569	\$22,252,960.00	\$191,641.51	\$28,714.36	\$404,771.55	\$682,806.27	\$1,307,933.70		\$277,452.70
24	\$1,062,351	\$155,658.16	\$23,322.84	\$328,770.08	\$554,999.92	\$914,669	\$22,752,960.00	\$197,906.96	\$29,653.14	\$418,005.00	\$705,129.67	\$1,350,694.77		\$288,343.77
25	\$1,095,208	\$160,472.44	\$24,044.19	\$338,938.47	\$571,752.90	\$934,769	\$23,252,960.00	\$204,278.56	\$30,607.82	\$431,462.63	\$727,831.26	\$1,394,180.27		\$298,972.27
TOTALS	\$19,099,693.00	\$2,798,531.81	\$419,314.45	\$5,910,860	\$9,970,987.18	\$18,243,725	\$453,824,000.00	\$3,585,617.04	\$537,246.41	\$7,573,285.01	\$12,775,320.86	\$24,471,469.32		\$5,371,776.32

- Pilot will include Main Mall, Former Macy's Parcel and Key Bank parcel
- If JC Penney lease is terminated, this parcel will make additional pilot payment at a rate equal to the same cost per square foot as the Main Mall, Macy's parcel and Key Bank parcel.
- During the development of the project, if any of the project site is subdivided, or if outparcels are created and wholly owned and operated by Spark IC, LLC, an affiliate of Spark IC, LLC, or an unaffiliated third party, buildings constructed thereon, such parcels will be taxed pursuant to a Pilot at a rate equal to the same cost per square foot of leasable area as is taxed pursuant to the Pilot for the Main Mall, Macy's Parcel and Key Bank.
- If all or a substantial portion of the site is sold to an unaffiliated third party within ten years upon closing the pilot, the IDA Board must consent and approve of the transfer of the pilot agreement.

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.