

HARRIS BEACH PLLC
ATTORNEYS AT LAW

February 27, 2018

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PITTSFORD, NY 14534
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RACHEL BARANELLO ENDRESS

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VIA FEDERAL EXPRESS

Hon. Cheryl Dinolfo
Monroe County Executive
39 West Main Street
County Office Building
Rochester, New York 14614

Ms. Susan Buck
Monroe County Treasury
B-3 County Office Building
39 West Main Street
Rochester, New York 14614

Mr. Mark W. Assini, Supervisor
Gates Town Hall
1605 Buffalo Road
Rochester, New York 14624

Mr. Dan Milgate, Superintendent
Spencerport Central School District
71 Lyell Avenue
Spencerport, New York 14559

Mr. Paul I. Arndt, Assessor
Gates Town Hall
1605 Buffalo Road
Rochester, New York 14624

Re: County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered
By COMIDA ("COMIDA") and 135 FedWhy Way LLC
135 FedEx Way in the Town of Gates, Monroe County, New York

Ladies and Gentlemen:

Enclosed herewith please find a copy of the Payment In Lieu of Tax Agreement, the Application for Real Property Tax Exemption and COMIDA Checklist with respect to the above-captioned matter. Also enclosed for your perusal are copies of the lease and leaseback agreements.

Very truly yours,



Rachel Baranello Endress

RBE/lap

Enclosures

cc: Jeffrey R. Adair (COMIDA)
John Embow

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

AND

135 FEDWHY WAY LLC

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Tax Map No.

118.050-0001-009.100

Affected Tax Jurisdictions:

County of Monroe
Town of Gates
Spencerport Central School District

Dated as of February 1, 2018

PAYMENT IN LIEU OF TAX AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

Further, provided that:

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

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

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

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

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

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

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

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

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

Section III. Payment Due Date and Payee Allocation.

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

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

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

Section IV. Lease Termination.

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

Section V. Assessment Challenges.

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

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

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

Section VI. Changes in Law.

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

Section VII. Events of Default.

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

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

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

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

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

Section VIII. Transfer of Facility.

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

Section IX. Assignment.

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

Section X. Miscellaneous.

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

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

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

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

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

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


Section XI. No Recourse.

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

[Remainder of Page Intentionally Left Blank]

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

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

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

135 FEDWHY WAY LLC

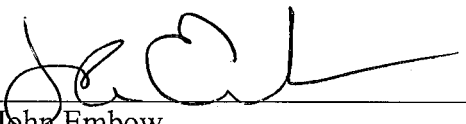
By: 
Name: John Embow
Title: Member

Exhibit A

Description of the Project and Facility

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

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


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

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


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

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

135 FEDWHY WAY LLC

By: 
Name: John Embow
Title: Member

GROVE ROOFING SERVICES, INC.

By: 
Name: John Embow
Title: President



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)

Name County of Monroe Industrial Development Agency
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 Baranello Endress
Title Agency Counsel

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

Name 135 FedWhy Way LLC
Street 131 Reading Avenue
City Buffalo, New York 14220
Telephone no. Day (716) 828-1870
Evening ()
Contact John Embow
Title Member

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 118.050-0001-009.100
b. Street address 135 FedEx Way
c. City, Town or Village Gates (Town)
d. School District Spencerport CSD
e. County Monroe
f. Current assessment \$75,000
g. Deed to IDA (date recorded; liber and page) Lease Agreement, a memorandum of which was recorded on or about February 26, 2018.

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

- a. Brief description (include property use) construct an approx. 7,300 sq. ft. building to be used in part as office space and in part as warehouse space
b. Type of construction
c. Square footage 7,300 sq.ft.
d. Total cost approx. \$525,000
e. Date construction commenced Winter 2016
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 Please 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>	X	
Town/City <u>Gates (Town)</u>	X	
Village <u>N/A</u>		
School District <u>Spencerport CSD</u>	X	

d. Person or entity responsible for payment

Name 135 FedWhy Way LLC
 Title _____
 Address 131 Reading Avenue,
Buffalo, New York 14220

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 (716) 828-1870

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 874 of GML assessment roll year _____

7. A copy of this application, including all attachments, has been mailed or delivered on 2/27/18 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Rachel Baranello Endress, 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.

