

HARRIS BEACH ^{PLLC}

ATTORNEYS AT LAW

February 21, 2023

99 GARNSEY ROAD
PITTSFORD, NY 14534
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RACHEL C. BARANELLO

DIRECT: (585) 419-8769
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TO ALL ON THE ATTACHED DISTRIBUTION LIST:

Re: County of Monroe Industrial Development Agency ("COMIDA") and
Apex Property Owner, LLC – 380 John Street in the Town of Henrietta, New
York
Tax Map No. 161.010-0001-033

Ladies and Gentlemen:

On November 25, 2020, we filed an Amended and Restated Payment-In-Lieu-of-Tax Agreement, dated as of November 1, 2020 (the "Amended and Restated PILOT Agreement"), by and between COMIDA and Apex Rochester, LLC. Apex Rochester, LLC, with the prior written consent of COMIDA, assigned the Amended and Restated PILOT Agreement to Apex Property Owner, LLC (the "Company") on December 29, 2021. In order to comply with Section 1.1B.(ii)(c) of the Amended and Restated PILOT Agreement, the Company requested, and the Town of Henrietta agreed, that the date for submission of the audited financial statements to the Town of Henrietta be May 15, rather than March 15. This change also impacted the payment date, making it May 31, rather than May 15. On February 8, 2022, we filed said Amended and Restated PILOT Agreement with the taxing jurisdictions.

The Company has now requested that the Town accept unaudited financial statements with a certificate executed by the Company's chief financial or similar officer. The Town has agreed to such change with the condition that the Town be permitted to request an audit of the Company's financial records by an auditing firm of the Company's choice, with the approval of the Town, and at the Company's expense.

To that end, enclosed please find the Amended and Restated PILOT Agreement, dated as of February 1, 2023, together with redlined pages showing the changes.

Very truly yours,



Rachel C. Baranello

Enclosures

cc: COMIDA
Christopher N. Merrill
Stephen M. Gordon
Adam Berkoff, Esq.
Jason Osiecki
Rebecca Wiesner
Linda Salpini

DISTRIBUTION LIST

Hon. Adam J. Bello
Monroe County Executive
39 West Main Street
County Office Building
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6423 5792 59

Stephen L. Schultz, Supervisor
Town of Henrietta
475 Calkins Road
Rochester, New York 14623
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6423 5792 73

Ms. Michelle Nicodemus, Assessor
Henrietta Town Hall
475 Calkins Road
Rochester, New York 14623
CERTIFIED MAIL RECEIPT#:
9489 0090 0027 6423 5792 97

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 6423 5792 66

Dr. Pamela Kissel, Interim Superintendent
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT#:
9489 0090 0027 6423 5792 80

Mrs. Diane E. McBride, BOE President
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT#:
9489 0090 0027 6390 0214 78

Ms. Karen A. Flanigan, District Clerk
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT#:
9489 0090 0027 6390 0214 85

COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

AND

APEX PROPERTY OWNER, LLC

AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT

Tax Account No.

161.010-0001-033.000

Dated as of February 1, 2023

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 February, 2023 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 PROPERTY OWNER, LLC**, a Delaware limited liability company with offices at c/o Harrison Street Real Estate, LLC, 444 West Lake Street, Suite 2100, Chicago, Illinois 60606 (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, Apex Rochester, LLC ("Apex Rochester") 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, Apex Rochester 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 Apex Rochester 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, Apex Rochester 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, Apex Rochester and the Agency further amended and restated 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 that certain Amended and Restated PILOT Agreement, dated as of November 1, 2020 (as so amended and restated, the "2020 Amended and Restated PILOT Agreement"), by and between Apex Rochester and the Agency, to assist with the Phase II Project; and

WHEREAS, in November of 2021, Apex Rochester requested the Agency approve the assignment of its rights and interests in and to the Project to Apex Property Owner, LLC (the "Company"); and

WHEREAS, by Assignment and Assumption of Agreements, dated December 29, 2021 and recorded in the Office of the Monroe County Clerk on January 5, 2022 in Liber 12609 of Deeds, at Page 359 (the "Assignment and Assumption"), Apex Rochester assigned all of its rights and interest in the Project to the Company; and

WHEREAS, the Company and the Agency desire to further amend and restate the 2020 Amended and Restated PILOT Agreement, pursuant to the terms and conditions in this Amended and Restated PILOT Agreement (as so amended and restated, the "PILOT Agreement"), to permit the Company to submit to the Town (as hereinafter defined) unaudited financial statements; 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"), as described below, commencing on the May 15th 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 31 during the term hereof. In order to calculate the PILOT Payments, the Company agrees to provide unaudited financial statements to the Town by May 15 of each year of the PILOT term together with a certificate executed by the Company's chief financial or other similar officer showing the Company's calculation of the PILOT Payment. The Town shall be permitted to request an audit of the Company's books by an auditing firm of the Company's choice, with approval from the Town for which such approval shall not be unreasonably withheld, and at the Company's expense.

(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.

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 PROPERTY OWNER, LLC, a Delaware
limited liability company

By:  Stephen M. Gordon
Authorized Signatory

19,005 ✓

HARRIS BEACH ^{PLLC}
ATTORNEYS AT LAW

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

RACHEL C. BARANELLO, ESQ.

DIRECT: (585) 419-8769
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May 31, 2019

Hon. Cheryl Dinolfo
Monroe County Executive
39 West Main Street
County Office Building
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
91 7199 9991 7039 8847 0185

Ms. Susan Buck
Monroe County Treasury
B-3 County Office Building
39 West Main Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
91 7199 9991 7039 8847 0192

Stephen L. Schultz, Supervisor
Town of Henrietta
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
91 7199 9991 7039 8847 0208

Mr. Lawrence Bo Wright, Superintendent
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
91 7199 9991 7039 8847 0215

Ms. Amy Jorstad, Assessor
Henrietta Town Hall
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
91 7199 9991 7039 8847 0222

Re: County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered
By COMIDA ("COMIDA") and Apex Rochester, LLC Project;
10-284 Colony Manor Drive in the Town of Henrietta, New York

Ladies and Gentlemen:

Enclosed herewith please find a copy of the Payment In Lieu of Tax Agreement and the Application for Real Property Tax Exemption with respect to the above-captioned matter. Also enclosed for your perusal are copies of the as-recorded Memorandum of Lease and Memorandum of Leaseback.

Very truly yours,

Rachel C Baranello

Rachel C. Baranello

RCB/lap

Enclosures

cc: Imagine Monroe Powered By COMIDA
James A. Malesich, Jr.
Betsy D. Brugg, Esq.

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

AND

APEX ROCHESTER, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Tax Account No.

161.010-0001-033.000

Dated as of May 15, 2019

Affected Tax Jurisdictions:

Monroe County
Town of Henrietta
Rush-Henrietta Central School District

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "PILOT Agreement"), dated as of the 15th day of May, 2019 is 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 50 West Main Street, Suite 8100, Rochester, New York 14614 (the "Agency") and **APEX ROCHESTER, LLC**, a New York limited liability company with offices at 3 E Stow Road, Marlton, New Jersey 08053 (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 has requested the Agency to assist in a certain project (the "Project") all as more particularly described in an application dated February 12, 2019 (the "Application") and the Agency has agreed to acquire a leasehold or other interest in an approximately 14-acre parcel of land located at 10-284 Colony Manor Drive in the Town of Henrietta, New York [Tax Map No.: 161.010-0001-033.000] (the "Land"), to assist in the demolition of the 16 existing structures located thereon and the construction in their 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 (the "Improvements") (the Land and the Improvements, together with any equipment installed therein are hereinafter referred to as the "Facility" or "Leased Premises"); to serve the students of Rochester Institute of Technology; all pursuant the Act; and

WHEREAS, the Company has leased the Facility to the Agency simultaneously herewith pursuant to the terms and conditions of a certain Lease Agreement, dated as of the date hereof (the "Lease Agreement"), and the Agency has leased the Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of the date hereof (the "Leaseback Agreement"); 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 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. Subject to the completion and filing by the taxable status date (**March 1, 2020**) (the "Taxable 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 the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Leased Premises shall be exempt from Real Estate Taxes commencing with the **2021** County and Town tax years and the **2020-2021** School District tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Leased Premises by the Affected Tax Jurisdictions. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Leased Premises as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Leased Premises is not impaired and the Leased Premises continues to qualify as a "project" under the Act; (ii) neither the Leased Premises nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

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 annually to the Affected Tax Jurisdictions, as a payment in lieu of taxes, within thirty (30) days of receipt of the invoice for payment of taxes (the "Payment Date"), commencing with the invoice for the **2020-2021** School District tax year and the invoice for the **2021** County and Town tax years, an amount equal to the Total PILOT Payment. The Company shall make all payments due hereunder without further notice or invoicing from the Agency, any Affected Tax Jurisdiction or any other party.

