

PRE-LEASE BUILDING RENOVATION AGREEMENT

THIS PRE-LEASE BUILDING RENOVATION AGREEMENT (“Agreement”) is entered into this _____ day of November, 2020 (“Effective Date”) by and between the City of Lynden (“City”), a Washington municipal corporation, and Davidson Fitness Inc dba Forge Fitness Lynden, Inc. (“Forge Fitness”), a Washington corporation. The City and Forge Fitness may also be referred to herein individually as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, the City of Lynden and Forge Fitness entered a lease agreement of even date herewith (“Lease”), attached as **Exhibit A**, under the terms of which Forge Fitness will lease from the City the building situated at 100 Drayton St., Lynden, Washington (“Building”); and

WHEREAS, the Building includes a swimming pool, two racquetball courts, a gymnasium, a weight room, storage rooms, offices, rest rooms, showers, and locker rooms (“Facilities”); and

WHEREAS, the City is leasing the Building to Forge Fitness with the intention that Forge Fitness will operate the Facilities for the benefit of the public; and

WHEREAS, the Lease term for the Building will not begin until January 1, 2021; and

WHEREAS, Forge Fitness wishes to conduct significant renovations to the Building as contemplated in the Lease, including without limitation renovation of the ceiling above the pool, replacing rug flooring with hard tile, painting throughout the building, upgrading the locker rooms, and remodeling the front lobby; and

WHEREAS, Forge Fitness expects said renovations to require several months of work and has requested access to the Building and Facilities for the purpose of starting work prior to commencement of the Lease (“Pre-Lease Renovation”); and

WHEREAS, the City wishes to allow Forge Fitness to conduct Pre-Lease Renovation to minimize the time the facilities are unavailable to the public during the term of the Lease; and

WHEREAS, the Parties wish to memorialize their agreement regarding the conditions of use associated with Forge Fitness’ access to the Building to perform Pre-Lease Renovation;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the Parties agree as follows:

TERMS

- 1. CONDITIONS OF USE.** City hereby grants permission for Forge Fitness, and any contractors or subcontractors retained by Forge Fitness, to access the Building during and outside normal business hours to perform Pre-Lease Renovation and for no other purpose except as may be provided under the terms of the Lease.
- 2. TERM.** This Agreement shall commence on the Effective Date and terminate on January 1, 2021.

- 3. RENOVATION REQUIREMENTS.** Pre-Lease Renovation must comply with the terms set forth in Section 7 of the Lease. Failure to comply with Section 7 of the Lease shall be a material breach of this Agreement.
- 4. DAMAGES.** Forge Fitness shall be financially responsible for any and all damages to the Building or the Facilities, including property damage, structural damage, and personal injury to or caused by Forge Fitness, its employees, contractors, agents, or guests which results from Forge Fitness' use of the Building or Facilities in accordance with this Agreement.
- 5. INDEMNIFICATION.** Forge Fitness shall indemnify and hold harmless the City, its officials, employees, volunteers, and attorneys, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from Forge Fitness' use of the Building, sustained by any person or persons, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property caused by the tortious act or negligent act or omission of Forge Fitness, its employees, agents, contractors, or guests.
- 6. INSURANCE.** Forge Fitness shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the City, during the term of this Agreement, general liability insurance from an insurance company licensed in the State of Washington and acceptable to the City. The required insurance shall be evidenced by a certificate of insurance submitted to the City prior to the Effective Date. Forge Fitness shall name the City as an additional insured under the general liability policy, with minimum limits of \$2,000,000.00 per occurrence. Forge Fitness' maintenance of insurance as required by the Agreement shall not be construed to limit the liability of Forge Fitness to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- 7. NON-EXCLUSIVE USE.** Forge Fitness recognizes, understands and acknowledges that this Agreement is non-exclusive, and that the swimming pool located in the Building will continue to be used by the Bellingham Bay Swim Team ("BBST"), also known as "Let's Pool Together," during the term of this Agreement. Forge Fitness shall communicate its Pre-Lease Renovation plans to BBST where such plans may impact BBST's use of the swimming pool and shall make all reasonable efforts to coordinate its Pre-Lease Renovation with BBST so as to minimize disruption to BBST's use of the swimming pool in the Building.
- 8. NON-ASSIGNMENT.** Forge Fitness shall not assign or transfer this Pre-Lease Renovation Agreement without the prior written consent of the City.
- 9. REPRESENTATIONS AND WARRANTIES BY FORGE FITNESS.** Forge Fitness warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the State of Washington and is duly authorized and in good standing to conduct business in the State of Washington, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Forge Fitness has been duly authorized to act for and bind Forge Fitness.

10. APPLICABLE LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be Whatcom County Superior Court.

11. NONWAIVER OF BREACH. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

12. SEVERABILITY. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. COUNTERPARTS. This Agreement may be executed in counterparts and each shall be deemed an original, but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

**DAVIDSON FITNESS INC
DBA FORGE FITNESS LYNDEN, INC.
d.b.a. FORGE FITNESS**

CITY OF LYNDEN

Date:

Mayor Scott Korthuis
Date: