

November 22, 2022

**CERTIFIED MAIL RECEIPT#:**  
**9489-0090-0027-6390-0157-36**

Mr. Agostino Mineo, Assessor  
Town of Gates  
1605 Buffalo Road  
Rochester, New York 14624

Re: County of Monroe Industrial Development Agency  
Assignment and Assumption of 135 Fedex Way in the  
Town of Gates, New York 14624

Dear Auggie:

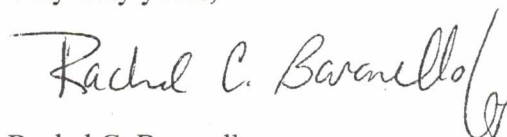
Enclosed herewith please find a copy of the as-recorded Assignment and Assumption of Agreements (the "Assignment and Assumption"), from 135 Fedwhy Way LLC (the "Assignor") to 135 Fedex Way LLC (the "Assignee") in connection with the Project located at 135 Fedex Way in the Town of Gates, New York 14624.

This Agreement assigns to the Assignee all of the benefits previously afforded the Assignor under the Lease Agreement, Leaseback Agreement and Payment-In-Lieu-Of-Tax Agreement (collectively, the "Documents" and more particularly described in the Assignment and Assumption), each by and between Assignor and the County of Monroe Industrial Development Agency.

This is to inform you that the PILOT Agreement for this property is to remain in effect and Assignee should receive the partial real property abatement for the remainder of the PILOT term. A copy of the PILOT Agreement is attached for your reference.

Please contact me if you have any questions. Thank you.

Very truly yours,



Rachel C. Baranello

RCB/lap  
Enclosures  
cc:

**COMIDA**  
Attached Distribution List  
Stephen Capizzi  
John D'Aurizio, Esq.

old! 2602 16 000  
new! 2602 22 005

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

RACHEL C. BARANELLO

DIRECT: (585) 419-8769  
FAX: (585) 419-8816  
RBARANELLO@HARRISBEACH.COM

DISTRIBUTION LIST

Hon. Adam J. Bello  
Monroe County Executive  
39 West Main Street, Suite 110  
County Office Building  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #  
9489-0090-0027-6390-0157-43

Mr. Cosmo A. Giunta, Supervisor  
Town of Gates  
1605 Buffalo Road  
Rochester, New York 14624  
CERTIFIED MAIL RECEIPT #  
9489-0090-0027-6390-0157-67

Ms. Susan Buck  
Monroe County Treasury  
B-3 County Office Building  
39 West Main Street  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #  
9489-0090-0027-6390-0157-50

Mrs. Kristin Swann, Superintendent  
Spencerport Central School District  
71 Lyell Avenue  
Spencerport, New York 14559  
CERTIFIED MAIL RECEIPT #  
9489-0090-0027-6390-0157-74

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B82110

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Time: 2:47 PM

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## ASSIGNMENT AND ASSUMPTION OF AGREEMENTS

Monroe County Clerk's Office

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENTS (the "Assignment and Assumption"), dated as of the 5<sup>th</sup> day of October, 2022 (the "Effective Date"), is made by and between **135 FEDWHY WAY LLC**, a New York limited liability company with offices at 131 Reading Avenue, Buffalo, New York 14220 (the "Assignor") and **135 FEDEX WAY LLC**, a New York limited liability company with offices at 20 English Woods, Rochester, New York 14616 (the "Assignee").

All capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Leaseback Agreement, dated as of February 1, 2018, by and between the County of Monroe Industrial Development Agency, a public benefit corporation of the State of New York (the "Agency") and Assignor (the "Leaseback Agreement"). The Agency is executing this document in its capacity as leasehold title holder only for the purpose of consenting to this Assignment and Assumption as contemplated herein.

### WITNESSETH:

WHEREAS, Assignor is the owner of that certain parcel of land and all improvements thereon located at 135 Fedex Way in the Town of Gates, New York 14624 (the "Land"); and

WHEREAS, Assignor has entered into a lease with the Agency, dated as of February 1, 2018 (the "Lease Agreement") whereby Assignor leases the Facility (as defined below) to the Agency pursuant to the terms thereof; and

WHEREAS, by Resolutions adopted by the Agency on March 15, 2016, the Agency authorized the execution of certain documents with respect to the Project (as defined below), including the Lease Agreement, a memorandum of which was recorded in the Monroe County Clerk's Office on February 23, 2018 in Liber 11988 of Deeds, at Page 654; the Leaseback Agreement, a memorandum of which was recorded in the Office of the Monroe County Clerk on February 23, 2018 in Liber 11988 of Deeds, at Page 650; and a certain Payment In Lieu of Tax Agreement, dated as of February 1, 2018, by and between the Agency and Assignor (the "PILOT Agreement" and, together with the Lease Agreement, the Leaseback Agreement and related documents, the "Documents"); and

WHEREAS, pursuant to the Documents, the Agency provided financial assistance to the Assignor in the form of (i) a sales tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project; and (ii) a partial real property tax abatement structured through the PILOT Agreement; and

WHEREAS, the term of the leasehold estates created by the Lease Agreement and the Leaseback Agreement commenced as of February 1, 2018 and shall terminate at 11:59 P.M. on December 31, 2028, or on such earlier date as may be permitted under the Documents; and

WHEREAS, the Project consisted of: (A) the acquisition by lease, license or otherwise, of an interest in an approximately 1.50-acre parcel of land located at 135 Fedex Way in the Town of Gates, New York [Tax Map No.: 118.05-1-9.1] (the "Land"); (B) the construction on the Land of an approximately 7,300 square-foot building comprised of approximately 6,000 square feet of



warehousing space and approximately 1,300 square feet of office space (collectively, the "Improvements"); (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"), and (D) the lease of the Facility to the Company for sublease to Grove Roofing Services, Inc. (the "Tenant") for use in its business as a commercial roofing company; and

WHEREAS, Assignor has informed the Agency that Assignor and Assignee have entered into a purchase agreement ("Purchase Agreement") whereby Assignee will acquire the Facility, and as a result thereof indirectly acquire all of the Assignor's right, title and interest and obligations under the Documents, as the same may be amended from time to time, which arise from and after the Effective Date; and

WHEREAS, Agency approved the assignment and assumption by its resolution dated July 19, 2022; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's rights, title, interest, duties, obligations and liabilities under the Documents which arise from and after the Effective Date, and the Assignee desires to accept such assignment and to assume all of such rights, title, interest, duties and obligations and liabilities of Assignor thereunder.

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment by Assignor.

(a) Assignor hereby sells, assigns, transfers, conveys and sets over unto Assignee all of Assignor's rights, title, interest, duties, obligations and liability in, to and under the Documents first arising from and after the Effective Date.

(b) Assignee hereby accepts such assignment, and Assignee hereby covenants to operate and maintain the Project, during the term of the Documents, such that it constitutes a "project" under Title I of Article 18-A of the General Municipal Law of the State of New York.

(c) Assignor hereby agrees and consents that this Assignment and Assumption shall in no way be construed as a waiver or release of any claims or rights that the Agency may have at any time against the Assignor relating to any matters asserted or first arising under the Documents prior to the Effective Date, and the Agency expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

2. Assumption by Assignee. Assignee hereby assumes the performance of all of the obligations, terms, covenants and conditions of the Documents on Assignor's part first to be performed thereunder first arising from and after the Effective Date and will perform all of the obligations, terms, covenants and conditions of the Documents on Assignee's part to be performed and which arise from and after the Effective Date, all with the same force and effect as though the Assignee had signed the Documents as a party named therein.



3. Indemnity of Assignee. Assignee does hereby agree, for Assignee and for Assignee's legal representatives, successors and assigns, to indemnify, defend and save Assignor and Assignor's successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignee under the Documents with respect to obligations which arise from and after the Effective Date.

4. Indemnity of Assignor. Assignor does hereby agree, for Assignor and for Assignor's successors and assigns, to indemnify, defend and save Assignee and Assignee's legal representatives, successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignor under the Documents with respect to obligations which arose prior to the Effective Date.