(ii) For purposes of this PILOT Agreement, each 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.

(iii) *Company Certificate.* The Company shall submit with each PILOT Payment a certificate executed by the Company's chief financial or other similar officer showing the Company's calculation of the PILOT Payment for such year (each a "PILOT Certificate"). The PILOT Certificate shall further certify that no Event of Default (as defined in Section 6.1 herein) has occurred. The Company hereby agrees to provide any additional information requested by the Agency or its counsel not contained in the PILOT Certificate as of its date of submission. The Company covenants to keep accurate records and books of account in accordance with generally accepted accounting principles consistently applied and to have its financial statements examined annually by an independent public accountant.

(iv) *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 Agency 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 Total 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 through the **2049-2050** School District tax year, and (ii) the **2021** County and Town tax years through the **2050** County and Town tax years. This PILOT Agreement shall expire on **December 31, 2050**; *provided, however*, the Company shall pay the **2050-2051** School District tax bill and the **2051** County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax 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 Leased 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
d/b/a Imagine Monroe Powered By COMIDA
50 West Main Street, Suite 8100
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
3 E Stow Road
Marlton, New Jersey 08053
Attn: James A. Malesich, Jr., Vice President

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 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 D/B/A IMAGINE
MONROE POWERED BY COMIDA**

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

APEX ROCHESTER, LLC

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

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

[Signature Page to 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 D/B/A IMAGINE
MONROE POWERED BY COMIDA**

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

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

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



NYS BOARD OF REAL PROPERTY SERVICES

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)

County of Monroe Industrial Development Agency
Name d/b/a Imagine Monroe Powered by COMIDA
Street 8100 CityPlace, 50 West Main Street
City Rochester, New York 14614
Telephone no. Day (585) 419-8769
Evening ()
Contact Rachel C. Baranello
Title Agency Counsel

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Apex Rochester, LLC
Street 3 E Stow Road
City Marlton, New Jersey 08053
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 10-284 Colony Drive
- 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)
Lease Agreement, a memorandum of which was recorded on or about May 15, 2019.

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

- a. Brief description (include property use) construction of an approx. 445,000 sq. ft. building to be used as student housing
- b. Type of construction _____
- c. Square footage approx. 445,000 sf
- d. Total cost \$100,050,000
- e. Date construction commenced Spring/Summer 2019
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)
See Attached 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 PILOT Agreement
- _____
- _____
- _____

- b. Projected expiration date of agreement See Attached PILOT Agreement
- _____

c. Municipal corporations to which payments will be made

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

d. Person or entity responsible for payment

Name Apex Rochester, LLC
 Title _____
 Address 3 E Stow Road
Marlton, New Jersey 08053

e. Is the IDA the owner of the property? Yes/No (circle one)

If "No" identify owner and explain IDA rights or interest

Telephone 585-445-2736

The IDA has a leasehold interest in the property.

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 _____
Real Property Tax Law

7. A copy of this application, including all attachments, has been mailed or delivered on 5/31/19 (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 County of Monroe

Name

Title

Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA hereby certify that the information

Organization

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

5/20/19
 Date

Rachel C Baranello
 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 ad valorem levies for which the parcel is liable:

 Date

 Assessor's signature

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Return To:
HARRIS BEACH PLLC
99 GARNSEY ROAD
PITTSFORD, NY 14534-

Receipt # 2078196

Book Page D 12185 0265

No. Pages: 5

Instrument: MEMO OF LEASE

Control #: 201905200493

Ref #: TT0000018524

Date: 05/20/2019

Time: 12:19:02 PM

APEX ROCHESTER LLC,

COUNTY OF MONROE INDUSTRIAL DEVELOPMENT
AGENCY,
IMAGINE MONROE POWERED BY COMIDA,

Recording Fee	\$26.00	
Pages Fee	\$20.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	Employee: ED
TP-584 Form Fee	\$5.00	
Total Fees Paid:	\$70.00	

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.

Consideration: \$1.00

ADAM J BELLO

MONROE COUNTY CLERK



**MEMORANDUM OF LEASE PURSUANT TO
SECTION 291-c OF THE REAL PROPERTY LAW**

(Company to Agency)

THIS MEMORANDUM, dated as of May 15, 2019 (the "Memorandum of Lease"), is by and between **APEX ROCHESTER, LLC**, a New York limited liability company with offices at 3 E Stow Road, Marlton, New Jersey 08053 (the "Company") and 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 50 West Main Street, Suite 8100, Rochester, New York 14614 (the "Agency").

1. Reference to Lease: That certain Lease Agreement, dated as of May 15, 2019 (the "Lease Agreement"), whereby the Company leases certain real property to the Agency.

2. Description of the Leased Premises: Certain real property and improvements located in the Town of Henrietta, Monroe County, New York, as more particularly described on Schedule A attached hereto (the "Leased Premises").

3. Term of Lease Agreement: Commencing May 15, 2019 and ending **December 31, 2050**.

4. Date of Commencement: May 15, 2019.

5. Date of Termination: December 31, 2050.

6. Rights of Extension or Renewal: None.

7. Lease Subordinate. The Lease Agreement is subject and subordinate to (i) a certain Mortgage, dated May 15, 2019, from the Company and the Agency to Northwest Bank (the "Mortgagee") which is intended to be recorded in the office of the Monroe County Clerk subsequent to the recording of this Memorandum; and (ii) that certain Leaseback Agreement, dated as of May 15, 2019, between the Agency and the Company (the "Leaseback Agreement").

Property Address: 10-284 Colony Manor Drive, Henrietta, New York 14623

Tax Map No.: 161.010-0001-033.000

Record and Return to:

Harris Beach PLLC

Attention: Lori A. Palmer, Paralegal

County Clerk Box #18

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

APEX ROCHESTER, LLC

By: 10 Colony Manor, LLC, its Managing Member

By: Colony Manor-Michaels, LLC, its Member


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

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

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

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) ss.:

On May 10, 2019, before me, Heather D. Weiss, Notary Public in and for said county, personally appeared **James A. Malesich, Jr.**, who has satisfactorily identified himself as the signer to the attached document.


Notary Public Signature
Heather D. Weiss
Notary Public, State of New Jersey
My Commission Expires: June 30, 2021

[Affix Notary Stamp Here]

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

On the _____ day of May, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **Jeffrey R. Adair**, 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

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

APEX ROCHESTER, LLC

By: 10 Colony Manor, LLC, its Managing Member

By: Colony Manor-Michaels, LLC, its Member

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

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

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

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) ss.:

On May _____, 2019, before me, _____, Notary Public in and for said county, personally appeared James A. Malesich, Jr., who has satisfactorily identified himself as the signer to the attached document.

Notary Public Signature

[Affix Notary Stamp Here]

My Commission Expires: _____

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

On the 9th day of May, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey R. Adair, 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
Qualified in Monroe County
Commission Expires May 31, 2019

SCHEDULE A**Legal Description of the Leased Premises**

All that tract or parcel of land situated in the Town of Henrietta, County of Monroe, State of New York, situated in Town Lot 5, in the Fifth Range of Lots, Township 12, Range 7 and being more particularly bounded and described as follows:

Beginning at a point in the easterly line of John Street (49.5' wide), said point being at the intersection with the southerly line of Town Lot 5; thence

1. North 21° 57' 18" East, along said easterly line of John Street, a distance of 811.29 feet to a point of intersection with the southerly line of lands now or formerly of Albert Ranieri, Jr. and Rose Ann Ranieri; thence the following three (3) courses along said land of Ranieri;
2. North 88° 34' 03" East, a distance of 256.98 feet to a point; thence,
3. South 21° 19' 12" West, a distance of 84.87 feet to a point; thence,
4. North 88° 34' 03" East, a distance of 55.82 feet to a point; thence,
5. North 88° 34' 03" East, along the southerly line of lands now or formerly of Rochester LLC, a distance of 551.48 feet to a point of intersection with the westerly line of lands now or formerly of Rochester Gas & Electric Corporation; thence,
6. South 20° 25' 03" West, along said westerly line, a distance of 715.60 feet to a point of intersection with the aforementioned southerly line of Town Lot 5; thence,
7. South 88° 24' 10" West, along said southerly line of Town Lot 5, a distance of 886.30 feet to the point of beginning.

