

BLOOM UTICA LLC

and

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

**Herkimer County Industrial Development Agency
Real Estate Lease-Leaseback**

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of this 1st day of October, 2022 is by and between **BLOOM UTICA LLC**, a New York Limited Liability Company having an address of 2005 Palmer Avenue, #111, Larchmont, New York 10538 (the "Company") and the **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 420 E. German Street, Suite 101A, Herkimer, New York 13350 (the "Agency").

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, in order to induce the Company to develop the Facility and in order to advance the job opportunities, health and general prosperity and economic welfare of the people of the State of New York, the Agency is willing to accept a leasehold interest in the Facility pursuant to the terms and conditions contained in the Lease Agreement dated of even date herewith entered into between the Company, as Lessor, and the Agency, as Lessee (the "Lease Agreement"); to acquire a leasehold interest in certain real property located in the Town of Schuyler, County of Herkimer, State of New York, more particularly described on Exhibit A thereof; and

WHEREAS, the Company has executed and delivered a Leaseback Agreement, dated of even date herewith, with the Agency to acquire a leasehold interest in the same real property located in the Town of Schuyler, County of Herkimer, New York, more particularly described in Exhibit "A" attached to the Leaseback Agreement, and to construct and equip a facility thereon (the "Facility"); and

WHEREAS, the Facility is exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing March 1, 2023, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement commencing July 1, 2023 through the term of the Leaseback Agreement (the "Exemption Term") (each year measured by the twelve month period commencing with the first day of July, herein referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the Town of Schuyler, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Herkimer County, the Frankfort-Schuyler Central School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:
 - (a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and
 - (b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.
2. The Company shall pay to the Agency for the benefit of each Taxing Authority:
 - (a) in lieu of general real property taxes for the Facility, the Company shall pay the following percentages of the actual real property taxes which would be due if the Facility were fully taxable on the tax rolls of the Taxing Jurisdictions:

<u>Year</u>	<u>Percentage</u>
1	50
2	55
3	60
4	65
5	70
6	75
7	80
8	85
9	90
10	95
11	100
(and each successive year of the term of the lease pursuant to the Lease Agreement)	

- (b) Upon receipt of a bill from the Agency, Company shall make payments in lieu of taxes through the Agency based upon calculations of payments due furnished in writing by the Agency to the Company. Payments shall be made to coincide with each individual Taxing Jurisdiction's schedule due dates for payment of taxes. The Agency shall accept payment from the Subtenant.
 - (c) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Company shall henceforth pay as PILOT Payments on hundred (100%) percent of the Exempt Taxes together with interest at the rate of five (5%) percent per annum on any delinquent PILOT Payments together with expenses of collection, including but not limited to, payment of attorneys' fees; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.
3. The Company will make PILOT Payments for the benefit of each Taxing Authority hereunder for each exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.
 4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback

Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason (including without limitation the expiration or earlier termination of the Leaseback Agreement or this Agreement), the Company is required to pay any tax which the payments specified in this Agreement are intended to be in lieu of, the Company may deduct the aggregate of any such tax payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.
6. This Agreement shall be binding upon the successors and assigns of the parties.
7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority through the Agency and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.
9. The Guarantor, unconditionally, and for its heirs, successors and assigns, guarantee the payment and performance of obligations under this Agreement to the Agency. Guarantor waives any and all claims for offset and defenses of payment.
10. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.
- (b) This agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.
- (c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Herkimer County Industrial Development Agency
420 E. German Street – Suite 101A
Herkimer, New York 13350
Attn: John J. Piseck, Jr., Chief Executive Officer

With a Copy to: Felt Evans, LLP
4 - 6 North Park Row
Clinton, New York 13323
Attn: Anthony G. Hallak, Esq.

To the Company: Bloom Utica LLC
2005 Palmer Avenue - #111
Larchmont, New York 10538
Attn: Aaron Marcus, Manager

With a Copy to: Thompson, LLP
75 Broad Street – Suite 2120
New York, New York 10004
Attn: Daniel Seidenstein, Esq.

Provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

- (e) This Agreement shall be governed by and constructed in accordance with the laws of the State of New York.
- (f) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

John J. Piseck, Chief Executive Officer

BLOOM UTICA LLC

By: _____

Aaron Marcus, Manager

STATE OF NEW YORK)
COUNTY OF HERKIMER) ss.:

On this 27th day of September, 2022, before me, a notary public in and for said State, did personally appear **John J. Piseck**, to me personally known 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.

Anthony G. Hallak
Notary Public

ANTHONY G. HALLAK
Notary Public, State of New York
No. 4234403
Qualified in Oneida County
Commission Expires May 23, 2026

STATE OF NEW YORK)
COUNTY OF New York) ss.:

On this 28 day of September, 2022, before me, a notary public in and for said State, did personally appear **Aaron Marcus**, to me personally known 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.

Andrew H. Meier, Esq.
Notary Public

ANDREW H. MEIER, ESQ.
NOTARY PUBLIC, State of New York
Registration No. 02ME6332812
Qualified in Kings County
Commission Expires on November 9, 2023

Exhibit A

LEGAL DESCRIPTION

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate within the Town of Schuyler, County of Herkimer and State of New York, designated as Parcel "E", as shown on the map entitled "Subdivision Map Showing Lands Belonging to Herkimer County Industrial Development Agency Designated as Parcels "D", "E", "F", "G", "H", "J" and Proposed Roads", dated March 24, 2022 and filed in the Herkimer County Clerk's office on August 18, 2022 as Instrument No. M2022-2663, prepared by Emrich Land Surveying, PLLC; said parcel more particularly described as follows:

BEGINNING at an iron pin (set) located on the westerly road boundary of a proposed town road (Road B) at its intersection with the division line between the herein described property, designated as Parcel "E" on the south and the property, designated as Parcel "D" on the north;

Thence South 06° 42' 00" East, along said westerly boundary of a proposed town road, a distance of 606.26 feet to an iron pin (set); said pin located at the intersection of the last mentioned course with the division line between the herein described property, designated as Parcel "E" on the north and the property, designated as Parcel "F" on the south;

Thence South 82° 45' 20" West, along the last mentioned division line, a distance of 563.62 feet to an iron pin (set) located on the northerly highway boundary of the New York State Thruway;

Thence North 59° 52' 50" West, along said northerly highway boundary of the New York State Thruway, a distance of 351.11 feet to an iron pin (set); said pin located at the intersection of the last mentioned course with the division line between the herein described property, designated as Parcel "E" on the east and the property of Linda P. Williams (reputed owner) as described by Deed L. 1375 P. 220 on the west;

Thence North 05° 38' 00" West, along the last mentioned division line, a distance of 232.86 feet to an iron pin (found); said pin located at the intersection of the last mentioned division line with the division line between the herein described property, designated as Parcel "E" on the east and the property, designated as Parcel "J" on the west;

Thence North 06° 49' 55" West, along the last mentioned division line, a distance of 160.40 feet to an iron pin (set); said pin located at the intersection of the last mentioned division line with the aforementioned division line between the herein described property, designated as Parcel "E" on the south and the property designated as Parcel "D" on the north;

Thence North 82° 45' 20" East, along the last mentioned division line a distance of 840.75 feet to the point of beginning, containing 480,979 ± square feet or 11.041 acres, more or less;

RESERVING: a Permanent Easement to be granted for utility purposes; said easement being fifty (50) feet in width, westerly of, adjacent to and parallel with the westerly road boundary of a proposed town road as described above and as shown on the above referenced map.

RESERVING: a Permanent Easement for ingress and egress to be granted for stormwater management purposes to access stormwater control facilities, if any, constructed upon the premises which easement shall run from "Road B" to the stormwater facilities.

Together with a temporary right of way for ingress and egress over the Proposed Roads set forth on the above identified Emrich Map referred to herein as "Kenneth Dodge Drive" and "Road B", which right of way shall terminate upon dedication and acceptance of the road by the Town of Schuyler for public purposes.

Together with the right and subject to the burdens, if any, vested in the Agency in and to Drive-In Road and Diamond Drive leading between New York State Route 5 and the aforementioned proposed road.

BEING: a portion of the premises conveyed by Dale Windecker and Deborah S. Windecker to Herkimer County Industrial Development Agency by Warranty Deed dated January 2, 2020, recorded in the Herkimer County Clerk's Office on January 3, 2020 by Deed as Instrument Number RP2020-29.