5. Consent of Agency; Indemnity of Assignee and Assignor to Agency. Pursuant to the terms and provisions of the Documents, the Agency hereby consents to this Assignment and Assumption, and acknowledges its consent below by and through its duly authorized officer. It being expressly understood and agreed that each of Assignor and Assignee, jointly and severally, agree and covenant that each of Assignor and Assignee hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend and hold the Agency and its members, officers, agents and employees harmless from and against, any and all costs or liabilities that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to this Assignment and Assumption, including without limitation, all causes of action and reasonable attorneys' fees and litigation expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing.

6. Representations and Warranties of Assignor. Assignor hereby represents and warrants to the Assignee that (a) there have been no prior assignments of the Documents made by Assignor to any other party, (b) that the Documents are being assigned to the Assignee free and clear of all liens and encumbrances, and (c) Assignor has complied with all provisions of the Documents regarding assignment, including but not limited to Section 6.3 of the Leaseback Agreement. The representations and warranties of Assignor set forth herein shall survive the closing of the transactions contemplated by the Purchase Agreement and the delivery of this Assignment and Assumption. The Agency hereby acknowledges Assignor's compliance with the provisions of the Lease Agreement and the Leaseback Agreement regarding assignment.

7. Counterparts. This Assignment and Assumption may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

8. Binding Effect. Each reference herein to a party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Assignment and Assumption and in whose favor the provisions of this Assignment and Assumption shall inure.

9. Entire Agreement. This Assignment and Assumption represents the entire agreement between the parties hereto with respect to the subject hereof and supersedes all prior negotiations, either written or oral.

10. Further Assurances. Assignor and Assignee agree to deliver to each other such further instruments and/or documents as reasonably requested and for the purpose of carrying out or consummating the transactions contemplated by this Assignment and Assumption.

*[Remainder of Page Intentionally Left Blank – Signature Pages Follow]*

**[Assignor's Signature Page to Assignment and Assumption of Agreements]**

IN WITNESS WHEREOF, the Assignor has executed and delivered this Assignment and Assumption of Agreements as of the date first above written.

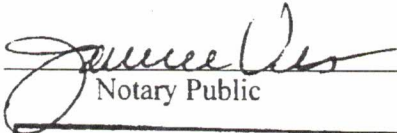
**ASSIGNOR:**

**135 FEDWHY WAY LLC**

By:   
Name: John Embow  
Title: Member

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

On the 25 day of August, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared **John Embow**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

<p><b>JANICE VERTLIEB</b> <b>NOTARY PUBLIC, STATE OF NEW YORK</b> Registration No. 01VE6098654 Qualified in Niagara County My Commission Expires <u>9/15/23</u></p>
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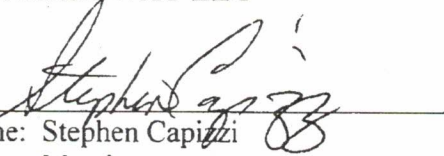


**[Assignee's Signature Page to Assignment and Assumption of Agreements]**

IN WITNESS WHEREOF, the Assignee has executed and delivered this Assignment and Assumption of Agreements as of the date first above written.

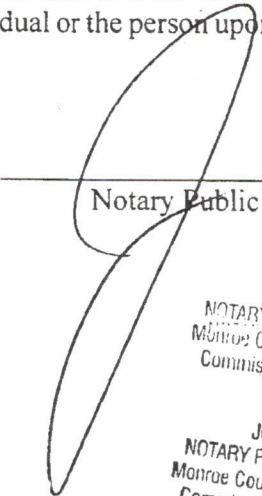
**ASSIGNEE:**

**135 FEDEX WAY LLC**

By:   
Name: Stephen Capizzi  
Title: Member

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

On the 5 day of October, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared **Stephen Capizzi**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

~~JOHN F. D'AURIZIO  
NOTARY PUBLIC, State of New York  
Monroe County, Reg # 01DA4949793  
Commission Expires April 17, 2023~~