2/22/18
Date


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

MEMORANDUM

February 27, 2018

TO: Susan Buck, Monroe County Treasury
FROM: Rachel Baranello Endress
RE: COMIDA Checklist

-
1. NAME OF COMPANY: 135 FedWhy Way LLC
 2. MONTH & YEAR OPENED: February, 2018
 3. YEAR OF FIRST BILLING: Please see attached PILOT Agreement
 4. YEAR COMIDA ENDING: Please see attached PILOT Agreement
 5. SPECIAL INSTRUCTIONS: Please see attached PILOT Agreement
 6. TAX ACCOUNT NUMBER: 118.050-0001-009.100

LEASE AGREEMENT

(Company to Agency)

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

WITNESSETH:

The Company desires to rent to the Agency the real property, including any buildings, structures or improvements thereon, described in **Schedule A** attached hereto (the "Leased Premises") pursuant to the terms contained herein (this Lease Agreement is to be coterminous with the term of a certain leaseback agreement, between the Agency and the Company, dated the date hereof (the "Leaseback Agreement")).

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

1. Granting Clause. The Company hereby leases to the Agency the Leased Premises, upon the terms and conditions of this Lease Agreement.
2. Warranty of Title. The Company warrants that it has good and marketable title to the Leased Premises and forever warrants the title to the Leased Premises.
3. Term. The term of this Lease Agreement shall be coterminous with the term of the Leaseback Agreement as defined in Section 2.5 thereof (the "Lease Term").
4. Rent. The Agency agrees that it will pay to the Company, for the use of the Leased Premises, rent of One Dollar (\$1.00) per annum.
5. Taxes. The Company agrees to pay all taxes to be assessed on, or charges or expenses incurred with respect to, the Leased Premises during the Lease Term.
6. Maintenance and Insurance of Premises. The Company shall maintain and insure the Leased Premises. The Agency shall not be required to maintain the Leased Premises or incur any costs with respect to the Leased Premises. All insurance or condemnation proceeds shall be distributed and governed by the Leaseback Agreement.
7. Lease Expiration. The parties agree that at the expiration of the Lease Term the Agency will surrender the Leased Premises to the Company in the then condition of the Leased Premises.
8. Hold Harmless. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members and employees, and their respective successors or personal

representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Leased Premises or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Leased Premises or as a result of a breach by the Company of its representations or agreements contained herein or in the Leaseback Agreement, or (ii) liability arising from or expense incurred by the Agency's financing, constructing, equipping, owning and leasing of the Leased Premises, including, without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability.

9. Non-Merger. So long as any leasehold or sub-leasehold mortgage is in existence, unless all mortgages and all other parties to such leases and sub-leases shall otherwise expressly consent in writing, fee title to the Land and the leasehold estate of the Agency therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by the Company or by the Agency or by a third party, by purchase or otherwise.

10. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or by nationally recognized overnight courier, addressed as follows:

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

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

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

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. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

11. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his/her individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State or of the County of Monroe, New York, and neither the State nor the County of Monroe, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Leased Premises (except for revenues derived by the Agency with respect to the Unassigned Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

12. Effective Date; Counterparts.


This Lease Agreement shall become effective on the Closing Date. It may simultaneously be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

13. Law Governing.

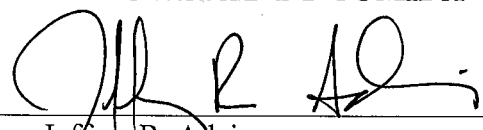
This Lease Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

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

135 FEDWHY WAY LLC

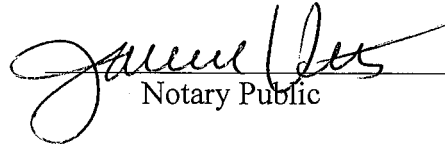
By: 
Name: John Embow
Title: Member

**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 YORK)
COUNTY OF ERIE) ss.:

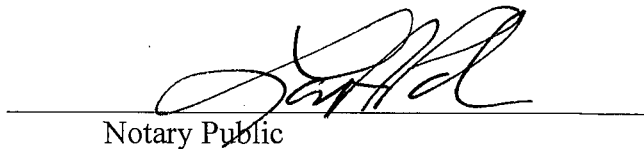
On the 15 day of February, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared **John Embow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



JANICE VERTLIEB
Notary Public, State of New York
No. 01VE6098654
Qualified in Niagara County
My Commission Expires Sept. 15, 2019

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

On the 12th day of February, 2018, 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.



Lori A. Palmer
Notary Public, State of New York
Qualified in Monroe County
Commission Expires May 31, 2019

Schedule A

Description of the Leased Premises

Property Address: 135 FedWhy Way, Gates, New York 14624
Tax Map ID No.: 118.050-0001.009.100

LEASEBACK AGREEMENT

(Agency to Company)

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

WITNESSETH:

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 55 of the Laws of 1972 of the State (collectively with the Enabling Act, the "Act") created the Agency which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, the Company has requested the Agency to assist in a certain project (the "Project") consisting of: (A) the acquisition by lease, license or otherwise, of an interest in an approximately 1.50-acre parcel of land located at 135 FedEx Way in the Town of Gates, New York [Tax Map No.: 118.05-1-9.1] (the "Land"); (B) the construction on the Land of an approximately 7,300 square-foot building comprised of approximately 6,000 square feet of warehousing space and approximately 1,300 square feet of office space (collectively, the "Improvements"); (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"), and (D) the lease of the Facility to the Company for

sublease to **Grove Roofing Services, Inc.** (the "Tenant") for use in its business as a commercial roofing company; and

WHEREAS, the Agency has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire a leasehold interest in, and construct and equip the Facility; and

WHEREAS, the Agency proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS

Section 1.1 Representations and Covenants of the Agency.

The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Facility is of a character included in the definition of "project" in the Act.

(b) The Agency has been duly authorized to execute and deliver this Leaseback Agreement.

(c) The Agency will acquire a leasehold interest in the Facility, lease the Facility to the Company pursuant to this Leaseback Agreement and cause the Improvements to be constructed and equipped by the Company, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Monroe and improving their standard of living. The Land is more particularly described in **Schedule A** attached hereto and made a part hereof.

(d) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Leaseback Agreement by the undertaking of the Company to locate and maintain the Facility in the Town of Gates, Monroe County, New York.

Section 1.2 Representations and Covenants of the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained as of the date hereof:

(a) The Company has power to enter into and to execute and deliver this Leaseback Agreement.

(b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.

(d) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (e). The Company shall operate the Facility in accordance with this Leaseback Agreement and as a qualified "Project" under the Act.

(e) The Company has transferred to the Agency fee interest or insurable title to the leasehold interest and assets contemplated by this Leaseback Agreement and all documents related hereto.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or equity, before or by any court, public board or body. There is no litigation pending or, to the knowledge of the Company, threatened against or affecting the Company, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Leaseback Agreement.

(g) Except as disclosed in any environmental assessment report submitted to the Agency by the Company, the Company represents and covenants to its actual knowledge (i) the Facility complies and will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (ii) that no pollutants,

contaminants, solid wastes, or toxic or hazardous substances have been in the past or will be discharged, released, stored, treated, generated, disposed of, or allowed to escape or exist on the Facility except in compliance with all material applicable environmental laws, (iii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iv) that no asbestos has been or will be incorporated into or disposed of on the Facility except in compliance with all applicable environmental laws, (v) that no underground storage tanks are or will be located on the Facility, and (vi) that no investigation, order, agreement, notice, demand, or settlement with respect to any of the above is threatened, anticipated, in existence, or will be in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(h) The Company hereby agrees that at all times during which it is operating the Project, and whether or not this Leaseback Agreement is in effect, to comply with, and ensure compliance by its subtenants or sublessees with, the provisions of Section 1.2(g).

(i) The Company has provided to the Agency a certificate or certificates of insurance containing all of the insurance provision requirements included under Sections 3.4 and 3.5 hereof. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

(j) Any personal property acquired by the Company in the name of the Agency shall be located in the County of Monroe, except for temporary periods during ordinary use.

Section 1.3 Public Authorities Law Representations.

The parties hereto hereby acknowledge and agree that the Facility and the interest therein conveyed to the Agency under the Lease Agreement, dated as of the date hereof, by and between the Company and the Agency (the "Lease Agreement") and conveyed by the Agency back to the Company pursuant to the terms of this Leaseback Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Company. The Facility and the leasehold interests therein secure the Company's obligations to the Agency under the PILOT Agreement and this Leaseback Agreement, including the Company's obligation to

acquire, construct, equip and maintain the Facility on behalf of the Agency and the performance by the Company of the Unassigned Rights.

ARTICLE II
FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

Section 2.1 Agreement to Lease to Agency.

The Company has leased or subleased, or has caused to be leased or subleased, or will convey, or will cause to be conveyed, to the Agency a fee interest or a leasehold interest in the property, including any buildings, structures or improvements thereon more particularly described in **Schedule A** attached hereto. The Company agrees that the Agency's interest in such Facility will be sufficient for the purposes intended by this Leaseback Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability arising out of a defect in title or a lien adversely affecting the Facility resulting from said conveyances and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Facility.

Section 2.2 Construction and Equipping of the Improvements.

(a) The Agency hereby confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to a resolution duly adopted by the Agency on March 15, 2016 (the "Authorizing Resolution").

(b) The Company and the Agency agree and acknowledge that the Company will lease the Facility from the Agency pursuant to this Leaseback Agreement. The Company, as agent for the Agency, will then construct and equip the Improvements.

(c) The Company, as agent for the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, reconstruction, renovation and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (a) the completion of the Project, or (b) **December 31, 2018**; *provided, however* that the Agency may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

(d) The Company hereby agrees to pay the Agency's administrative fee, the fees of local counsel to Agency and/or the fees of transaction counsel, and any and all fees, costs and expenses incurred in the acquisition, construction and installation of the Facility, including recording fees and taxes and any other fees or expenses due hereunder.

(e) The Company hereby covenants and agrees to annually file with the State Department of Taxation and Finance, on or before February 15 of each calendar year, the Annual Report (i.e., NYS Form ST-340) required by General Municipal Law Section 874(8) concerning the value of sales and use tax exemptions claimed by the Company, its agents, consultants and

subcontractors while acting as agent for the Agency and to provide a copy of said Annual Report to the Agency upon filing the same with the State Department of Taxation and Finance. Copies of the as-filed Annual Report should be addressed and delivered to the Agency pursuant to Section 5.10 of this Leaseback Agreement.

Section 2.3 Demise of Facility.

The Agency hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Leaseback Agreement.

Section 2.4 Remedies to be Pursued Against Contractors and Subcontractors and their Sureties.

In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Company deems reasonably necessary, and in such event, the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including but not limited to reasonable attorneys' fees) in any such action or proceeding.

Section 2.5 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions of Section 5.3 hereof) and the leasehold estate created hereby shall commence as of February 1, 2018.

(b) The leasehold estate created hereby shall terminate at 11:59 P.M. on **December 31, 2028**, or on such earlier date as may be permitted by Section 8.1 hereof.

(c) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivering and recording any necessary terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Leaseback Agreement as shall be reasonably necessary to terminate the Agency's leasehold interest in the Project upon the expiration or termination hereof. Notwithstanding any such expiration or termination of this Leaseback Agreement, the Company's obligations under Sections 3.3 and 5.2 hereof shall continue.

(d) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term.

(e) The Agency shall, subject to the provisions of Sections 5.3 and 7.1 hereof neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Leaseback Agreement, to prevent the Company during the term of this Leaseback Agreement from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 2.6 Rents.

(a) Upon execution of this Leaseback Agreement, the Company shall pay rent for the Facility in the amount of One Dollar (\$1.00) for the period commencing on the date hereof and ending on December 31, 2018, and on January 1 of each calendar year thereafter an amount equal to One Dollar (\$1.00) annually.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the term of this Leaseback Agreement, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's leasing of the Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Leaseback Agreement.

(c) The Company hereby agrees to pay the Agency's administrative fee, the fees of local counsel to Agency and/or the fees of transaction counsel incurred from time to time during the Lease Term related to forms of financial assistance hereunder or under other State and federal programs or otherwise related to the Project, and any and all fees, costs and expenses incurred in the acquisition, construction and equipping of the Facility, including recording fees and taxes and any other fees or expenses due hereunder.

(d) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Company shall fail to timely make any payment required in this Section 2.6, the Company shall pay the same together with interest from the date said payment is due at the rate of six percent (6%) per annum.

Section 2.7 Obligations of Company Hereunder Unconditional.

The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility

for the Company's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Leaseback Agreement, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 6.1 hereof, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estates of the Company hereunder, except upon written consent of the Company. None of the foregoing shall relieve the Company of its obligations under Section 5.2 hereof.

Section 2.8 Easements and Licenses.

The Company shall have the sole and exclusive right and obligation to execute any and all easements and licenses in connection with the Project and Facility.

ARTICLE III
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 3.1 Maintenance and Modifications of Facility By Company.

(a) The Company agrees that during the term of this Leaseback Agreement it or its operator will (i) keep the Facility in as reasonably a safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; (iv) operate the Facility such that it continues to qualify as a "project" under the Act and pursuant to the terms contained herein for the purposes described in the Application; and (v) indemnify and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), (iii) or (iv) above.

(b) The Company, at its own expense, from time to time, may make any structural additions, modifications or improvements to the Facility or any addition, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses that do not adversely affect the structural integrity or impair the operating efficiency of the Facility or substantially change the nature of the Facility. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility; provided, however, the Company shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) the Company is acting as agent for the Agency under the Agent Agreement which contemplates said additions, modifications or improvements or (ii) as otherwise provided by law. Upon

request, the Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title or other satisfactory interest in such property.

Section 3.2 Installation of Additional Equipment.

The Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may remove or permit the removal of such machinery, equipment or other personal property; provided that any such removal of such machinery, equipment or other personal property shall not adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended and provided further that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 3.3 Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same respectively become due and payable, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought by the Company therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the Agency from the Facility, (ii) all payments under a certain payment-in-lieu of tax agreement by and between the parties hereto, to be executed in connection with this transaction (as defined in Article IX hereof) by the parties simultaneously herewith, (iii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided, that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the term of this Leaseback Agreement.

(b) The Company may, at its own expense, and in its own name or on behalf of the Agency, in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may not permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom.

(c) If it should be determined that any state or local sales or compensatory use taxes are payable with respect to the construction, equipping, purchase or rental of machinery or equipment, materials or supplies in connection with the Facility, or are in any manner otherwise payable directly or indirectly in connection with the Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

Section 3.4 Insurance Required.

At all times throughout the term of this Leaseback Agreement including, without limitation, during any period of construction of the Facility, the Company shall maintain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the replacement cost of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company. As an alternative to the requirements in this subsection (a), including the requirement of periodic appraisal, the Company may insure such property under a blanket insurance policy or policies covering not only the Facility, but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than **\$1,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, and **\$1,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

Section 3.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide (i) for payment of the losses of the Company and the Agency as their respective interests may appear, and (ii) that the insurance company shall endeavor to give thirty (30) days' prior written notice or such other notice as the policy provides for, of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the Closing

Date. The Company shall deliver to the Agency on or before the first business day of each calendar year thereafter, a certificate dated not earlier than the immediately preceding December 1st reciting that the Company is carrying insurance in the amounts and of the types required by Sections 3.4 and 3.5 hereof, effective through the end of the succeeding calendar year. Prior to the expiration of any such policy evidenced by said certificates, the Company shall furnish the Agency with evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

(c) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

Section 3.6 Application of Net Proceeds of Insurance.

The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

- (i) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and
- (ii) the net proceeds of the insurance required by Sections 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 3.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges.

If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the premium for such insurance. The Company shall reimburse the Agency for any amount so paid together with interest thereon from the date of payment at six percent (6%) per annum.

**ARTICLE IV
DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 4.1 Damage or Destruction.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Leaseback Agreement:

- (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement; and

(iii) except as otherwise provided in subsection (b) of this Section 4.1, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to replace, repair, rebuild or restore the Facility, and the net proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 4.1, if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

Section 4.2 Condemnation.

(a) If at any time during the term of this Leaseback Agreement the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement. The Agency shall not have any interest whatsoever in any condemnation award, and the Company shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company shall promptly:

(i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or

(ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility.

The Facility, as so restored, or the substitute facilities, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to restore the Facility or acquire substitute facilities, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a) hereof, if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Agency shall cooperate fully with the Company in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the Agency

voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of the Company.

Section 4.3 Condemnation of Company-Owned Property.

The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

**ARTICLE V
SPECIAL COVENANTS**

Section 5.1 No Warranty of Condition or Suitability by the Agency.

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT SUCH FACILITY IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 5.2 Hold Harmless Provisions.

The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members, agents (other than the Company), directors and employees, and their respective successors, assigns or personal representatives (collectively, the "Indemnified Parties"), harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency's financing, constructing, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Indemnified Parties and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability.

Section 5.3 Right to Inspect the Facility.

The Agency and its duly authorized agents shall have the right at all reasonable times, and upon prior reasonable notice to the Company, to inspect the Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to the Facility, as approved by the Company, noting the Agency involvement in the Project. The Agency shall honor and comply with any restricted access policy of the Company relating to the Facility; any inspections shall be conducted so as not to interfere with the Company's business operations.

Section 5.4 Company to Maintain its Existence.

The Company agrees that during the term of this Leaseback Agreement it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets.

Section 5.5 Qualification in the State.

Throughout the term of this Leaseback Agreement, the Company shall continue to be duly authorized to do business in the State.

Section 5.6 Agreement to Provide Information.

The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Company's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency.

Section 5.7 Books of Record and Account; Financial Statements.

The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company relating to the Facility.

Section 5.8 Compliance With Orders, Ordinances, Etc.

(a) The Company agrees that it will, throughout the term of this Leaseback Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.8, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that it must comply with such requirement or requirements.

Section 5.9 Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create or suffer to be permitted or created any lien, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.9, the Company may in good faith contest any such lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 5.10 Sales Tax.

During each year in which the Company is entitled to claim a sales tax exemption, the Company shall file an Annual Statement with the New York State Department of Taxation and Finance regarding the value of sales tax exemptions that the Company, its agents, consultants or subcontractors have claimed pursuant to the benefits the Agency conferred upon it in connection with the Facility. During each such year, the Company shall also file a copy of said Annual Statement with the Agency on an annual basis. The Company acknowledges that the penalty for failure to file such statement is a default under the terms of this Leaseback Agreement.

Section 5.11 Depreciation Deductions and Investment Tax Credit.

The parties agree that the Company shall be entitled to all depreciation deductions with respect to any depreciable property (whether real property or personal property) in the Facility pursuant to section 167 of the United States Internal Revenue Code (the "Code") and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility.

ARTICLE VI
RELEASE OF CERTAIN LAND; REMOVAL OF EQUIPMENT;
ASSIGNMENT AND SUBLEASING

Section 6.1 Restriction on Sale of Facility; Release of Certain Land.

Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company (the "Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, the Lender and the Company, for purposes of financing the construction and/or renovation and improvement of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns (the "Approved Liens") the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement, without the prior written consent of the Company. Under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rentals described in Section 2.6, Section 3.3, or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 herein or (i) the right of the Agency on its own behalf to receive all opinions of counsel, reports, financial information, certificates, insurance policies or binders or certificates, or other notices or communications required to be delivered to the Agency hereunder or otherwise reasonably requested by the Agency; (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency hereunder; (iii) the right of the Agency in its own behalf to enforce the obligation of the Company to complete the Project and to confirm the qualification of the Project as a "project" under the Act; (iv) the right of the Agency to amend with the Company this Leaseback Agreement, and the right of the Agency to exercise its rights and remedies

hereunder; (v) the right of the Agency in its own behalf to declare an Event of Default under Section 7.1 hereof; and (vi) the right of the Agency as to any of the foregoing, exercisable with respect to any sublessees or subtenants (collectively, the "Unassigned Rights").

Section 6.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement or diminution of the rents payable under Section 2.6 hereof.

Section 6.3 Assignment and Subleasing.

(a) This Leaseback Agreement may not be assigned in whole or in part except to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), and the Facility may not be subleased, in whole or in part, by the Company except to a Related Person of the Company without the prior written consent of the Agency. A transfer in excess of 50% of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of each assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;

(ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act; and

(v) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, the Company at its cost shall furnish the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

(b) Any such assignment or sublease is subject to the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel.

ARTICLE VII

DEFAULT

Section 7.1 Events of Default Defined.

(a) Each of the following shall be an "Event of Default" under this Leaseback Agreement:

(1) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 of this Leaseback Agreement and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice of such failure to the Company; or

(2) If there is any purposeful, willful and knowing breach by the Company of any of its other agreements or covenants set forth in the Application and or any ancillary or supplemental documents submitted in connection therewith or in this Leaseback Agreement; or

(3) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Leaseback Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such 30-day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or

(4) If any representation or warranty of the Company contained in this Leaseback Agreement is incorrect in any material respect when made; or

(5) If there is any failure by the Company to observe or perform any covenant, condition or agreement required by any other agreement between the Company and the Agency to be observed or performed by the Company (including, but not limited to, the Agent Agreement and the PILOT Agreement) and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence.

(b) Notwithstanding the provisions of Section 7.1(a) hereof, if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under

this Leaseback Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Section 2.6 and Section 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by the Unassigned Rights as set forth in Section 10.10 hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 7.2 Remedies on Default.

Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps;

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6(a) hereof and (ii) all other payments due under this Leaseback Agreement.

(2) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

(3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Leaseback Agreement.

(4) Terminate the Lease Agreement, Leaseback Agreement and/or PILOT Agreement and convey the Facility to the Company or its designee. The Agency shall have the right to execute appropriate terminations of Lease Agreement and Leaseback Agreement with respect to

the Facility and to place the same on record in the Monroe County Clerk's Office, at the expense of the Company, and in such event the Company waives delivery and acceptance of such terminations of Lease Agreement and Leaseback Agreement and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such terminations.

Section 7.3 Remedies Cumulative.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses.

The Agency is acting as a conduit for financial assistance to the Company. In consideration thereof, the Company agrees to pay all reasonable attorneys' fees incurred by the Agency related to the Project and during the Lease Term. In the event the Company should default under any of the provisions of this Leaseback Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.5 No Additional Waiver Implied by One Waiver.

In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII

EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY

Section 8.1 Early Termination of Leaseback Agreement.

(a) The Company shall have the option at any time to terminate this Leaseback Agreement upon delivery to the Agency notice pursuant to Section 8.2 hereof signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.

(b) The Agency shall have the option at any time to terminate this Leaseback Agreement upon any default of the Company under the PILOT Agreement (as hereinafter defined).

(c) The Agency shall have the option at any time to terminate this Leaseback Agreement and demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence of an Event of Default hereunder.

Section 8.2 Obligation to Terminate Lease Agreement.

Upon termination of this Leaseback Agreement in accordance with Section 2.5 or Section 8.1 hereof, the Agency and the Company shall terminate the lease between the Company, as lessor and the Agency, as lessee dated as of the date hereof, executed simultaneously herewith (the "Lease Agreement") for the consideration of One (\$1.00) Dollar. The Company shall exercise its obligation and/or right as the case may be to terminate the Lease Agreement by giving written notice to the Agency.

Section 8.3 Termination.

At the closing of any lease termination of the Facility pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the consideration, deliver to the Company all necessary documents:

(a) To terminate the Lease Agreement and surrender to the Company the Facility being leased, as such Facility exists, subject only to the following:

(i) any liens to which title to such property was subject when leased to the Agency,

(ii) any liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced,

(iii) any liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Leaseback Agreement, and

(b) To release to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards with respect to the Facility.

ARTICLE IX
JOBSPLUS TAX ABATEMENT PROGRAM

Section 9 The Company acknowledges that it is receiving an enhanced real property tax abatement program commonly described as the "JobsPlus Initiative" whereby it pays property taxes on the real property pursuant to a Payment-in-Lieu-of-Tax Agreement, dated as of the date hereof, by and between the Agency and the Company (the "PILOT Agreement"), to be executed simultaneously herewith. In consideration for this enhanced PILOT Agreement, the Company has agreed to create one (1) additional full-time/full-time equivalent job within a three (3) year period as defined in the PILOT Agreement and maintain that job throughout the term of the PILOT Agreement. The Company agrees and understands that the Agency or its duly appointed agent may examine the Company's books and records during normal business hours

and upon reasonable notice (a minimum of 48 hours) to determine the Company's compliance with the JobsPlus Initiative.

ARTICLE X
MISCELLANEOUS

Section 10.1 Surrender of Facility.

Except as otherwise expressly provided in this Leaseback Agreement, at the termination of this Leaseback Agreement, the Company shall surrender possession of the Facility peaceably and promptly to the Agency in as good condition as at the commencement of the term of this Leaseback Agreement, loss by fire or other casualty covered by insurance, condemnation and ordinary wear, tear and obsolescence only excepted.

Section 10.2 Notices.

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or by nationally recognized overnight courier, addressed as follows:

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

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

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

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.

Section 10.3 Binding Effect.

This Leaseback Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

Section 10.4 Severability.

In the event any provision of this Leaseback Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.5 Amendments, Changes and Modifications.

This Leaseback Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 10.6 Execution of Counterparts.

This Leaseback Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 10.7 Applicable Law.

This Leaseback Agreement shall be governed exclusively by the applicable internal laws of the State without reference to the principles of conflicts of laws.

Section 10.8 Recording and Filing.

This Leaseback Agreement or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of Monroe County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 10.9 Survival of Obligations.

This Leaseback Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 hereof and all indemnities shall survive any termination or expiration of this Leaseback Agreement.

Section 10.10 Unassigned Rights.

Notwithstanding any assignment by the Agency to any mortgagees, the Company's obligations as set forth hereinabove in Sections 1.2(d), 1.2(g), 2.1, 2.2, 2.6, 3.1(a), 3.3, 3.4, 3.5, 5.2 and 7.4 will not be assigned to any such mortgagee but shall remain as rights of the Agency.

Section 10.11 Employment Opportunities, Notice of Jobs.

The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "Referral Agencies"). The Company also agrees that it

will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

Section 10.12 Section Headings Not Controlling.

The headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.

Section 10.13 Merger of the Agency.

(a) Nothing contained in this Leaseback Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Leaseback Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.

Section 10.14 No Broker. Agency and Company represent and warrant to the other that neither Agency nor Company has dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Leaseback Agreement, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including attorney's fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

Section 10.15 No Recourse; Special Obligations.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his/her individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State or of the County of Monroe, New York, and neither the State nor the County of Monroe, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 10.16 No Joint Venture Created.

The Agency and the Company mutually agree that by entering into this Leaseback Agreement the parties hereto are not entering into a joint venture.

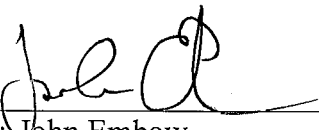
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IN WITNESS WHEREOF, the Agency and the Company have caused this Leaseback Agreement to be executed in their respective corporate names, all as of the date first above written.

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


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

135 FEDWHY WAY LLC

By: 
Name: John Embow
Title: Member

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

On the 12th day of February, 2018, 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.

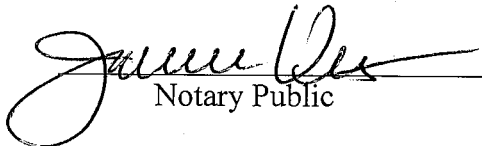


Notary Public

Lori A. Palmer
Notary Public, State of New York
Qualified in Monroe County
Commission Expires May 31, 2019

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

On the 15 day of February, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared **John Embow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JANICE VERTLIEB
Notary Public, State of New York
No. 01VE6098654
Qualified in Niagara County
My Commission Expires Sept. 15, 2019

SCHEDULE A

Description of the Leased Premises

Property Address: 135 FedWhy Way, Gates, New York 14624

Tax Map ID No.: 118.050-0001.009.100