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November 25, 2020

Hon. Adam J. Bello
Monroe County Executive
39 West Main Street
County Office Building
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6207 3552 91

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 6207 3553 07

Stephen L. Schultz, Supervisor
Town of Henrietta
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6207 3553 14

Mr. Lawrence Bo Wright, Superintendent
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6207 3553 21

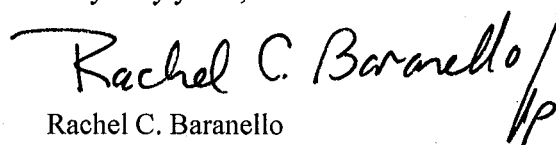
Ms. Sarah Lippincott, Assessor
Henrietta Town Hall
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6207 3553 38

Re: County of Monroe Industrial Development Agency ("COMIDA") and
Apex Rochester, LLC – 380 John Street (formerly 10-284 Colony Manor Drive)
in the Town of Henrietta, New York

Ladies and Gentlemen:

Enclosed herewith please find a copy of the Amended and Restated Payment-In-Lieu-of-Tax Agreement and the Amended Application for Real Property Tax Exemption with respect to the above-captioned matter. Also enclosed for reference is a copy of the Amendment to Agreements, which was recorded with the Monroe County Clerk.

Very truly yours,


Rachel C. Baranello

RCB/lap
Enclosures

cc: COMIDA
James A. Malesich, Jr.
Betsy Brugg, Esq.

COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

AND

APEX ROCHESTER, LLC

AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT

Tax Account No.

161.010-0001-033.000

Dated as of November 1, 2020

Affected Tax Jurisdictions:

Monroe County
Town of Henrietta
Rush-Henrietta Central School District

AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT

THIS AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT (the "Amended and Restated PILOT Agreement"), dated as of the 1st day of November, 2020 is by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 50 West Main Street, Suite 1150, Rochester, New York 14614 (the "Agency") and **APEX ROCHESTER, LLC**, a New York limited liability company with offices at 2 Cooper Street, P.O. Box 90708, Camden, New Jersey 08101 (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 Company previously requested the Agency to assist in a certain project (the "2019 Project") all as more particularly described in an application dated February 12, 2019 (the "2019 Application") consisting of: (A) the acquisition of a leasehold or subleasehold interest in an approximately 14-acre parcel of land located at 380 John Street (formerly known as 10-284 Colony Manor Drive) in the Town of Henrietta, New York (the "Land"); (B)(i) the demolition of the existing 16 structures on the Land and (ii) the construction in its place of an approximately 445,000 square-foot, 7-story, 300-unit/935-bed student housing facility featuring 14,000 square feet of modern amenities available 24/7 to its residents (collectively, the "2019 Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "2019 Equipment" and, together with the Land and the 2019 Improvements, the "2019 Facility"); and

WHEREAS, the Company leased the 2019 Facility to the Agency pursuant to the terms and conditions of a certain Lease Agreement, dated as of May 15, 2019 (the "Existing Lease Agreement"), and the Agency leased the 2019 Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of May 15, 2019 (the "Existing Leaseback Agreement"), all in contemplation of entering into that certain Payment In Lieu of Tax Agreement, dated as of May 15, 2019 (the "Original PILOT Agreement") to assist with the 2019 Project; and

WHEREAS, the Company has now submitted an application to the Agency requesting that the Agency assist with a continuation of the 2019 Project (the "2020 Project"; and, together with the 2019 Project, the "Project") consisting of: (A) the retention of a leasehold or subleasehold interest in the Land; (B) the construction on the Land of an approximately 140,000 square-foot, 5-story, 77-unit/318-bed student housing facility featuring modern amenities available 24/7 to its residents (the "2020 Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "2020 Equipment" and, together with the Land and the 2020 Improvements, the "2020 Facility"; and, together with the 2019 Facility, the "Facility" or "Leased Premises"), to be used by the

students of Rochester Institute of Technology; and

WHEREAS, the Company and the Agency desire to further amend and restate the Original PILOT Agreement, as amended by that certain First Amendment to Payment In Lieu of Tax Agreement, dated as of February 1, 2020 (the "First Amendment to PILOT Agreement") pursuant to the terms and conditions in this Amended and Restated PILOT Agreement (as so amended and restated, the "PILOT Agreement"), to assist with the Phase II Project; 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 Agency and the Company deem it necessary and proper to enter into an this Amended and Restated PILOT Agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Monroe County (the "County"), the Town of Henrietta (the "Town"), and the Rush-Henrietta Central School District (the "School District" and, together with the County and the Town, the "Affected Tax Jurisdictions").