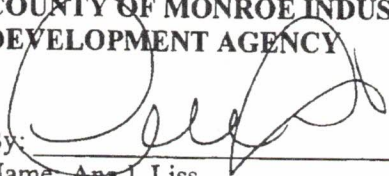
JOHN F. D'AURIZIO  
NOTARY PUBLIC, State of New York  
Monroe County, Reg # 01DA4949793  
Commission Expires April 17, 2023

**ACKNOWLEDGMENT OF ASSIGNMENT AND ASSUMPTION  
OF AGREEMENTS**

The undersigned hereby acknowledges receipt of notice of the Assignment and Assumption of Agreements, by and between **135 FEDWHY WAY LLC** (the "Assignor") and **135 FEDEX WAY LLC** (the "Assignee"), dated the date first written above (the "Assignment and Assumption"), pursuant to which Assignor assigns all of Assignor's rights, title, interest, duties, obligations and liabilities under the Documents (as defined in the Assignment and Assumption) first arising from and after the Effective Date thereof and Assignee accepts such assignment and assumes all of Assignor's rights, title, interest, duties, obligations and liability into and under the Documents first arising from and after the Effective Date thereof. The foregoing shall not be construed, however, as a waiver or release of any claims or rights that the undersigned may have at any time against the Assignor except as set forth in Section 1(c) of the Assignment and Assumption, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity. Moreover, the undersigned hereby acknowledges Assignor's compliance with the provisions of the Leaseback Agreement regarding assignment.


IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of the 5<sup>th</sup> day of October, 2022.

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Ana J. Liss  
Title: Executive Director

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

On the 29<sup>th</sup> day of September, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **Ana J. Liss**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

LORI A. PALMER  
Notary Public, State of New York  
No. 01PA4848797  
Qualified in Monroe County  
Commission Expires May 31, 2023

ORIGINALLY  
FILED PILOT

COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY  
D/B/A IMAGINE MONROE POWERED BY COMIDA

AND

135 FEDWHY WAY LLC

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Tax Map No.

118.050-0001-009.100

Affected Tax Jurisdictions:

County of Monroe  
Town of Gates  
Spencerport Central School District

Dated as of February 1, 2018



## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT** (the "PILOT Agreement") made as of February 1, 2018, by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA**, a public benefit corporation of the State of New York, having its offices at 8100 CityPlace, 50 West Main Street, Rochester, New York 14614 (the "Agency"), and **135 FEDWHY WAY LLC**, a New York limited liability company having offices at 131 Reading Avenue, Buffalo, New York 14220 (the "Company").

### WITNESSETH:

**WHEREAS**, the Agency was created by Chapter 55 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

**WHEREAS**, the Agency has agreed to assist the Company with a certain project (the "Project") all as more particularly described in an application dated March 1, 2016 (the "Application") said Project consisting of: the acquisition of a leasehold or other interest in an approximately 1.50-acre parcel of land located at 135 FedEx Way in the Town of Gates, County of Monroe and State of New York [Tax Map ID No.: 118.050-0001-009.100], and the construction of an approximately 7,300 square-foot building thereon (the "Facility"), a description of which is annexed hereto as Exhibit A; and related site work, for sublease to **Grove Roofing Services, Inc.** (hereinafter referred to as "Tenant", as defined in the PILOT Addendum attached hereto); and

**WHEREAS**, the Agency has agreed to lease the Facility to the Company; and

**WHEREAS**, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision other than special ad valorem levies, special assessments and service charges against real property, which are or may be imposed for special improvements or special district improvements; and

**WHEREAS**, the Legislature of the County of Monroe by Resolution No. 154 of 1989 has adopted a revised tax abatement policy which was modified and readopted by the Agency in June 2000 (the "JobsPlus Tax Abatement Policy," sometimes hereinafter referred to as "JobsPlus") for industrial and/or commercial property leased, licensed and/or owned by the Agency; and

**WHEREAS**, the Facility meets the criteria of the JobsPlus Tax Abatement Policy; and

**WHEREAS**, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the County of Monroe, the Town of Gates and the Spencerport Central School District (collectively, the "Taxing Jurisdictions").

