

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

AND

LUMBER EAST LLC

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Tax Map No.

122.580-0001-015.001

Affected Taxing Jurisdictions:

County of Monroe
City of Rochester

Dated as of February 1, 2019

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "PILOT Agreement") made as of February 1, 2019, is by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA**, a public benefit corporation of the State of New York, having its offices at 8100 CityPlace, 50 West Main Street, Rochester, New York 14614 (the "Agency"), and **LUMBER EAST LLC**, a limited liability company formed and validly existing under the laws of the State of New York with offices at 550 Latona Road, Building E, Suite 501, Rochester, New York 14626 (the "Company").

WITNESSETH:

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

WHEREAS, the Company has requested the Agency to assist in a certain project (the "Project") all as more particularly described in an application dated August 27, 2018 (the "Application") and the Agency has agreed to acquire or retain a leasehold or other interest in an approximately 3.16-acre parcel of land located 78 Rockwood Street in the City of Rochester, County of Monroe and State of New York [Tax Map ID No.: 122.580-0001-015.001] (the "Land"), and to assist in the construction of an approximately 34,000 square-foot building thereon (the "Facility"), a description of which is annexed hereto as **Exhibit A**; and related site work, for lease to **Fitness International, LLC** (hereinafter referred to as, the "Tenant", as defined in the PILOT Addendum attached hereto) for use as a fitness club; 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 "County") and the City of Rochester (the "City" and, collectively with the County, the "Affected Taxing Jurisdictions").

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

Section 1 - Payment in Lieu of Ad Valorem Taxes.

Section 1.1 A. Subject to the completion and filing by the taxable status date (**March 1, 2019**) (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law (the "RPTL") and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the **2021** County tax year and the **2020-2021** City tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy, real estate taxes levied against the Facility by the County and City. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Facility is leased to the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually to the Agency for the benefit of the Affected Taxing Jurisdictions (or directly to the Affected Taxing Jurisdictions), as a payment in lieu of taxes, within thirty (30) days of receipt of the invoice for payment of taxes (the "Payment Date"), commencing with the invoice for the **2020-2021** City tax year and the invoice for the **2021** County tax year, an amount equal to the Total PILOT Payment, as set forth on **Schedule A** attached hereto and made a part hereof. The Company shall make all payments due hereunder without further notice or invoicing from the Agency, any Affected Tax Jurisdiction or any other party.

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

1.2 Allocation. The Agency shall remit to the Affected Taxing Jurisdictions amounts received hereunder (if any) within thirty (30) days of receipt of said payment and shall allocate said payments among 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 specific allocation.

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

1.4 Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the **2020-2021** City tax year through the **2029-2030** City tax year, and (ii) the **2021** County tax year through the **2030** County tax year. This PILOT Agreement shall expire on **December 31, 2030** *provided, however*, the Company shall pay the **2030-2031** City tax bill and the **2031** County tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and

specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL. It is hereby agreed and understood that the Affected Taxing Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

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

Section 3 - Transfer of 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 Taxing Jurisdictions in excess of the payment described in Section I herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected 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 of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section 4 - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment of the Facility by any of the Affected Taxing Jurisdictions. The Company shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments, and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

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

6.1 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) the Company abandons or otherwise vacates the County of Monroe; (iv) the failure by the Company to make any payments required under this PILOT Agreement; or (v) the breach of covenants or event of default under that certain Leaseback Agreement, dated as of the date hereof, between the Agency and the Company (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 in writing of such Event of Default and of its intent to recapture the PILOT benefits (or any portion thereof). 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.

6.2 If payments pursuant to Section 6.1 herein are not made by the due dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: With respect to payments to be made pursuant to Section 6.1 herein, if said payment is not received by the due date defined in Section 6.1 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 hereunder, or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Taxing Jurisdictions.

Section 7 - Assignment. No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section 8 - Miscellaneous.

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

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

To the Agency: County of Monroe Industrial Development Agency
d/b/a Imagine Monroe Powered By COMIDA
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 C. Baranello, Esq.

To the Company: Lumber East LLC
550 Latona Road, Building E, Suite 501
Rochester, New York 14626
Attention: Angelo Ingrassia, Manager

With a Copy to: Stephen E. Hall, Esq.
36 West Main Street, Suite 400
Rochester, New York 14614

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

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

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

Section 9 - JobsPlus Tax Abatement Policy.

9.1 Jobs Requirement. The Company or its Tenant shall create one (1) new full-time/full-time equivalent job(s) in three (3) years and maintain those full-time/full-time equivalent job(s) for the balance of the ten (10) year term hereof.

9.2 Compliance Report. The Company shall report its compliance with these provisions as requested by the Agency, or its Project Compliance Monitor.