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Return To:

BOX 18

**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT
AGENCY,
IMAGINE MONROE POWERED BY COMIDA,**

APEX ROCHESTER LLC,

Receipt # 2078196

Book Page D 12185 0270

No. Pages: 5

Instrument: MEMO OF LEASE

Control #: 201905200494

Ref #: TT0000018525

Date: 05/20/2019

Time: 12:19:03 PM

Recording Fee	\$26.00	
Pages Fee	\$20.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	Employee: ED
TP-584 Form Fee	\$5.00	
Total Fees Paid:	\$70.00	

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.**

Consideration: \$1.00

ADAM J BELLO

MONROE COUNTY CLERK



MEMORANDUM OF LEASEBACK AGREEMENT
Section 291-c of the Real Property Law
(Agency to Company)

THIS MEMORANDUM, dated as of May 15, 2019 (the "Memorandum of Leaseback"), is by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA**, a public benefit corporation duly organized and existing under the laws of the State of New York with offices at 50 West Main Street, Suite 8100, Rochester, New York 14614, as Lessor (the "Agency"), and **APEX ROCHESTER, LLC**, a New York limited liability company with offices at 3 E Stow Road, Marlton, New Jersey 08053, as Lessee (the "Company").

1. Reference to Leaseback: That certain Leaseback Agreement, dated as of May 15, 2019 (the "Leaseback Agreement"), whereby the Agency leases certain real property and improvements back to the Company.

2. Description of the Leased Premises: Certain real property and improvements located in the Town of Henrietta, Monroe County, New York, as more particularly described on Schedule A attached hereto (the "Leased Premises").

3. Term of Leaseback Agreement: Commencing May 15, 2019 and ending **December 31, 2050**.

4. Date of Commencement: May 15, 2019.

5. Date of Termination: December 31, 2050.

6. Rights of Extension or Renewal: None.

7. Leaseback Subordinate. The Leaseback Agreement is subject and subordinate to a certain Mortgage, dated May 15, 2019 (the "Mortgage"), from the Company and the Agency to Northwest Bank (the "Mortgagee"), which is intended to be recorded in the office of the Monroe County Clerk subsequent to the recording of this Memorandum.

Property Address: 10-284 Colony Manor Drive, Henrietta, New York 14623

Tax Map No.: 161.010-0001-033.000

Record and Return to:

Harris Beach PLLC

Attention: Lori A. Palmer, Paralegal

County Clerk Box #18

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

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

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

APEX ROCHESTER, LLC

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

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

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

On the 9th day of May, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **Jeffrey R. Adair**, 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
Qualified in Monroe County
Commission Expires May 31, 2019

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) ss.:

On May _____, 2019, before me, _____, Notary Public in and for said county, personally appeared **James A. Malesich, Jr.**, who has satisfactorily identified himself as the signer to the attached document.

Notary Public Signature

[Affix Notary Stamp Here]

My Commission Expires: _____

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

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

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

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

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


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

On the ____ day of May, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey R. Adair, 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

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) ss.:

On May 10, 2019, before me, Heather D. Weiss, Notary Public in and for said county, personally appeared James A. Malesich, Jr., who has satisfactorily identified himself as the signer to the attached document.

 _____
Notary Public Signature
Heather D. Weiss
Notary Public, State of New Jersey
My Commission Expires: June 30, 2021

[Affix Notary Stamp Here]

SCHEDULE A**Legal Description of the Leased Premises**

All that tract or parcel of land situated in the Town of Henrietta, County of Monroe, State of New York, situated in Town Lot 5, in the Fifth Range of Lots, Township 12, Range 7 and being more particularly bounded and described as follows:

Beginning at a point in the easterly line of John Street (49.5' wide), said point being at the intersection with the southerly line of Town Lot 5; thence

1. North 21° 57' 18" East, along said easterly line of John Street, a distance of 811.29 feet to a point of intersection with the southerly line of lands now or formerly of Albert Ranieri, Jr. and Rose Ann Ranieri; thence the following three (3) courses along said land of Ranieri;
2. North 88° 34' 03" East, a distance of 256.98 feet to a point; thence,
3. South 21° 19' 12" West, a distance of 84.87 feet to a point; thence,
4. North 88° 34' 03" East, a distance of 55.82 feet to a point; thence,
5. North 88° 34' 03" East, along the southerly line of lands now or formerly of Rochester LLC, a distance of 551.48 feet to a point of intersection with the westerly line of lands now or formerly of Rochester Gas & Electric Corporation; thence,
6. South 20° 25' 03" West, along said westerly line, a distance of 715.60 feet to a point of intersection with the aforementioned southerly line of Town Lot 5; thence,
7. South 88° 24' 10" West, along said southerly line of Town Lot 5, a distance of 886.30 feet to the point of beginning.

HARRIS BEACH ^{PLC}
ATTORNEYS AT LAW

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

RACHEL C. BARANELLO, ESQ.
TELEPHONE: (585) 419-8769
RBARANELLO@HARRISBEACH.COM

March 5, 2019

Hon. Cheryl Dinolfo, County Executive
110 County Office Building
39 West Main St.
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
91 7199 9991 7039 6465 3267

Mr. Stephen L. Schultz, Supervisor
Town of Henrietta
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
91 7199 9991 7039 6465 3274

Ms. Amy Jorstad, Assessor
Henrietta Town Hall
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT#:
91 7199 9991 7039 6465 3281

Mr. Lawrence Bo Wright, Superintendent
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT#:
91 7199 9991 7039 6465 3298

**Re: County of Monroe Industrial Development Agency d/b/a Imagine Monroe
Powered By COMIDA
Notice of Public Hearing and Proposed PILOT Deviation with respect to
10 Colony Manor, LLC Project located at 10-284 Colony Manor Drive in the Town
of Henrietta, New York**

Ladies and Gentlemen:

On March 18, 2019 at 10:00 a.m., local time, in the Main Meeting Room at the Henrietta Town Hall, 475 Calkins Road, Rochester, New York 14467, the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") shall conduct a public hearing in accordance with Article 18-A of the New York State General Municipal Law, to consider the approval of certain financial assistance for the benefit of the Project including a payment-in-lieu-of-tax-agreement (the "PILOT Agreement") between the Agency and 10 Colony Manor, LLC (the "Company"), the terms of which deviate from the Agency's uniform tax exemption policy (the "UTEP"). Attached is a copy of the Notice of Public Hearing describing the project and financial assistance contemplated by the Agency.

You are welcome to attend such hearing at which time you will have an opportunity to review the project application (copy enclosed) and present your views, both orally and in writing, with respect to the project. The public hearing is being conducted pursuant to Section 859-a of the General Municipal Law. We are providing this notice to you, pursuant to General Municipal Law Section 859-a, as the chief executive officer of an affected tax jurisdiction within which the project is located.

The Agency proposes to provide financial assistance (the "Financial Assistance") to the Company in the form (1) the leasing of the facility for a term of up to thirty (30) years, pursuant to which the Agency will obtain from the Company a leasehold or other interest in the facility and lease (or sell) its interest the facility back to the Company, (2) a sales and use tax exemptions on all equipment and building materials to incorporated into the facility, (3) if necessary, a mortgage recording tax exemption on any mortgages given to secure the financing of the facility, and (4) the execution of the PILOT

Hon. Cheryl Dinolfo
Mr. Steven L. Schultz
Ms. Amy Jorstad
Mr. Lawrence Bo Wright
March 6, 2019
Page 2

HARRIS BEACH PLLC
ATTORNEYS AT LAW

Agreement providing the Company with a partial real property tax abatement. The proposed Financial Assistance deviates from the Agency's UTEP to the extent that the proposed terms of the PILOT Agreement contemplated for the Project entail (i) a PILOT term of up to thirty (30) years; and (ii) PILOT payments shall be calculated using the formula set forth on Schedule A attached hereto.

The Town of Henrietta has provided its support for the proposed PILOT terms as set forth in a certain letter from Stephen L. Schultz, Town Supervisor, dated February 12, 2019 (attached hereto).

Upon due consideration of the Company's application, the various positive economic and social impacts of the Project, and the Project's general satisfaction of several considerations set forth within Section D of the UTEP, including, but not limited to (i) the expansion and retention of employment opportunities in Monroe County; and (ii) the substantial capital investment associated with the Project derived from both public and Company sources, the Agency desires to approve the proposed terms of the PILOT Agreement.

We are providing this letter to you, pursuant to Section 874 of the General Municipal Law, as the Chief Executive Officer of an affected tax jurisdiction within which the facility is located to notify you of a proposed deviation from the Agency's UTEP. Prior to the above-described meeting date, comments on the proposed deviation may be sent to the Agency to the attention of Jeffrey R. Adair, Executive Director, at 50 West Main Street, Suite 8100, Rochester, New York 14614. The Agency will review and respond to any correspondence received from any affected tax jurisdiction regarding such proposed deviation. The Agency will allow any representative of an affected tax jurisdiction present at the meeting to consider the proposed deviation to address the Agency regarding such proposed deviation.

Very truly yours,



Rachel C. Baranello

RCB/lap
Enclosures
cc: Jeffrey R. Adair, COMIDA
Betsy Brugg, Esq.

SCHEDULE A

PILOT Year	PILOT Abatement*
1-2	Shelter Rent x 5%
3	Shelter Rent x 6%
4	Shelter Rent x 7%
5	Shelter Rent x 8%
6	Shelter Rent x 9%
7-30	Shelter Rent x 10%

*Shelter Rent means gross rents actually collected at the facility minus utilities ("Shelter Rent").



TOWN OF HENRIETTA
County of Monroe • State of New York
475 Calkins Road, P.O. Box 999, Henrietta, N.Y. 14467
(585) 334-7700 • www.henrietta.org

STEPHEN L. SCHULTZ
Supervisor

PETER C. MINOTTI
Deputy Town Supervisor

M. RICK PAGE
SCOTT M. ADAIR
ROBERT BARLEY JR.
MICHAEL J. STAFFORD
Council Members

Jeffrey Adair
Executive Director, Imagine Monroe
CityPlace, 50 West Main Street, Suite 8100
Rochester, NY 14614

February 12, 2019

Dear Jeff,

I am writing to you to provide my support for the Colony Manor student housing project being undertaken by 10 Colony Manor LLC. I have been informed they are applying to the Imagine Monroe Board for tax incentives, including a Shelter Rent PILOT agreement as well as mortgage tax and sales tax exemptions. We are very much in support of this project.

First, there is no better location for student housing in our Town than the Colony Manor location. When the developers first spoke to me about this, I challenged them to do two things: line up the access road with Wiltsie Drive so that the light can be used for turns and so cars traveling to campus can go straight across, and fit as many students in the space as is possible as that means that many fewer students in residential neighborhoods or driving to campus from distant apartment complexes. The design they shared accomplishes both of those goals and they really excelled on the latter.

I spoke with the Rush-Henrietta Central School District about supporting this project, and while they think the project sounds generally good for the Town (as the project itself has no impact on them, they don't have a strong opinion on it), and while they think this is a good deal for the municipalities as far as the PILOT agreement goes, they are against a PILOT on general principles. As I have stated previously, PILOT agreements are problematic for the School District because they are not included when calculating the growth factor for the Town with regards to the Tax Cap. This is an issue I plan to take up with Albany.

The deal they were referring to was to have a phased in growth, rather than just jumping from five years at 5% up to the remaining years at 10%. I had discussed with the developers the idea of graduating the rate each year until we reach the steady state of 10%. So the rates, each year, would be: 5%, 5%, 6%, 7%, 8%, 9%, 10%, 10%, 10%... We think this would help the Town, County, and School from a budget growth standpoint.

Sincerely,

Stephen L. Schultz
Henrietta Town Supervisor

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") on the 18th day of March, 2019 at 10:00 a.m., local time, in the Main Meeting Room at the Henrietta Town Hall, 475 Calkins Road, Henrietta, New York 14467, in connection with the following matter:

10 COLONY MANOR, LLC, a New York limited liability company or an entity formed or to be formed (collectively, the "Company") has requested that the Agency assist with a certain Project (the "Project"), consisting of: (A) the acquisition of a leasehold or subleasehold interest in an approximately 14-acre parcel of land located at 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 "Improvements"); and (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"), to be used by the students of Rochester Institute of Technology. The Facility will be initially operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Facility and lease the Facility back to the Company. The Company will operate the Facility during the term of the lease. At the end of the lease term the Agency's leasehold interest will be terminated. The Agency contemplates that it will provide financial assistance (the "Financial Assistance") to the Company in the form of sales and use tax exemptions and a mortgage recording tax exemption, consistent with the policies of the Agency, and a partial real property tax abatement.

The Agency will, at the above-stated time and place, present a copy of the Company's Application (including the Benefit/Incentive analysis) and hear all persons with views in favor of or opposed to either the location or nature of the Facility, or the proposed financial assistance being contemplated by the Agency. In addition, at, or prior to, such hearing, interested parties may submit to the Agency written materials pertaining to such matters.

Dated: March 6, 2019

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

By: Jeffrey R. Adair, Executive Director