

RECREATIONAL FACILITY LEASE AGREEMENT

This Recreational Facility Lease Agreement (“Agreement” or “Lease”) is entered into 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. The Lessor and Lessee also may be referred to herein individually as “Party” or collectively as “Parties.”

For valuable consideration contained herein the receipt of which is acknowledged, the City and the Lessee agree as follows:

1. **Description of Premises.** The Lessor owns that certain real property and all improvements located thereon situated at 100 Drayton St., Lynden, Washington, as described in Exhibit A, (which real property and improvements are hereinafter collectively referred to as the “Premises” or “Building”).
2. **Demise of Premises.** Lessor hereby leases and demises unto Lessee, and Lessee hereby leases from Lessor, the Building. The Building includes without limitation a swimming pool, two racquetball courts, a gymnasium, weight room, storage rooms, offices, rest rooms and shower, and locker facilities.

Term. The Lease term for the Premises shall be five (5) years beginning January 1, 2021, and ending December 31, 2025. The Lease shall automatically renew for an additional five (5), five (5) year terms, unless terminated by one Party providing written notice to other Party not less than six (6) months before the expiration of any five (5) year term. In the event each potential term is automatically renewed this Lease shall expire December 31, 2050. Lessor shall not have the right to terminate the Lease without cause sooner than twenty years from its inception. Lessor may accomplish Lease termination without cause at the end of its third renewal term (December 31, 2040), or any term thereafter. Termination for cause shall require Lessee’s material breach of the Lease that was not cured by Lessee within twenty-one (21) days of receipt of written notice of such breach. Any termination of the Lease by the Lessor or Lessee, with or without cause, shall meet the prior six (6) months’ notice requirement herein.

3. **Rent and Leasehold Tax.** Rent due for each month of this Lease shall be forty percent (40%) of that portion of the average monthly gross revenue collected by Lessee over the prior three (3) months exceeding Forty Thousand Dollars (\$40,000.00); provided that, said rent due shall be capped at not more than Five Thousand Dollars (\$5,000.00) per month. Said \$5,000.00 monthly cap shall be adjusted annually every January 1st by the increase in the Consumer Price Index for Seattle-Tacoma-Bellevue for the prior twelve (12) months. Monthly rental payments shall commence on April 1, 2021 and shall be due and payable on the first day of each calendar month thereafter for so long as this Lease or any additional Lease term remains in effect. Leasehold tax shall also be due with the Lessee’s rental payment each month in the amount of 12.84% of the rent due. The

maximum leasehold tax due under this lease shall be \$642 per month based on a \$5,000 rental payment.

4. **Additional Rent.** The Parties acknowledge and agree that the Rent described in Section 4 payable by Lessee under this Lease is net of casualty insurance and utilities. Management and operating costs applicable to the Building shall also be payable by Lessee per Section 5. The Parties intend the Agreement to be a “triple net” lease and as such Lessee shall pay as follows:

- 4.1 **Insurance on Premises.** Lessor shall obtain and keep in force during the term of this Lease and any extension hereof, at Lessee’s expense, a policy or policies of “All Risk” insurance covering loss or damage to the Premises in an amount determined by Lessor from time to time, providing protection against all perils including fire, theft and vandalism, and any such other risks as Lessor deems advisable. Lessee shall obtain and keep in force during the term of this Lease, at Lessee’s expense, a policy or policies of insurance covering loss or damage to Lessee’s leasehold improvements and personal property in an amount not less than the full replacement value thereof.

- 4.2 **Utilities.** Lessee shall pay all charges for public utilities, including without limitation water, sewer, stormwater, electricity, garbage, natural gas and any other power source costs which shall be used in or charged against the Premises during the term of this Lease or renewal hereof.

5. **Management and Operational Responsibility, Upkeep, and Repairs.** 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. Lessee shall be responsible for the general upkeep and janitorial services for the Building. General upkeep and janitorial services include without limitation daily cleaning and stocking of restrooms, ordinary and ongoing pool maintenance, changing light bulbs and fixtures as needed, floor maintenance such as sweeping, washing, and waxing, maintenance of program equipment such as exercise equipment, volleyball or pickleball nets, swimming floating devices, pool lifts, vending machines, office equipment and general grounds maintenance. Lessee shall further be responsible for repairs to the Premises; except for major maintenance repairs costing in excess of Fifteen Thousand Dollars (\$15,000.00). Lessor shall be responsible for structural repairs, roof, HVAC, pool heating equipment, Pool pumps, heat exchangers and all filtration equipment and dehumidification systems. Lessor and Lessee shall together conduct a semi-annual inspection of the Premises to assess any needed repairs. Lessee shall in addition promptly notify Lessor of any required repairs or maintenance that is the responsibility of Lessor under this section.

6. **Payments to Lessee.** The reopening of the Building pursuant to this Lease has great value to the City and its citizens as the principal indoor recreational resource

in the greater Lynden community. Lessee's intended improvements to the Building will provide further community benefit. In consideration thereof, Lessor will make payment to Lessee as described below.

- 6.1 Reopening.** Within thirty (30) days of first fully reopening the Building to the public for public recreational use, the Lessor shall make a one-time payment to Lessee in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00). This payment covers extraordinary renovations done to the facility that could include, but not limited to: ceiling insulation removal and repair; mezzanine construction including new stairway; window installation; new flooring and paint; locker room renovation; and new reception desk. Outdoor extraordinary renovations may include new siding or cladding.
- 6.2 Reimbursement for Renovation.** Lessee intends to renovate the Building. Subject to Section 7 herein, Lessor shall reimburse Lessee for Lessee's documented out-of-pocket expenditures for design, construction, labor, and materials in Building Renovations ("Capital Expenditures"). Once per calendar year, on or before January 1, 2022, and each January 1 thereafter for so long as this Lease or renewal hereof remains in effect, Lessor shall reimburse Lessee for documented out-of-pocket Capital Expenditures up to a maximum of Twenty-Five Thousand Dollars (\$25,000.00) per year.
- 7. Building Renovations.** This Lease contemplates Lessee will undertake renovations of the Building ("Building Renovations").

 - 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 Building Renovations 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 the City does not provide any assurance of structural integrity, or absence of defects in design, construction practice, or materials, and in no event shall the City be liable for said approval.
 - 7.2 Construction.** Lessee shall provide Lessor with a copy of the proposed contract for Building Renovations 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 Building Renovations 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 Building Renovations – Public Notice and Access.** Lessee shall provide at least twenty-one (21) days advance written notice to the public of any Building Renovations. Such notice shall at minimum include posting signage in the Building and on any website for the Building controlled by Lessee. During Building Renovations, 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 Building Renovations on Termination or Expiration of Lease.** Upon termination or expiration of this Lease and any renewal hereof, all Building Renovations shall become the sole property of Lessor.
- 8. Condition of Premises and Building.** Lessee accepts the Premises “as is,” as inventoried, and agrees that the Premises are in acceptable condition, subject to Lessee’s right to make Building Renovations. The Lessee accepts responsibility for any damages to the Premises caused by the Lessee, or by Lessee’s business invitees and members of the public.
- 9. Care of Building and Premises.** The Premises shall at all times be kept and used in accordance with the laws of the State of Washington and ordinances of the City, and in accordance with all directions, rules and regulations of the County health officer, City building inspector, City fire department, or other proper officer of the City or County. The Lessee shall permit no waste, damage, or injury to the Premises and at Lessee’s own cost and expense shall keep such waste, damage, or injury, from occurring.
- 10. Signs.** Lessee shall not erect or place, or permit to be erected or placed, any signs, lettering, or advertising of any kind or nature on the exterior walls unless such signage that meets all relevant described in the City Municipal Code.
- 11. Non-Discrimination.** The Lessee shall comply with all federal, state, and local laws governing non-discrimination. The Lessee will not discriminate in providing access or services to the public because of race, creed, color, sex, age, marital status, or national origin. Further, the Lessee will not discriminate in providing

services against any person because of the presence of any sensory, mental, or physical disability.

12. **Use of Building.** Lessee covenants and agrees that the Building shall be fully open to and serve the public during the entire term of this Lease or any extension hereof; except as required to accommodate construction or inspections. Lessee shall conduct its business so as to maximize the public benefit which can be produced therefrom, consistent with good business practices of similar facilities. To meet this obligation, at minimum, Lessee shall provide and adequately staff programs, particularly aquatic, swimming, and water safety programs, for all age groups, including senior citizens and children; and Lessee shall further accommodate competitive swimming programs, meets, and tournaments, including those from public and private schools. Lessee shall provide a discounted rate for membership and any facility use within the Building to senior citizens (65 or older), children under twelve (12) years of age, and residents of the City of Lynden; provided that any one person may not aggregate discounts (e.g., senior citizen resident of Lynden would be entitled only to the greater discount offered as between a senior citizen discount and Lynden resident discount.) Further, Lessee agrees to accept government subsidized programs such as Silver Sneakers Medicare Fitness program for seniors that reduce or eliminate the direct cost of membership to the facility.
13. **Rules of Conduct.** The Lessee shall develop rules of conduct for members of the public using the facilities in the Building intended to promote a family friendly atmosphere, enjoyable for people of all ages. Lessee shall have full discretion to adopt and enforce such rules of conduct on the Premises without interference of Lessor, which should include without limitation restrictions on aggressive behavior; vulgar language, bullying, inappropriate attire for a family environment and public displays of affection inappropriate for family environment. Lessee may suspend or revoke privileges and ban persons from entering the Building for violations of its rules without consulting Lessor. Notwithstanding the foregoing, Lessee's rules of conduct and its enforcement thereof, shall not violate laws governing non-discrimination as described in Section 11.
14. **Assignment, Sub-lease, and Change of Program or Service Providers.** Neither this Lease, nor any of the Lessee's rights hereunder, may be assigned or sub-let without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessee may at any time change programs and services and providers of programs and services for activities offered within the Building with the prior written consent of Lessor, which consent shall not be unreasonably withheld.
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, then the Lessor may cancel this Lease upon giving the notice required by law and re-enter the Building and take possession thereof.

16. **Right of Access.** The Lessor, or its agents may, upon giving reasonable notice to the Lessee, enter the Building during reasonable hours to inspect same, make necessary or agreed repairs, or to exhibit the Premises to prospective purchasers, mortgagors, lessees, workmen or contractors. This right of entry shall not be construed as an agreement on the part of the Lessor to make any repairs. Lessor further reserves the right to enter upon the Building at any reasonable time, without notice, during the thirty (30) day period immediately preceding the expiration of this Lease or any extension thereof, for the purpose of showing the Building to prospective lessees or purchasers.
17. **Non-liability of Lessor.** All personal property on the Premises shall be at the risk of Lessee. The Lessor and Lessor's employees and agents, shall not be liable for any injury to the Lessee, its employees, agents, business or social guests, invitees, members, or any member of the public, entering the Premises for any reason, or for any loss of or damage to goods and chattels resulting from any defect in the Premises or any equipment installed or located therein: and the Lessee shall indemnify the Lessor and hold Lessor harmless from any and all claims for such injury or damage. If any employee or agent of the Lessor shall, at the request of the Lessee, render any service or do any act for or on behalf of or at the direction of the Lessee, which act or service is not required by this Lease to be rendered by the Lessor, then in any and all such cases such employee or agent of the Lessor becomes wholly the agent of Lessee and the Lessor shall not be liable in any manner for damage to property, or injury, or death to persons arising out of or in connection with such service or act.
18. **Indemnification.** Lessee shall indemnify, defend, and hold harmless the Lessor and Lessor's employees and agents from any and all claims for damages, injury, or loss suffered or alleged to be suffered in or about the Premises by any person, firm, or corporation, to the full extent permitted under law, except to the extent such damages, injury, or loss are due to the negligence of Lessor, Lessors employees, or Lessors agents.
19. **Notice.** Notices, demands, and correspondence to the City and Forge Fitness shall be sufficiently given if dispatched by pre-paid first-class mail, or via email, to the addresses of the Parties as designated. Notices sent via first-class mail shall be deemed effective two (2) business days after they are postmarked and notices sent via email shall be deemed effective on the date sent if they are sent before 5:00 pm; if they are sent after 5:00 pm they shall be deemed effective on the following day. The Parties hereto may, from time to time, advise the other of new addresses for such notices, demands, or correspondence.

To Lessor:
City Administrator
City of Lynden
300 Fourth Street
Lynden, WA 98264
martinm@lyndenwa.org)

To Lessee:
Forge Fitness
Attention: _____

Email: _____

20. **Insurance.** Lessee shall at all times maintain a liability insurance policy in connections with operations under this Lease in the minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence, and Two Million Dollars (2,000,000.00) aggregate, in a company acceptable to Lessor for the entire term of this Lease, or any extension hereof. Lessor shall be named as an additional insured on said policy. A copy of such current policy and any renewal thereof shall be provided to the Lessor.
21. **Lease Binding.** This Lease shall be binding on the Lessor and Lessee and on their successors and assigns, provided, however that this paragraph shall not be construed as permitting any assignment or transfer that is prohibited under Section 14 hereof.
22. **Destruction of Property.** In the event that the Building is partially destroyed, this Lease remains binding and Lessee shall continue to operate the unaffected portion of the Building in as full compliance with the terms and conditions of this Lease as is reasonably attainable, although rent, and any payment obligations of Lessor, is abated at the time of partial or total destruction and for so long as the destruction precludes use of the Building substantially as intended. If the Building is totally destroyed to such an extent that the damage cannot be repaired within ninety (90) days, Lessor has the option to repair or terminate this Lease upon thirty (30) days written notice, without liability.
23. **Abandoned Property.** Upon Lease termination and surrendering possession of the Premises to the Lessor, any personal property remaining in or about the Premises or Building shall be assumed by the Lessor to be abandoned property and may be disposed of in accordance with laws of the state.
24. **Possession.** It is the Lessor's intent that the Lessee shall have possession of the Premises on the date of the beginning of the lease term.
25. **Relationship of the Parties.** The Parties agree that they are each independent entities operating pursuant to the terms and conditions of this Lease. No agent, employee, servant or representative of a Party shall be deemed to be an employee, agent, servant or representative of the other Party for any purpose. Unless otherwise provided, each Party will be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Lease or any extension hereof.

26. **Attorney's Fees and Costs.** In case suit or action is instituted to enforce any right, obligation, or term of this Agreement, the Party not prevailing shall pay the prevailing Party's costs and disbursements relating to said proceedings, and such sum as the court determines reasonable for attorney's fees connected with said proceedings.
27. **Nonwaiver of Breach.** Failure of either Party at any time to require performance of any provision of this Lease shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Lease constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
28. **Governing Law and Venue.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by the Parties hereto that this Agreement shall be governed by the laws of Washington, both as to interpretation and performance. Any action in law, suit in equity, or judicial proceeding, for the enforcement of this Agreement, or any of the provisions contained therein, shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.
29. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
30. **No Construction Against Preparer of Lease.** This Lease is the product of the efforts of both Lessor and Lessee, expresses their mutual agreement, and should not be interpreted in favor of either Party or against either Party merely because they drafted the Lease or any provision thereof.
31. **Complete Agreement.** This Lease contains all of the terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Lease.

In Witness Whereof, the parties have executed this agreement on the _____ day of _____, 2020.

LESSOR (Mayor Scott Korthuis)

Date

LESSEE (Forge Fitness)

Date

Acknowledged by City Clerk:

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 _____

Exhibit A

The existing building located easterly of the existing tennis courts within Whatcom County Tax Parcel No. 400320 354542 0000.

SITUATE IN WHATCOM COUNTY, WASHINGTON.