NOW, THEREFORE, in consideration of the Agency providing the Facility and in consideration of the covenants herein contained, it is mutually agreed as follows:

**Section I. Payment in Lieu of Ad Valorem Real Property Taxes.**

JobsPlus Tax Abatement Policy. Subject to completion and filing by the applicable tax status date of New York State form RP-412-a, Application for Real Property Tax Exemption, (the "Exemption Application") under Section 412-(a) of the New York State Real Property Tax Law and Section 874 of the Act and as long as the Facility is leased by the Agency and leased back to the Company ("Leased"), the Company agrees to pay annually to the Taxing Jurisdictions as a payment in lieu of taxes, an amount equal to 100% of the real estate taxes ("Real Estate Taxes"), less the percentages of exemption set forth on the schedule below. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the Affected Taxing Jurisdictions.

<u>YEARS OF EXEMPTION</u>	<u>PERCENTAGE OF EXEMPTION</u>
1	90%
2	80%
3	70%
4	60%
5	50%
6	40%
7	30%
8	20%
9	10%
10	0%

Further, provided that:

(i) Jobs Requirement. The Company maintains its present impacted job level of nine full-time/full-time equivalent jobs in Monroe County, New York, and the Company or its Tenant creates one (1) new full-time/full-time equivalent job in three (3) years and maintains that one (1) new full-time/full-time equivalent job for the balance of the ten (10) year term hereof. The benefits provided for herein and the three-year job creation period commence when the Facility is substantially complete such that it is reassessed by the Town of Gates Assessor at full value for the Facility; and

(ii) Compliance Report. The Company shall report its compliance with these provisions as requested by the Agency, or its Project Compliance Monitor; and

(iii) Job Failure. If the one (1) new full-time/full-time equivalent job is not created by the end of the three (3) year period or not continuously maintained during the balance of the term



hereof, the exemption schedule will revert back to Section 485-b of the New York Real Property Tax Law and the Company agrees to pay in any year for which the job creation requirements are not met (a "Disqualifying Year"), as an additional payment in lieu of taxes, an amount equal to the difference between the tax benefits received in years one through the Disqualifying Year under this PILOT Agreement and the tax benefits which would have been received in years one through the Disqualifying Year under Section 485-b of the New York Real Property Tax Law. Under extenuating circumstances, the Agency Board may waive the above penalties after reviewing a written request from the Company for waiver of the penalties.

(iv) Waiver Process. The payments required hereunder for any non-compliance shall be paid by the Company to any and all Affected Taxing Jurisdictions whether or not billed. However, if the Company has made a good faith effort to achieve the job creation requirement, it may apply in writing for relief from the obligation for repayment of taxes abated, based on a showing of unforeseen economic circumstances, fiscal hardship, or other good cause. Application for relief from the repayment obligation shall be made to the Agency, which shall examine the application and grant relief, in whole or in part, from the repayment obligation or grant an alternate schedule for attaining the job creation requirement.

(v) Benefit Period. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than ten (10) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than ten (10) consecutive years. Notwithstanding the foregoing, nothing contained in this PILOT Agreement shall render the Company ineligible for a continued tax exemption under Real Property Tax Law Section 485-b or any other applicable statute if this PILOT Agreement is terminated prior to the expiration of the exemption schedule set forth herein.

## **Section II. Special District Charges, Special Assessments and Other Charges.**

(a) Special district charges, special assessments, and special ad valorem levies, unless otherwise exempt, and Monroe County Pure Waters charges are to be paid in full in accordance with normal billing practices.

(b) The Company shall pay, within the applicable grace period and without penalty, the amounts set forth in Sections I and II(a) hereof applicable to taxes, special ad valorem levies, special assessments or similar tax equivalents, less the percentages of exemption on similar property subject to taxation by the Taxing Jurisdictions, as appropriate.

## **Section III. Payment Due Date and Payee Allocation.**

As long as the Facility is owned or leased by the Agency, the Company agrees to pay annually to the Affected Taxing Jurisdictions as payment in lieu of taxes, on or before October 1 of each year for school taxes and on or before January 30 of each year for County and Town taxes, the amounts set forth in Section I hereof. The Company shall make PILOT payments in the amounts and on the dates specified above, whether or not any such PILOT payment is billed by the Agency, the Affected Taxing Jurisdictions or any other party. Payments-in-lieu-of-taxes shall be paid to the Affected Taxing Jurisdictions in the same proportion as ad valorem taxes



would have been allocated but for the Agency's involvement, unless the Affected Taxing Jurisdictions have consented in writing to a different allocation.

The parties agree and acknowledge the payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Taxing Jurisdictions would otherwise lose because the subject parcel(s) are not on the tax rolls.

#### **Section IV. Lease Termination.**

In the event that the Facility is no longer Leased by the Agency, and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption is less than that described in Section I herein, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Taxing Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date the Facility is no longer Leased by the Agency or the date of loss of eligibility of all or a portion of the exemption described herein. Notwithstanding anything contained herein to the contrary, in the event that the Facility, or any portion thereof, is no longer Leased by the Agency, or if the Agency's interest is otherwise transferred to the Company or any person or entity not otherwise entitled to an exemption from taxation (collectively with the Company, the "Transferee") such that the Facility, or portion thereof, is subject to immediate assessment and taxation and is taxed pro rata for the unexpired portion of any fiscal year during which said transfer of title to the Transferee occurred pursuant to the provisions of Section 520 of the New York Real Property Tax Law, any amounts payable or made, as the case may be, pursuant to this PILOT Agreement by the Company to the respective Taxing Jurisdictions shall be reduced or refunded, as the case may be, in accordance with 10 Op. Off. Real Property Services 87 (1999), from the amount of taxes required to be paid pursuant to such Section 520 with respect to the fiscal year during which said transfer of title to the Transferee occurred. The provisions of the immediately preceding sentence shall survive the termination or expiration of the leaseback agreement, dated as of the date hereof, entered into between the Agency and Company and executed simultaneously herewith (the "Leaseback Agreement").

#### **Section V. Assessment Challenges.**

(a) The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

(b) The Company and its Tenant shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Taxing Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein. If the assessment of all or a portion of the Facility is reduced as a result of any such proceedings so that the Company would be entitled to receive a refund or refunds of monies paid to the respective

Taxing Jurisdictions (taking into account, however, the impact of any abatement allowed the Company hereunder), the Company shall be entitled to receive a refund or refunds from the applicable Taxing Jurisdictions of any payment in lieu of real estate taxes and assessment paid pursuant to this PILOT Agreement in such amount.

**Section VI. Changes in Law.**

To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

**Section VII. Events of Default.**

(a) If payments are not made as provided for herein, the Agency and/or Taxing Jurisdictions, individually or collectively, shall be entitled to pursue any and all remedies afforded them at law or in equity.

Notwithstanding anything contained herein to the contrary, upon the occurrence of (i) the sale or closure of the Facility; (ii) a significant unapproved change in use of the Facility; (iii) a significant reduction in employment at the Facility (as defined below); (iv) the Company abandons or otherwise vacates the County of Monroe; (v) the failure by the Company to make any payments required under this PILOT Agreement; or (vi) the breach of covenants or event of default under the Leaseback Agreement (singularly or collectively an "Event of Default"), the Agency shall have the right to recapture real property tax abatements provided hereunder pursuant to the following schedule:

<b>Year of Recapture</b>	<b>Percent of Recapture, Applicable to Current Year and All Prior Years</b>
1	100%
2	100%
3	50%
4	50%
5	25%
6	25%
After year 6	At Agency's Discretion, 25% or Less

Any such recapture is at the sole and exclusive discretion of the Agency. The Agency shall notify the Company of such Event of Default of its intent to recapture the PILOT benefits (or any portion thereof). For purposes of this Section only, a "significant reduction in employment" shall mean more than twenty percent (20%) of the employment as stated in the Company's application to the Agency, dated March 1, 2016 (the "Application"), to wit, 9. Any and all recaptured payments received pursuant to this provision shall be remitted to the Taxing Jurisdictions on a pro rata basis within sixty (60) days of receipt of payment.



