

SECOND AMENDMENT TO RECREATIONAL FACILITY LEASE AGREEMENT

This Second Amendment to Recreational Facility Lease Agreement (“Second Amendment”) is entered this ____ day of _____, 2022, 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 (“Building”) on November 18, 2020 (“Lease”); 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 wish to clarify their respective maintenance and repair obligations under Section 5 of the Lease; and

WHEREAS, the City and Forge Fitness wish to recharacterize the term “Building Renovations” as “Capital Improvements” and clarify the parties’ respective obligations related to the construction of, and reimbursement for, Capital Improvements under Sections 6 and 7 of the Lease; and

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

NOW THEREFORE, THE PARTIES MUTUALLY AGREE THAT:

1. Section 5 of the Lease shall be replaced in its entirety with the following new Section 5:

5. **Management and Operational Responsibility, Upkeep, and Repairs.**

- 5.1 **Management and Operation.** Lessee shall be solely responsible for management and operation of the Premises and all costs associated therewith including all costs associated with labor, materials, supplies, and equipment. Management and operation include, without limitation, all janitorial services, such as cleaning and stocking of restrooms, changing of light bulbs and fixtures as needed, cleaning of exercise equipment, and floor cleaning such as sweeping, washing, and waxing.

- 5.2 **Routine Maintenance and Repairs.** Lessee shall be solely responsible for all routine maintenance of the Premises and shall keep the Premises in good condition and repair. Routine maintenance and repairs include all tasks necessary to ensure the upkeep, and preserve the longevity of, the interior and exterior of the Building and its systems including, without limitation, boiler maintenance, painting, plumbing repairs, landscape maintenance, sidewalk cleaning and snow and ice removal, pool maintenance (such as changing filters and ensuring property chlorine levels), duct cleaning, changing oil in the air compressor, and ensuring adequate winterization.

- 5.3 **Major Repairs.** Lessee shall also be responsible for maintenance and repair of the premises. Lessor agrees to reimburse Lessee for pre-approved repairs to a Structural Element costing in excess of Fifteen Thousand Dollars (\$15,000) or significant repairs to the roof, siding, heating, ventilating, electrical, plumbing systems and pool related

systems and structures. Lessor and Lessee further agree that replacement of the “popcorn” ceiling in the pool area, the addition of pool circulation systems such as additional jets, pool deck drainage work, and replacement of wood sill plates beneath columns shall be Major Repairs. Lessor’s approval is subject to review of the necessity and estimated cost of the Major Repair, as well as available funding for the Major Repair in the City’s budget. Lessor may withhold approval of the Major Repair based on the foregoing. Lessor and Lessee agree to together conduct a semi-annual inspection of the Premises to assess the need for any Major Repairs and assist the City in establishing a budget for said Major Repairs in accordance with the statutory process for budget approval. Maintenance items and other repairs of less than \$15,000 may not be added together to achieve the \$15,000 threshold for a Major Repair reimbursement.

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

6.2 Reimbursement for Capital Improvements. Lessee intends to construct permanent improvements to the Premises (“Capital Improvements”). 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. This amount shall only be included and available in years when included as a part of the Annual Budget for approved projects. 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 7 of the Lease shall be replaced in its entirety with the following new Section 7:

7. Capital Improvements. This Lease contemplates Lessee will undertake Capital Improvements to the Building.

7.1 Drawings, Designs, Plans, Specifications, Schematic Diagrams. Lessee shall provide Lessor with copies of any and all architectural drawings, designs, construction plans, specifications, schematics and other materials associated with any design of Capital Improvements not less than thirty (30) days prior to intended commencement of any construction unless parties mutually agree to shorter timeline. Construction shall not commence unless and until the Lessor has approved all such drawings, designs, plans, specifications, and schematics. Such approval by Lessor does not provide any assurance of structural integrity, or absence of defects in design, construction practice, or materials, and in no event shall Lessor be liable for said approval.

7.2 Construction. Lessee shall provide Lessor with a copy of the proposed contract for Capital Improvements and the name of the Contractor not less than thirty (30) days prior to intended commencement of any construction. Construction shall not commence unless and until the Lessor has approved the proposed construction contract and the Contractor; provided that, such approval shall not be unreasonably withheld. The Parties

acknowledge that any such construction contract shall contain indemnification and insurance provisions reasonably acceptable to Lessor, including naming the Lessor as an additional insured on any applicable insurance policies. The Lessor and its agents shall have a right to enter the Building at any time for purposes of inspecting ongoing or recently completed construction activities.

7.3 Compliance with Legal Requirements and Permits. Any and all Capital Improvements shall conform to all federal, state, and local laws, regulations, and ordinances, including without limitation all federal and state laws and regulations pertaining to access for persons with disabilities. All required permits shall be obtained prior to construction.

7.4 Capital Improvements – Public Notice and Access. Lessee shall provide at least twenty-one (21) days advance written notice to the public of any construction of Capital Improvements. Such notice shall at minimum include posting signage in the Building and on any website for the Building controlled by Lessee. During construction of Capital Improvements, Lessee shall accommodate public access to the Building in a manner to allow activities to continue to the extent feasible, and ensure the safety of all members of the public and Lessee’s employees.

7.5 Capital Improvements on Termination or Expiration of Lease. Upon termination or expiration of this Lease and any renewal hereof, all Capital Improvements shall become the sole property of Lessor.

4. All references to the term “Building Renovations” are hereby replaced with the term “Capital Improvements.”

5. 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 _____, 2022.

LESSOR (Mayor Scott Korthuis)

Date

LESSEE (Forge Fitness)

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 Mayor and 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: _____

_____. 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 _____ and _____ is the person who appeared before me, and said person acknowledged that they signed this instrument and acknowledged it as President of Forge Fitness 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 _____