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

Section 1 - Payment in Lieu of Ad Valorem Taxes.

Section 1.1 A. The Agency previously filed the New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") on May 31, 2019 under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act. The Project shall be exempt from real property taxes commencing with the 2020-2021 School District tax year and the 2021 County and Town tax years.

B. Payee/PILOT Payments. (i) As long as the Leased Premises is leased to the Agency or under its jurisdiction, control or supervision, the Company agrees to pay the PILOT Payment (as hereinafter defined) annually to the Town, as a payment in lieu of taxes, within thirty (30) days of receipt of the invoice for payment of taxes (the "Payment Date"), a described below, commencing on May 15 immediately following the issuance of a certificate of occupancy (conditional or otherwise) or the assessment of the Facility at full value, whichever occurs first (the "Effective Date"). The period of Shelter Rent benefits under this PILOT Agreement shall be thirty (30) years from the Effective Date (the "PILOT Term"). The PILOT Payment shall be made to the Town, in arrears, pursuant to the terms and conditions of the invoice the Town shall send to the Company on an annual basis. The Town shall distribute to the School District and the County its respective pro rata share of the PILOT Payment pursuant to Section 858(15) of the General Municipal Law.

(ii) (a) For purposes of this PILOT Agreement, each payment hereunder ("PILOT Payment") shall be an amount equal to Shelter Rent multiplied by five percent (5%) for

the first two (2) years of the PILOT Term; Shelter Rent multiplied by six percent (6%) for the third year of the PILOT Term; Shelter Rent multiplied by seven percent (7%) for the fourth year of the PILOT Term; Shelter Rent multiplied by eight percent (8%) for the fifth year of the PILOT Term; Shelter Rent multiplied by nine percent (9%) for the sixth year of the PILOT Term and Shelter Rent multiplied by ten percent (10%) for the balance of the PILOT Term. The term "Shelter Rent" shall mean the total rents received from the occupants of the Facility minus the cost of providing electricity, gas, heat and other utilities but shall not include (a) the cost of any insurance in connection with the Facility or (b) any utility or related costs incurred by any tenants or other occupants residing at the Facility.

(b) The PILOT Payment shall be calculated on a calendar year (except for the first year of the PILOT Term, which shall be a portion of that calendar year).

(c) The PILOT Payments required hereunder shall be made in arrears to the Town Assessor each May 15 during the term hereof. In order to calculate the PILOT Payments, the Company agrees to provide annual audited financial statements by March 15 of each year of the PILOT term with a copy to the Agency.

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

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder (if any) within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Town shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Town and special district purposes, the tax rates used to determine the allocation of the PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT Payment due date.

1.4 Valuation of Future Additions to the Leased Premises. In the event that any structural addition shall be made to the building or buildings included in the Facility, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "Future Addition"), the Company agrees to make additional payments in lieu of taxes to the Affected Taxing Jurisdictions in amounts equal to the then current ad valorem tax rates which would be levied upon or with respect to the Future Addition by the Affected Taxing Jurisdictions if the Future Addition were owned by the Company exclusive of the Agency's leasehold interest multiplied by the assessment or assessments established for that tax year by the appropriate Taxing Jurisdiction.

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2020-2021 School District tax year and (ii) the 2021 County and Town tax year. The Shelter Rent benefits provided for herein shall commence from the Effective Date and continue for the PILOT Term of thirty (30) years. In no event shall the Company be entitled to receive tax benefits relative to the Leased Premises for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Leased Premises which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section 2 - Special District Charges, Special Assessments and other Charges. Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section 3 - Transfer of Leased Premises. In the event that the Leased Premises 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 1 herein, 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 Leased Premises if the Premises 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 date of termination.

Section 4 - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment of the Leased Premises by any of the Affected Tax Jurisdictions. The Company 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.

4.2 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.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and

tax levy officers to assess the Leased Premises and apply tax rates to the respective assessments, and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 5 - Changes in Law. To the extent the Leased Premises 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 6 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section 1 hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) cure the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency may, at its sole and exclusive discretion, also seek recapture of any and all Financial Assistance received by the Company to the date of the occurrence of the Event of Default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section 1 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 1 herein, if said payment is not received by the Delinquency Date as defined in Section 6.1 above, 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.

6.3 Upon the occurrence of an Event of Default hereunder, the liability of the Company hereunder shall be all amounts due to the Agency pursuant to Section 1 hereof through

but not including the date on which the Facility is no longer exempt from Real Estate Taxes together with all other amounts due to the Agency pursuant to Section 6.2 hereof.

Section 7 - 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 shall not be unreasonably withheld or delayed.

Section 8 - Miscellaneous.

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

8.2 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 follows:

To the Agency: County of Monroe Industrial Development Agency
50 West Main Street, Suite 1150
Rochester, New York 14614
Attn: Executive Director

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

To the Company: Apex Rochester, LLC
2 Cooper Street
P.O. Box 90708
Camden, New Jersey 08101
Attn: James A. Malesich, Jr., EVP

With a Copy to: Woods Oviatt Gilman LLP
1900 Bausch & Lomb Place
Rochester, New York 14604
Attention: Betsy Brugg, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Monroe County, New York.

8.4 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 Leased Premises and paid to the Agency by the Company. Neither 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 hereto 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 members, officer, agents, servants and employees 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.

8.5 Benefit Period. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than thirty (30) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than thirty (30) 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 its expiration.

8.6 Job Requirement.

(A) The Company must create one (1) new full-time/full-time equivalent job in three (3) years and maintain that one (1) new full-time job for the balance of the thirty (30) 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 Henrietta Assessor at full value for the Facility.

(B) Compliance Report. The Company shall report its compliance with these provisions as requested by the Agency.

(C) 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.

(D) 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.

[Remainder of Page Intentionally Left Blank]

[Signature Page to Amended and Restated PILOT Agreement]

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**

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

APEX ROCHESTER, LLC

By: 10 Colony Manor, its Managing Member
By: Colony Manor-Michaels, LLC, Member

By: _____
James A. Malesich, Jr., Vice President

[Signature Page to Amended and Restated PILOT Agreement]

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**

By: _____

Name: Ana J. Liss

Title: Executive Director

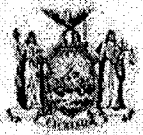
APEX ROCHESTER, LLC

By: 10 Colony Manor, its Managing Member

By: Colony Manor-Michaels, LLC, Member

By: _____

James A. Malesich, Jr., Vice President



NYS BOARD OF REAL PROPERTY SERVICES

AMENDED

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

2. OCCUPANT (IF OTHER THAN IDA)
(If more than one occupant attach separate listing)

Name County of Monroe Industrial Developmnt Agency
Street 50 West Main Street, Suite 1150
City Rochester, New York 14614
Telephone no. Day (585) 419-8769
Evening ()
Contact Rachel C. Baranello
Title Agency Counsel

Name Apex Rochester, LLC
Street 2 Cooper Street, P.O. Box 90708
City Camden, New Jersey 08101
Telephone no. Day (585) 445-2736
Evening ()
Contact Betsy Brugg, Esq.
Title Company Counsel

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 161.010-0001-033
b. Street address 380 John Street (formerly 10-284 Colony Manor)
c. City, Town or Village Henrietta (Town)
d. School District Rush-Henrietta CSD
e. County Monroe
f. Current assessment 7,406,000
g. Deed to IDA (date recorded; liber and page) Amendment to Agreements, recorded on or about November 23, 2020.

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) construction of an additional approx. 140,000 sq. ft. five-story 77-unit student housing facility
b. Type of construction
c. Square footage approx. 140,000 sf
d. Total cost \$27,000,000
e. Date construction commenced Winter/Spring 2020-21
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) See Attached Amended PILOT Agreement

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment See Attached Amended PILOT Agreement
b. Projected expiration date of agreement See Attached Amended PILOT Agreement

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Monroe</u>	X	
Town/City <u>Henrietta</u>	X	
Village _____		X
School District <u>Rush-Henrietta CSD</u>	X	

d. Person or entity responsible for payment

Name Apex Rochester, LLC
 Title _____
 Address 2 Cooper Street, PO Box 90708
Camden, New Jersey 08101

e. Is the IDA the owner of the property? Yes/No (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement. The IDA has a leasehold interest in the property.

Telephone 585-445-2736

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption Section 485-a of the NY assessment roll year 2020
Real Property Tax Law

7. A copy of this application, including all attachments, has been mailed or delivered on 11/25/2020 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Rachel C. Baranello, Agency Counsel of _____ of _____
Name Title
County of Monroe Industrial Development Agency hereby certify that the information
Organization

on this application and accompanying papers constitutes a true statement of facts.

11/29/20
Date

RCB
Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

Document Type: AMENDMENT TO LEASE
Document Status: Verify with OCR
Recorded Date: 11/23/2020 03:31:23 PM
Control Number: 202011231153
T/T #: TT0000008657
Book / Page: D 12427 0091
Consideration: \$1.00
Notations:
Town Additional:

Legal Desc:

Address: 380 JOHN STREET
Address 1:
City: HENRIETTA
State: NY Zip:
Land Notations:
Notes:
Submitter: METRO REAL ESTATE

Name Information

Grantor:
COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

Grantee:
APEX ROCHESTER LLC

AMENDMENT TO AGREEMENTS

THIS AMENDMENT TO AGREEMENTS, dated as of November 1, 2020 (the "Amendment"), is by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly organized and existing under the laws of the State of New York with offices at 50 West Main Street, Rochester, New York 14614 (the "Agency") and **APEX ROCHESTER, LLC**, a limited liability company formed and existing under the laws of the State of New York, with offices at 2 Cooper Street, P.O. Box 90708, Camden, New Jersey 08101 (the "Company").

WITNESETH:

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 55 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the Agency was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing, renovating and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, by resolution duly adopted by the Agency on March 19, 2019, the Agency designated and appointed the Company to act as its agent for the purpose of undertaking a certain project (the "2019 Project") consisting of: (A) the acquisition of a leasehold or subleasehold interest in an approximately 14-acre parcel of land located at 380 John Street (formerly known as 10-284 Colony Manor Drive) in the Town of Henrietta, New York (the "Land"); (B)(i) the demolition of the existing 16 structures on the Land and (ii) the construction in its place of an approximately 445,000 square-foot, 7-story, 300-unit/935-bed student housing facility featuring 14,000 square feet of modern amenities available 24/7 to its residents (collectively, the "2019 Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "2019 Equipment" and, together with the Land and the 2019 Improvements, the "2019 Facility"); and

WHEREAS, to assist the Company in the acquisition, construction, equipping, operating and maintaining of the 2019 Facility, the Agency and the Company executed and delivered (i) a certain Lease Agreement, dated as of May 15, 2019, by and between the Company and the Agency, pursuant to which the Company leased the 2019 Facility to the Agency (the "Existing Lease Agreement"), a memorandum of which (the "Existing Memorandum of Lease") was recorded in the Monroe County Clerk's Office on May 20, 2019 in Liber 12185 of Deeds, at Page 265; and (ii) a certain Leaseback Agreement, dated as of May 15, 2019, by and between the Agency and the Company, pursuant to which the Agency leased the 2019 Facility back to the Company (the "Existing Leaseback Agreement"), a memorandum of which (the "Existing Memorandum of Leaseback") was recorded in the Monroe County Clerk's Office on May 20, 2019 in Liber 12185 of Deeds, at Page 270; and

WHEREAS, the Company has now submitted an application to the Agency requesting that the Agency assist with a continuation of the 2019 Project (the "2020 Project" and, together with the 2019 Project, the "Project") consisting of: (A) the retention of a leasehold or subleasehold interest in the Land; (B) the construction on the Land of an approximately 140,000 square-foot, 5-story, 77-unit/318-bed student housing facility featuring modern amenities

available 24/7 to its residents (the "2020 Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "2020 Equipment" and, together with the Land and the 2020 Improvements, the "2020 Facility" and, together with the 2019 Facility, the "Facility"), to be used by the students of Rochester Institute of Technology. The Facility will be initially operated and/or managed by the Company; and

WHEREAS, the Company now desires to amend the Existing Lease Agreement, Existing Memorandum of Lease, Existing Leaseback Agreement and Existing Memorandum of Leaseback to (i) revise, where appropriate, the definition of "Project" and "Facility" therein, as to include both the 2019 Project and 2020 Project and the 2019 Facility and the 2020 Facility, and (ii) to extend the lease terms thereof through December 31, 2052; and

WHEREAS, the Agency, by resolution dated July 21, 2020, approved the new Application and the amendment of the Existing Lease Agreement, Existing Memorandum of Lease, Existing Leaseback Agreement and Existing Memorandum of Leaseback such that (i) the term "Project" shall mean both the 2019 Project and the 2020 Project, and whenever the term "Facility" is used, such term shall mean both the 2019 Facility and the 2020 Facility and (ii) to extend the terms of the Existing Lease Agreement and Existing Leaseback Agreement through December 31, 2052.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Company hereby agree as follows:


The Existing Lease Agreement, Existing Memorandum of Lease, Existing Leaseback Agreement and Existing Memorandum of Leaseback are amended as follows:

1. Wherever the term "Project" appears in each document, it shall mean the 2019 Project and the 2020 Project.
2. Wherever the term "Facility" appears in each document, it shall mean the 2019 Facility and the 2020 Facility.
3. The "Lease Term" shall be extended through December 31, 2052.
4. Any notices going to the Company shall now be sent to:
Apex Rochester, LLC
2 Cooper Street
P.O. Box 90708
Camden, New Jersey 08101
Attention: James A. Malesich, Jr., EVP
5. Unless otherwise amended pursuant to this Amendment, the terms of the Existing Lease Agreement, Existing Memorandum of Lease, Existing Leaseback Agreement and Existing Memorandum of Leaseback shall remain unchanged.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment to Agreements to be executed in their respective names, all as of the date first above written.

COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

By: 
Ana J. Liss, Executive Director


APEX ROCHESTER, LLC

By: 10 Colony Manor, its Managing Member
By: Colony Manor-Michaels, LLC, Member

By: _____
James A. Malesich, Jr., Vice President

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On this 19th day of November, 2020, before me, the undersigned, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of whom the individual acted, executed the instrument.



Notary Public

STATE OF NEW JERSEY)
COUNTY OF _____) ss:

LORI A. PALMER
Notary Public, State of New York
No. 01PA4848797
Qualified in Monroe County
Commission Expires May 31, 20 23

On this _____ day of November, 2020, before me, the undersigned, personally appeared **James A. Malesich, Jr.**, 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 on behalf of whom the individual acted, executed the instrument.

Notary Public

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment to Agreements to be executed in their respective names, all as of the date first above written.

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Ana J. Liss, Executive Director

APEX ROCHESTER, LLC
By: 10 Colony Manor, its Managing Member
By: Colony Manor-Michaels, LLC, Member

By: _____
James A. Malesich, Jr., Vice President

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On this _____ day of November, 2020, before me, the undersigned, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of whom the individual acted, executed the instrument.

Notary Public

STATE OF NEW JERSEY)
COUNTY OF Camden) ss:

On this 19th day of November, 2020, before me, the undersigned, personally appeared **James A. Malesich, Jr.**, 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 on behalf of whom the individual acted, executed the instrument.

Notary Public

Karen L Padmore

KAREN L PADMORE NOTARY PUBLIC STATE OF NEW JERSEY MY COMMISSION EXPIRES AUG. 4, 2021