(b) If payments pursuant to Section II(a) herein are not made by the due dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: With respect to payments to be made pursuant to Section II(a) herein, if said payment is not received by the due date defined in Section II(a) herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus a late payment penalty, in an amount equal to one percent (1%) of the amount due per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

#### **Section VIII. Transfer of Facility.**

In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I hereof, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or the date of termination.

#### **Section IX. Assignment.**

No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

#### **Section X. Miscellaneous.**

(a) This PILOT Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(b) All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follow:

To the Agency: County of Monroe Industrial Development Agency  
d/b/a Imagine Monroe Powered By COMIDA  
8100 CityPlace, 50 West Main Street  
Rochester, New York 14614  
Attn: Executive Director



With a Copy to: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Rachel Baranello Endress, Esq.

To the Company: 135 FedWhy Way LLC  
131 Reading Avenue  
Buffalo, New York 14220  
Attn: John Embow, Member

or 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. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

**Section XI. No Recourse.**

Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. No member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of, or supplement to, against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such member, officer, agent, servant and employee being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

*[Remainder of Page Intentionally Left Blank]*

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

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY D/B/A IMAGINE  
MONROE POWERED BY COMIDA**

By: 

Name: Jeffrey R. Adair

Title: Executive Director

**135 FEDWHY WAY LLC**

By: 

Name: John Embow

Title: Member

## **Exhibit A**

### **Description of the Project and Facility**

The "Project" consists of the construction of an approximately 7,300 square-foot building comprised of approximately 6,000 square feet of warehousing space and approximately 1,300 square feet of office space (collectively, the "Facility"); for sublease to Grove Roofing Services, Inc. (the "Tenant") for use in its business as a commercial roofing company.

**[N.B. – PILOT abatement applies to new value of the approximately 7,300 square-foot building but not to the existing assessment, calculated prior to the construction of the Facility.]**



**PILOT ADDENDUM  
(GROVE ROOFING SERVICES, INC.)**

The County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") and 135 FedWhy Way LLC (the "Applicant" or "Landlord"), agree and understand that the Applicant who filed the application for Agency benefits is not the party creating the jobs directly. The Agency and the Applicant agree and understand that Applicant is the landlord for Grove Roofing Services, Inc. (the "Tenant" and together with the Agency and the Applicant, the "Parties"). The Tenant executes this agreement to acknowledge and all Parties agree and understand that the Tenant is maintaining and creating the jobs in question. However, the Applicant is the one receiving benefits directly from the Agency. In the event the Tenant does not create the jobs, the Landlord is responsible for any and all penalties due as a result of Tenant's failure. The Applicant may attempt to find a substitute tenant and create the jobs with such new tenant provided the Agency is informed and consents to the new tenant's occupying the premises in question. The Agency's criteria for consent would be that the new tenant uses the facility as a "project" as defined for purposes of General Municipal Law Article 18-A and is otherwise creditworthy. The Landlord may require the Tenant in its sublease to create the jobs as the Parties agreed and understood or, in the alternative, to reimburse it for any and all fees it pays to the Agency. However, the Agency takes no position with respect to this issue and will look solely and exclusively to the Applicant as the direct beneficiary of its tax abatement programs.


**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY D/B/A IMAGINE  
MONROE POWERED BY COMIDA**

By:   
Name: Jeffrey R. Adair  
Title: Executive Director

**135 FEDWHY WAY LLC**

By:   
Name: John Embow  
Title: Member

**GROVE ROOFING SERVICES, INC.**

By:   
Name: John Embow  
Title: President

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3217644

Book Page D 12730 0120

No. Pages: 8

Instrument: ASSIGNMENT OF AGREEMENT (D)

Control #: 202210060942

Ref #: TT0000004702

Date: 10/06/2022

Time: 2:47:36 PM

Return To:  
BOX 110 JFD

135 FEDWHY WAY LLC,

135 FEDEX WAY LLC,

Recording Fee	\$26.00	
Pages Fee	\$35.00	
State Fee Cultural Education	\$14.25	
State Fee Records	\$4.75	Employee: CT
Management		
Total Fees Paid:	\$80.00	

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING - THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK

