

THIRD AMENDMENT TO RECREATIONAL FACILITY LEASE AGREEMENT

This Third Amendment to Recreational Facility Lease Agreement ("Third Amendment") is entered this ____ day of _____, 2024, by and between the City of Lynden ("City" or "Lessor"), a Washington municipal corporation, and Davidson Fitness Inc. dba Forge Fitness Lynden, Inc. ("Lessee" or "Forge Fitness"), a corporation organized under the laws of the State of Washington, (individually "Party" and together "Parties"), for the purpose of amending that certain Recreational Facility Lease Agreement entered into between the Parties on November 18, 2020.

WHEREAS, the City and Forge Fitness entered into a Recreational Facility Lease Agreement for the old YMCA building and pool therein situated at 100 Drayton Street, Lynden, Washington ("Building") on November 18, 2020; and

WHEREAS, the City and Forge Fitness executed that First Amendment to Recreational Facility Lease Agreement dated June 8, 2021; and

WHEREAS, the City and Forge Fitness executed that Second Amendment to Recreational Facility Lease Agreement dated June 10, 2022; and

WHEREAS, the Recreational Facility Lease Agreement, the First Amendment thereto, and the Second Amendment thereto may be referred to collectively as the "Lease;" and

WHEREAS, on April 1, 2024, the Lynden City Council approved funding for a structural analysis of the Building's roof; and

WHEREAS, that analysis revealed widespread moisture damage and excess loading of the structural joists; and

WHEREAS, major repairs must be completed during the summer of 2024 to allow the building to remain in use through next winter; and

WHEREAS, the Parties intend to complete emergency repairs to the Building to include (1) structural repairs to the roof, and (2) the installation of a new heating, ventilation, and air conditioning ("HVAC") system (collectively the "2024 Roof and HVAC Project"); and

WHEREAS, on June 3, 2024, the Lynden City Council approved making the 2024 Roof and HVAC Project a 2024 project in the City's capital improvement plan; and

WHEREAS, the City and Forge Fitness wish to amend the Lease (1) to differentiate the 2024 Roof and HVAC Project from other repairs and/or capital improvements, and (2) to memorialize the Parties' agreement and respective obligations related to the 2024 Roof and HVAC Project; and

WHEREAS, the foregoing recitals are a material part of this Third Amendment;

NOW THEREFORE, THE PARTIES MUTUALLY AGREE THAT:

1. Section 6.2 of the Lease shall be replaced in its entirety with the following new Section 6.2:

6.2 **2024 Roof Replacement and HVAC Installation.** The City has authorized certain capital improvements to the Building related to roof structural repair and HVAC replacement (referred to herein as the "2024 Roof and HVAC Project"). The 2024 Roof and HVAC Project will be carried out by Lessee, subject to the terms and conditions set forth in **Exhibit B** hereto, incorporated herein by reference.

2. The following new Section 6.3 shall be added to the Lease:

6.3 **Reimbursement for Capital Improvements.** Lessee intends to construct permanent improvements to the Premises ("Capital Improvements"). The term "Capital Improvements" includes, but is not limited to, the 2024 Roof and HVAC Project. However, the reimbursement terms contained in this section apply only to Capital Improvements that are not a part of the 2024 Roof and HVAC Project. The reimbursement terms applicable to the 2024 Roof and HVAC project are set forth in **Exhibit B**, as incorporated here by Section 6.2. Subject to Section 7 herein, Lessor shall reimburse Lessee for Lessee's documented out-of-pocket expenditures for design, construction, labor, and materials, in Capital Improvements ("Capital Expenditures"). Once per calendar year, on or before January 1, 2021, and each January 1 thereafter for so long as this Lease or renewal thereof remains in effect, Lessor shall reimburse Lessee for documented out-of-pocket Capital Expenditures up to a maximum of Two Hundred Fifty Thousand Dollars (\$250,000.00) per year, following the statutory process for budget approval. Exception: Lessor shall have no obligation to reimburse Lessee for Capital Expenditures incurred during the period of time when the 2024 Roof and HVAC Project is being completed. Lessee's installation of a pool accessibility lift or a landing for the north exterior door shall be Capital Improvements subject to approval by Lessor in accordance with Section 7 herein, but shall not be eligible for reimbursement by Lessor.

3. Section 15 of the Lease shall be replaced in its entirety with the following new Section 15:

15. **Default and Re-Entry.** If Lessee shall violate or default in any of the covenants and agreements herein contained, or if the Leasehold interest of the Lessee shall be attached or levied on under execution; or if a petition is filed by Lessee for an arrangement with their creditors under Chapter 11 of the Bankruptcy Act; or if the Lessee shall be declared bankrupt or insolvent according to law; or if any assignment of the Lessee's property shall be made for the benefit of creditors, or otherwise; or if the Lessee stops work on the 2024 Roof and HVAC Project for a period of (60) days or more prior to the acceptance of said project as complete by the City; then the Lessor may cancel this Lease upon giving the notice required by law and re-enter the Building and take possession thereof.

4. All other terms of the Lease shall remain in full force and effect.

In Witness Whereof, the parties have executed this agreement on the ____ day of _____, 2024.

LESSOR (Mayor Scott Korthuis)

Date



LESSEE (Forge Fitness)

7/13/24

Date

Acknowledged by City Clerk:

Date

STATE OF WASHINGTON)
)
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Scott Korthuis and Pam Brown are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it as the Mayor of the CITY OF LYNDEN to be the free and voluntary act of such party for the uses and purposed mentioned in the instrument.

DATED: _____

_____. NOTARY PUBLIC in
and for the State of WA. My commission
expires _____

STATE OF WASHINGTON)
)
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Jeannie Davidson is the person who appeared before me, and said person acknowledged that they signed this instrument and acknowledged it as the City Clerk of the CITY OF LYNDEN to be the free and voluntary act of such party for the uses and purposed mentioned in the instrument.

DATED: July 3, 2024

Heather C Sytsma
Lynden, WA. NOTARY PUBLIC in
and for the State of WA. My commission
expires 9/1/2027



Exhibit B

Terms and Conditions Applicable to 2024 Roof Replacement and HVAC Project (See Section 6.2)

A. Scope of Work. The 2024 Roof and HVAC Project includes:

- i. Assessing and costing replacement of existing roof elements, installing a new HVAC system, and making improvements to the existing building envelope.
- ii. Completing envelope inspections and/or investigations to identify all necessary corrective actions.
- iii. Removal and replacement of existing roof and structural components identified as needing replacement by a third-party inspector.
- iv. Installation of thermoplastic polyolefin ("TPO") roofing.
- v. Installation or replacement of all components associated with the installation of TPO roofing.
- vi. Repair or replacement of all necessary roof drainage systems.
- vii. Installation, testing, and balancing of a new HVAC system and all necessary components associated therewith.
- viii. Obtaining all necessary permits for the work.
- ix. Conducting third-party engineering inspections of all structural improvements.
- x. Conducting third-party inspection of all building envelope components.
- xi. Other work authorized in writing by the City Public Works Director.

B. Reimbursement for Expenses Associated with 2024 Roof and HVAC Project. Lessor shall reimburse Lessee for Lessee's documented expenditures for design, construction, labor, and materials associated with the work described in Section (A) above, subject to the following terms and conditions:

- i. Lessee shall invoice Lessor monthly for work that has been completed prior to the invoice date.
- ii. To be eligible for reimbursement by Lessor, each invoice must include (1) a record of work that ties to certified labor and materials costs, (2) total cost per task, (3) payment to date and that month's amount due, and (4) a list of all subcontractor work and invoices for the month along with all materials purchased and incorporated into the project.
- iii. Lessor will strive to reimburse eligible invoices by check at the next regularly scheduled check run, but not to exceed 30 days after the invoice is received by Lessor.
- iv. Lessor shall not be required to reimburse Lessee for any invoice submitted more than 60 days after the date of the invoice.
- v. Lessor shall make a final payment to Lessee, which shall constitute the entire unpaid balance of the reimbursable sum, no more than 30 days after receiving a final invoice after a final inspection of the construction and final acceptance of the project by the City Building Official.