

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of October 3, 2023, by and between GMS REALTY, LLP, a Vermont limited liability partnership, doing business in New York as GMS REALTY PARTNERS, LLC, a limited liability company organized and existing under the laws of the State of Vermont and authorized to do business in the State of New York, having its principal offices located at 356 Rathe Road, Colchester, Vermont 05446 (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 with the Agency on the property and building located on 48.10+/- acres of land situate at 47-51 Pine Camp Drive in the Town of Kirkwood, Broome County, New York more particularly described on Exhibit "A" attached hereto (the "Premises"), the renovation on the Premises of a 287,394+/- square foot existing primary structure (the "Facility"), and acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Premises, the Facility, and the Equipment being hereinafter collectively referred to as 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 fifteen (15) 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 Kirkwood (the "Town"), the Windsor 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 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 Town, the School District, and the County, the PILOT payments as shown on the PILOT Schedule attached hereto as Exhibit "B."

3. The Town, the School District, and the County 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 warehouse/wholesale facility for the storage of electrical materials and supplies, 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 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. 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.

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:      GMS Realty, LLP  
                                  356 Rathe Road  
                                  Colchester, Vermont 05446  
                                  Attn: Joshua Laber, Partner

with a copy to:       Jeremy H. Speich, Esq.  
                                  Harris Beach, PLLC  
                                  677 Broadway  
                                  Suite 1101  
                                  Albany, New York 12207

14.     The Town, the School District, the County, 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 1, 2039.

16.     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 parties 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

GMS REALTY, LLP  
doing business in New York as  
GMS REALTY PARTNERS, LLC

By: \_\_\_\_\_  
Joshua Laber, Partner

To the Company:      GMS Realty, LLP  
                                  356 Rathe Road  
                                  Colchester, Vermont 05446  
                                  Attn: Joshua Laber, Partner

with a copy to:        Jeremy H. Speich, Esq.  
                                  Harris Beach, PLLC  
                                  677 Broadway  
                                  Suite 1101  
                                  Albany, New York 12207

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BROOME COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

GMS REALTY, LLP  
doing business in New York as  
GMS REALTY PARTNERS, LLC

By: \_\_\_\_\_  
Stacey M. Duncan, Executive Director

By: \_\_\_\_\_  
Joshua Laber, Partner

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On this 3<sup>rd</sup> day of October, 2023, 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, 2026

STATE OF NEW YORK :

: ss.:

COUNTY OF SARATOGA:

On this 3<sup>rd</sup> day of October, 2023, before me, the undersigned, personally appeared JOSHUA LABER, 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



STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On this 3<sup>rd</sup> day of October, 2023, 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 SARATOGA:

On this 3<sup>rd</sup> day of October, 2023, before me, the undersigned, personally appeared JOSHUA LABER, 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

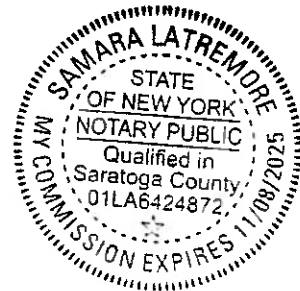


EXHIBIT "A"

Lot 19 (formerly Lots 19 and 20):

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Kirkwood, County of Broome and State of New York bounded and described as follows:

Beginning at an iron found on the southerly boundary of Consolidated Rail Corporation (Now or formerly) at its intersection with of the easterly boundary of the property conveyed to Corliss Avenue Properties, LLC recorded in the Broome County Clerk's Office in Liber 2457 of Deeds at page 463, said point being located 452.56 distant southeasterly measured along the southerly boundary of Consolidated Rail Corporation (Now or Formerly) from its intersection with the easterly boundary of Colesville Road:

Thence along the southerly boundary of Consolidated Rail Corporation the following 6 courses and distances:

- 1) S65°19'07"E a distance of 302.21 feet to a point;
- 2) S57°32'23"E a distance of 618.01 feet to a point;
- 3) S48°16'45"E a distance of 607.00 feet to a point;
- 4) S40°33'29"E a distance of 738.00 feet to a point;
- 5) S05°26'07"E a distance of 34.76 feet to a point;
- 6) S40°33'49"E a distance of 647.60 feet to a point in the westerly boundary of property

conveyed to Upstate Warehouse Property Development, LLC recorded in Liber 2028 at page 482;

Thence along the said westerly boundary of Upstate Warehouse Property Development, LLC the following 2 courses and distances:

- 1) S82°49'12"W a distance of 372.76 feet to a point in the northerly bank of the Susquehanna River;
- 2) S05°26'07"W a distance of 75± feet to a point in the low water mark of the Susquehanna River (by deed);

Thence along the low water mark of the Susquehanna River (by deed) a distance of 945± feet to a point in the easterly boundary of property conveyed to The People of the State of New York recorded in Liber 135 at page 144.

Thence along the easterly, northerly, and westerly boundary of the People of the State of New York the following 4 courses and distances:

- 1) N18°30'38"E a distance of 75± feet to an iron rod found, said iron being N65°15'09"W a distance of 904.29 feet from a said point in the northerly bank of the Susquehanna River;
- 2) N18°30'38"E a distance of 130.00 feet to an iron found;
- 3) N71°18'11"W a distance of 850.10 feet to an iron found;
- 4) S18°38'43"W a distance of 79.48 feet to an iron found on the northerly road boundary of Pine Camp Drive;

Camp Drive;

Thence along the northerly road boundary of Pine Camp Drive the following 4 courses and distances:

- 1) N60°52'34"W a distance of 105.20 feet to an iron found;
- 2) S67°08'02"W a distance of 93.60 feet to an iron found;
- 3) N66°50'43"W a distance of 432.72 feet to an iron found;
- 4) N63°56'46"W a distance of 74.92 feet to an iron found on the easterly boundary of property conveyed to KMCC Ventures, LLC recorded in Liber 2516 at page 670;

Thence N23°33'29"E along said easterly boundary of KMCC Ventures, LLC property and Corliss Avenue Properties, LLC property a distance of 1176.62 feet to the point or place of beginning.

For Information Only, Not Insured: Containing 47.8± Acres.

EXHIBIT "B"

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

GMS Realty, LLC - Deviated 15 Year PILOT Schedule (Improved Existing Facility- Industrial) 47 Pine Camp Drive, Kirkwood

PILOT YEAR	FULL TAXES w/o PILOT					% Abatement	PILOT Payment	Windsor School	County	Town	County	Town	Benefit
	PILOT	Windsor School	County	Town	Town								
1	\$794,974.00	\$575,711.00	\$195,443.00	\$23,820.00	75%	\$198,743.50	\$143,927.75	\$48,860.75	\$5,955.00	\$596,230.50	\$596,230.50	\$608,155.11	
2	\$810,873.48	\$587,225.22	\$199,351.86	\$24,296.40	75%	\$202,718.37	\$146,806.31	\$49,837.97	\$6,074.10	\$608,155.11	\$608,155.11	\$620,318.21	
3	\$827,090.95	\$598,969.72	\$203,338.90	\$24,782.33	75%	\$206,772.74	\$149,742.43	\$50,834.72	\$6,195.58	\$620,318.21	\$620,318.21	\$632,724.58	
4	\$843,632.77	\$610,949.12	\$207,405.68	\$25,277.97	75%	\$210,908.19	\$152,737.28	\$51,851.42	\$6,319.49	\$632,724.58	\$632,724.58	\$645,379.07	
5	\$860,505.42	\$623,168.10	\$211,553.79	\$25,783.53	75%	\$215,126.36	\$155,792.03	\$52,888.45	\$6,445.88	\$645,379.07	\$645,379.07	\$658,357.77	
6	\$877,715.53	\$635,631.46	\$215,784.86	\$26,299.20	50%	\$438,857.77	\$317,815.73	\$107,892.43	\$13,149.60	\$658,357.77	\$658,357.77	\$671,694.92	
7	\$895,269.84	\$648,344.09	\$220,100.56	\$26,825.19	50%	\$447,634.92	\$324,172.05	\$110,050.28	\$13,412.59	\$671,694.92	\$671,694.92	\$685,587.62	
8	\$913,175.24	\$661,310.97	\$224,502.57	\$27,361.69	50%	\$456,587.62	\$330,655.49	\$112,251.29	\$13,680.85	\$685,587.62	\$685,587.62	\$700,000.00	
9	\$931,438.74	\$674,537.19	\$228,992.62	\$27,908.93	50%	\$465,719.37	\$337,268.60	\$114,496.31	\$13,954.46	\$700,000.00	\$700,000.00	\$715,333.76	
10	\$950,067.52	\$688,027.94	\$233,572.48	\$28,467.10	50%	\$475,033.76	\$344,013.97	\$116,786.24	\$14,233.55	\$715,333.76	\$715,333.76	\$730,868.98	
11	\$969,068.87	\$701,788.50	\$238,243.93	\$29,036.45	25%	\$726,801.65	\$526,341.37	\$178,682.94	\$21,777.34	\$730,868.98	\$730,868.98	\$746,868.20	
12	\$988,450.25	\$715,824.27	\$243,008.80	\$29,617.18	25%	\$741,337.69	\$536,868.20	\$182,256.60	\$22,212.88	\$746,868.20	\$746,868.20	\$763,112.56	
13	\$1,008,219.25	\$730,140.75	\$247,868.98	\$30,209.52	25%	\$756,164.44	\$547,605.56	\$185,901.74	\$22,657.14	\$763,112.56	\$763,112.56	\$779,868.98	
14	\$1,028,383.64	\$744,749.57	\$252,826.36	\$30,813.71	25%	\$771,287.73	\$558,557.68	\$189,619.77	\$23,110.28	\$779,868.98	\$779,868.98	\$797,095.91	
15	\$1,048,951.31	\$759,638.44	\$257,882.89	\$31,429.98	25%	\$786,713.48	\$569,728.83	\$193,412.17	\$23,572.49	\$797,095.91	\$797,095.91	\$815,237.83	
<b>TOTALS</b>	<b>\$13,747,816.82</b>	<b>\$9,856,010.35</b>	<b>\$3,379,877.28</b>	<b>\$411,929.19</b>		<b>\$7,100,407.58</b>	<b>\$5,142,033.26</b>	<b>\$1,745,623.08</b>	<b>\$212,751.25</b>	<b>\$6,647,409.24</b>	<b>\$6,647,409.24</b>	<b>\$6,647,409.24</b>	

Based on an assumed 2% property tax increase per year

Windsor School	30,396,615	\$575,711.00	Full Market Value \$31,305,785
County	10,319,066	\$195,443.00	ER 60.50%
Town of Kirkwood	1,257,699	\$23,820.00	Assessment Value - \$18,940,000
1st Year Taxes	\$794,974.00		

\*\*Special Districts are not included in this PILOT, i.e., Fire, Ambulance, Library, Highway and Parks. Please note you will still receive a bill for those taxes.

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.