9.3 Job Failure. If the one (1) new full-time/full-time equivalent job(s) 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 RPTL. Under extenuating circumstances, the Agency Board may waive the above penalties after reviewing a written request from the Company for waiver of the penalties.

9.4 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.

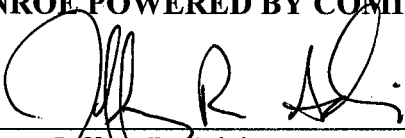
9.5 Benefit Period. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than ten (10) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than ten (10)

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.

[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

LUMBER EAST LLC

By: _____
Name: Angelo M. Ingrassia
Title: Manager

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

LUMBER EAST LLC

By: _____

Name: Angelo M. Ingrassia

Title: Manager

PILOT AGREEMENT DATED AS OF FEBRUARY 1, 2019

**BY AND BETWEEN THE
COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A
IMAGINE MONROE POWERED BY COMIDA
AND LUMBER EAST LLC**

"Total Tax Payment" shall be calculated as follows:

<u>Tax Year</u>	<u>County and Town Tax Year</u>	<u>School Tax Year</u>	<u>Total Taxable Valuation</u>
	2020	2019/2020	Full Taxes
Year 1	2021	2020/2021	Base Valuation, plus (Added Value x .00)
Year 2	2022	2021/2022	Base Valuation, plus (Added Value x .10)
Year 3	2023	2022/2023	Base Valuation, plus (Added Value x .20)
Year 4	2024	2023/2024	Base Valuation, plus (Added Value x .30)
Year 5	2025	2024/2025	Base Valuation, plus (Added Value x .40)
Year 6	2026	2025/2026	Base Valuation, plus (Added Value x .50)
Year 7	2027	2026/2027	Base Valuation, plus (Added Value x .60)
Year 8	2028	2027/2028	Base Valuation, plus (Added Value x .70)
Year 9	2029	2028/2029	Base Valuation, plus (Added Value x .80)
Year 10	2030	2029/2030	Base Valuation, plus (Added Value x .90)

For the term of this PILOT Agreement, the Company shall continue to pay full taxes based on the assessed value of the Land and any existing improvements before the completion of any Improvements (the "Base Valuation"). During the term of this PILOT Agreement, the Base Valuation shall be increased from time to time by the percentage increase in the assessed valuation in all taxable real property in the City of Rochester, Monroe County, New York, as of the respective tax status date for the tax year for which the recalculation is being made. The Total Taxable Valuation for each Total Tax Payment shall be calculated such that a graduated abatement factor (the "Abatement Factor") shall be applied to the increased assessed valuation attributable to the Improvements made to the Facility by the Company, as an agent of the Agency, for the Project (the "Added Value"). The abatement schedule shall allow for a 100% exemption from taxation for the Added Value in Year 1, with such exemption being eliminated in 10% increments in PILOT Years 2-10.

Once the Total Taxable Valuation is established using the Abatement Factor, the Total Tax Payment shall be determined by multiplying the Total Taxable Valuation by the respective tax rate for each Affected Taxing Jurisdiction (after application of any applicable equalization rate). After Year 10, the Facility shall be subject to full taxation by the Affected Taxing Jurisdictions.

$$\text{Total Taxable Valuation} = \text{Base Valuation} + (\text{Added Value} \times \text{Abatement Factor})$$

$$\text{Total Tax Payment} = \text{Total Taxable Valuation (after equalization)} \times \text{Tax Rate}$$

Exhibit A

Description of the Project and Facility

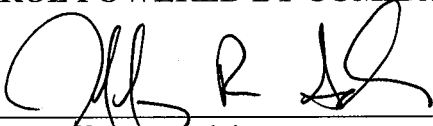
The "Project" consists of: the construction of an approximately 34,000 square-foot building (the "Facility") at 78 Rockwood Street in the City of Rochester, Monroe County, New York, for lease to Fitness International of New York, LLC (the "Tenant"), for use as a fitness center.

[N.B. – PILOT abatement applies to new value of the existing approximately 34,000 square-foot building but not to the existing assessment, calculated prior to the construction.]

**PILOT ADDENDUM
(FITNESS INTERNATIONAL, LLC)**

The County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") and Lumber East 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 Fitness International, LLC (the "Tenant" and together with the Agency and the Applicant, the "Parties"). The Tenant executes this addendum to acknowledge and all Parties agree and understand that the Tenant is maintaining and creating the jobs in question, if at all. 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. Without affecting Tenant's rights under its lease, 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 such 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 lease 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; provided, however, the Landlord acknowledges there is no such Tenant obligation whatsoever. 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.

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

LUMBER EAST LLC

By: _____
Name: Angelo M. Ingrassia
Title: Manager

FITNESS INTERNATIONAL, LLC

By: _____
William B. Horner
Senior Vice President
Chief Real Estate Officer

**PILOT ADDENDUM
(FITNESS INTERNATIONAL, LLC)**

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