

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of _____, 201__ (“Effective Date”) by and between the Town of Addison, Texas (“City” or “Licensor”), and _____, a [type of entity, state of formation] (“Licensee”) (the City and Licensee are sometimes referred to herein individually as a “Party” and together as the “Parties”).

RECITALS:

WHEREAS, the Licensee operates and provides an outdoor fee based boot camp style program known as _____, which allows its registered participants to attend and participate at any of the Licensee locations (hereinafter the “Program”); and

WHEREAS, the Licensee desires to use certain property and areas owned by Licensor, which property and areas are set forth in Exhibit A attached to this Agreement and incorporated herein (such property and areas being the “Licensed Locations”), to provide its Program for (and solely for) its registered participants (“Participants”), as an independent contractor, and not as an employee of the City, in accordance with the terms set forth herein.

NOW, THEREFORE, for and in consideration of the payments stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Term. The term of this Agreement is for a period of six (6) months beginning on the Effective Date first set forth above, subject, however, to the earlier termination of this Agreement (the “Term”).

Either Party may terminate this Agreement for any reason or for no reason whatsoever by giving the other Party at least thirty (30) days prior written notice thereof. In the event of a breach or violation of this Agreement by Licensee, the City may terminate this Agreement immediately by providing either oral or written notice to Licensee.

Section 2. Use of Licensed Locations.

2.1. Grant of Program Use. Subject to all of the terms, conditions, and provisions of this Agreement, Licensor grants to Licensee a temporary, non-exclusive, revocable license, during the Term of this Agreement, to use the Designated Portion (as hereinafter defined) of the Licensed Locations solely for the Program for its Participants, during the following days and hours only:

[insert days, times when the Program is allowed]

Each use of the Licensed Locations for the Program is herein referred to as a “Program Event.” No more than ____ Participants may participate in any Program Event. Prior to commencement

of the Program at the Licensed Locations, Licensee shall submit to Licensor, for Licensor's consideration of approval, a written site plan or diagram, satisfactory to Licensor, that depicts or otherwise identifies that portion of each of the Licensed Locations that Licensee will use pursuant to this Agreement (the "Designated Portion"). The said site plan or diagram, once (and if) approved by Licensor, shall become a part of this Agreement. The determination of the Designated Portion is subject to the written approval of Licensor, and may be adjusted or changed at any time by Licensor. Notwithstanding the reference in this Agreement to Licensed Locations, the use by Licensee of the Licensed Locations for the Program is limited to the Designate Portion thereof.

Licensee shall use the Licensed Locations only as permitted under the terms and conditions set forth herein and in accordance with and subject to all statutes, laws, ordinances, rules, regulations, standards and orders of the City and of any other governmental entity, agency, or authority having jurisdiction.

Notwithstanding the foregoing days and times, if the use of any of the Licensed Locations on any such days and times conflicts with the needs of the City or the use by the City of any of the Licensed Locations for any purpose (as determined solely by the City), including but not limited to special events hosted or conducted by the City, or with any event or program of any third person or party that has been authorized or otherwise approved by the City (in the City's sole discretion), Licensee shall not have the right to use such Licensed Locations during the preparation, holding, conducting, or clean-up and/or tear-down of any of the foregoing.

2.2. Use of Licensed Locations.

A. Licensee shall use and occupy and cause its agents, employees, invitees, and Program Participants and attendees to use the Licensed Locations in compliance with all applicable City, State, and Federal codes, regulations, statutes, laws, ordinances, orders, rules and regulations.

B. The City provides (and Licensee accepts) the Licensed Locations in their "AS IS, WHERE IS" condition and subject to and with all faults, defects, and conditions.

C. Licensee shall not mar, deface, damage, destroy, or injure any part of the Licensed Locations, any other property of the City, or any property of any third person. At the conclusion of each Program Event, and at the end of the Term or upon the earlier termination of this Agreement, Licensee shall return the Licensed Locations in as good a condition and repair as the Licensed Locations were in prior to commencement of the Licensee use (and this obligation shall survive the expiration or earlier termination of this Agreement). Without limiting the foregoing, Licensee shall not make, cause or allow any alterations of any kind to the Licensed Locations. Licensee shall not be allowed to store or leave any equipment or property at the Licensed Locations.

D. Upon the conclusion of each Program Event and upon expiration or the earlier termination of this Agreement, Licensee shall immediately remove all goods, wares, merchandise, materials, and all other property owned, leased, or used by Licensee, its guests and invitees, or by any Participant, their guests and invitees, which has been placed or permitted to be placed in or at the Licensed Locations pursuant to or in connection the Program and/or this Agreement. Any such goods, wares, merchandise,

materials, and other property not so removed shall be considered abandoned and may be removed and disposed of or stored by City as City deems necessary or appropriate, in the City's sole discretion, and at Licensee's sole expense (and Licensee, upon the City's demand, shall pay the City for the expenses incurred by the City in removing, disposing, and/or storing the same, and this obligation shall survive the expiration or earlier termination of this Agreement). City shall in no way be responsible for payment, damage or claims for loss or abandoned property removed, disposed or, or stored pursuant to this Agreement.

E. In the event Licensee fails to remove any goods, wares, merchandise, materials, or other property, including any temporary or portable structures erected or placed for any Program Event, and/or to repair any damage to or destruction of any portion of the Licensed Locations damaged or destroyed in connection with or related to Licensee's use of the Licensed Locations, and/or to restore the Licensed Locations to the same condition that existed as of Licensee's commencement of the use of the Licensed Locations, the City shall be entitled to conduct such repairs and restoration, and Licensee shall be responsible for the costs thereof which shall be due upon written demand thereof (and this obligation shall survive the expiration or the earlier termination of this Agreement).

F. Licensee shall have no right to occupy and/or use the Licensed Locations for any purpose set forth herein (i) at any time or day other than the times and days specified in this Agreement or (ii) after expiration or earlier termination of this Agreement. Further, Licensee shall have no right to occupy and use the Licensed Locations for the purposes herein set forth during any City sponsored special events or third party events sponsored and/or approved by the City.

G. Licensee shall be solely responsible and liable for the operation and supervision of the Program and Program Participants. Licensee, Participants, and all Licensee Persons (as defined in Section 3.3., below), are and shall at all times be and remain liable and responsible for their acts and omissions, including, without limitation, their operations and conduct at or in connection with the Program.

H. Licensee shall not be authorized to sell, display or offer for sale any food, beverages or other items at the Licensed Locations.

I. The Program shall at all times be conducted in a clean, orderly, and legitimate manner in accordance with any and all existing City policies, ordinances and any laws requiring operation of the nature of Licensee. All rubbish, trash, glass, bottles, and cans of any kind shall be placed in trash receptacles or otherwise removed from the Licensed Locations. Licensee shall be responsible for cleaning the Licensed Locations immediately after each Program Event, and upon the expiration or earlier termination of this Agreement. Further, Licensee is responsible for and obligated to repair any and all damages to or destruction of any portion of the Licensed Locations resulting from Program activities (or alternatively, in the City's sole discretion, Licensee is responsible for and obligated to pay to the City all costs, fees, and expenses incurred by the City in making such repairs or causing such repairs to be made).

J. Licensee shall, prior to use of any of the Licensed Locations, designate in writing to Licensor an authorized Licensee representative for the Program, who shall be

deemed to be the Licensee's authorized representative unless written notice designating a different person to serve as the Licensee representative is delivered by Licensee to the City.

2.3 Use Fee. For the license granted herein, Licensee shall pay the City a fee in an amount equal to fifteen percent (15%) of the gross revenue collected by or for Licensee and paid by or on behalf of Participants for each Program Event conducted at any of the Licensed Locations during the Term of this Agreement ("Use Fee"). For purposes of this Agreement, "gross revenue" means the sum of all money collected and received by Licensee from Program Participants. Licensee shall, within ten (10) business days after commencement of each Program, send a roster of the Participants for each Program conducted during the Term of this Agreement. Contractor shall pay the Use Fee to the City simultaneously with its delivery of the roster of the Participants for each Program (that is, shall pay the Use Fee within ten (10) business days after commencement of each Program). *For example, a Program consists of 10 Program Events, conducted each Monday, and commences on Monday, February 2 and ends on Monday, April 6. Licensee shall pay the City the Use Fee on or prior to Thursday, February 12.*

If the Use Fee is not timely paid, Licensee shall not conduct the Program at any of the Licensed Locations. For purposes hereof, "business days" means Monday through Friday of each week, excluding holidays; and "holidays" means New Years Day, Memorial Day, U.S. Independence Day, Labor Day, Thanksgiving Day and the Friday immediately thereafter, Christmas Eve, and Christmas Day.

2.4 Books and Records. Licensee shall maintain a complete set of books and records, in electronic format or otherwise, in connection with all aspects of and relating to the gross revenue from the Program including any expenses and costs related thereto, which books and records shall be kept and maintained in accordance with generally accepted accounting practices and procedures. Said books and records shall be available for inspection, copying, audit and examination by the City upon ten (10) days prior written request, and in connection therewith Licensee shall provide the same to the City at a location within the City as determined by the City.

Section 3. Miscellaneous.

3.1 Relationship of Parties. Licensee is and shall be at all times, and shall assume all duties under this Agreement as, an independent contractor, and shall not be deemed for any purpose to be an agent, servant, employee, or representative of Licensor. Licensor shall be solely responsible for the mode and manner of the conduct and performance of the Program under or in connection with this Agreement. Licensor shall not direct or have control over or charge of Licensee, its officers, managers, employees, representatives, technicians, agents, subcontractors, or Participants under or in connection with this Agreement, and the officers, managers, employees, representatives, technicians, agents, subcontractors, and Participants of Licensee shall at all times be under Licensee's exclusive direction and control. Nothing contained herein does or shall be construed to create a partnership, joint venture, joint enterprise, or agency relationship between the Parties, and nothing contained herein shall be construed to be inconsistent with such independent contractor relationship. Licensee shall be solely responsible for the wages, benefits, taxes, and any other similar obligation, in connection with its employees, agents, or servants. It is understood and agreed by and between the Parties that Licensee, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes

no responsibility or liability to any third person or party in connection with these actions.

3.2 Insurance. At all times in connection with this Agreement, Licensee shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

A. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards, and which coverage shall include contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement.

B. Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

C. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

With reference to the foregoing insurance requirement, Licensee shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas shall be named as an additional insured with respect to all liability policies.

2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the City.

3. A waiver of subrogation in favor of the Town of Addison, Texas, and its officials, officers, employees, and agents shall be contained in each policy required herein.

4. All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.

5. All insurance policies shall be endorsed to the effect that the City will receive at least ten (10) days' notice prior to cancellation or non-renewal of the insurance.

6. All insurance policies, which name the City as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. Licensee may maintain reasonable and customary deductibles.

9. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Licensee and the City on the Effective Date, and shall:

1. List each insurance coverage described and required herein. Such certificates will include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the City.

Upon request, Licensee shall furnish the City, with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

3.3 Licensee's Indemnification Obligation. Licensee covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to the City), INDEMNIFY, AND HOLD HARMLESS the City, its elected and appointed officials, and its officers, employees, agents, and representatives, individually or collectively, in both their official and private capacities (each an "City Person" and collectively the "City Persons"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the City and/or any other City Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) the conduct, operation, and/or provision of the Program by Licensee as described in this Agreement, including in Section 2.1, above, (ii) the use of the Licensed Locations by Licensee as described in this Agreement, including in Section 2.1, above, (iii) any representations and/or warranties by Licensee under this Agreement, (iv) any personal injuries (including but not limited to death) to any Licensee Persons (as hereinafter defined) arising out of or in connection with the Brick Wall Relocation under this Agreement, and/or (v) any act or omission under, in performance of, or in connection with this Agreement by Licensee or by any of Licensee's employees, agents, contractors, subcontractors, invitees, licensee, sublicensees, any Participants, or any other person or entity for whom Licensee is legally responsible, and their respective owners, directors, officers, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, and sublicensees (collectively, "Licensee Persons"). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY CITY PERSON, OR CONDUCT BY ANY CITY PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Licensee shall promptly advise the City in writing of any claim or demand against any City Person related to or arising out of Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Licensee's sole cost and expense. The City Persons shall have the right, at the City Persons' option and own expense, to participate in such defense without relieving Licensee of any of Licensee's obligations hereunder. This defense, indemnity, and hold harmless provision shall survive the expiration or earlier

termination of this Agreement.

3.4 Waiver, Release. Licensee, and all Licensee Persons (as defined in Section 3.3, above) do hereby RELEASE, WAIVE, ACQUIT, AND FOREVER DISCHARGE the Town of Addison, Texas and all other City Persons (as defined in Section 3.3, above) from, and COVENANT NOT TO SUE the Town of Addison, Texas or any other City Persons for, any and all claims, liability, judgments, lawsuits, demands, harm, losses, damages, proceedings, actions, causes of action, fees, fines, penalties, expenses, or costs (including, without limitation, attorneys fees and court costs) whatsoever for or related to any illness or injury of any kind or nature whatsoever (including, without limitation, death), or any damage to or destruction of any property, or any other harm or loss whatsoever, which Licensee and/or Licensee Persons may sustain or suffer in connection with or related to Licensee's provision and conducting of the Services and/or its activities under or in connection with this Agreement, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY CITY PERSON, OR CONDUCT BY ANY CITY PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Licensee shall cause each Participant to sign an agreement with Licensee regarding the Participant's participation in a Program, and each such agreement shall, in addition to any other terms or conditions thereof, include a similar provision as set forth above in this Section 3.4 whereby the Participant WAIVES, RELEASES, ACQUITS, AND FOREVER DISCHARGES the Town of Addison, Texas, its elected and appointed officials, and its officers, employees, agents, and representatives from, and covenants not to sue the Town of Addison, Texas, its elected and appointed officials, and its officers, employees, agents, and representatives for, any and all claims, liability, judgments, lawsuits, demands, harm, losses, damages, proceedings, actions, causes of action, fees, fines, penalties, expenses, or costs (including, without limitation, attorneys fees and court costs) whatsoever for or related to any illness or injury of any kind or nature whatsoever (including, without limitation, death), or any damage to or destruction of any property, or any other harm or loss whatsoever, which the Participant may sustain or suffer in connection with or related to the Program and Licensee's provision thereof, or to the Licensed Locations and condition thereof, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY OF THE TOWN OF ADDISON, TEXAS, ITS ELECTED AND APPOINTED OFFICIALS, AND ITS OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, OR CONDUCT BY ANY OF THE TOWN OF ADDISON, TEXAS, ITS ELECTED AND APPOINTED OFFICIALS, AND ITS OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND; and Licensor shall be a third party beneficiary of such provision and the agreement between Licensee and Participant shall so provide.

3.5 Assignment. Licensee may not, and has no power or authority to, assign, transfer, sell, or otherwise convey this Agreement, in any manner or form whatsoever, without the prior written consent of the City.

3.6 Notices. Unless otherwise provided for in this Agreement, any notice required or permitted under this Agreement shall be in writing and shall be given or provided by (i) personal delivery, (ii) U.S. mail, as certified or registered mail, with postage prepaid, addressed as follows,

or (iii) placing the same in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered next business day. Except as may be otherwise specified herein, such notice shall be deemed given provided, delivered, or given (a) if by personal delivery, on the date of delivery; (b) if by mail (as aforesaid), on the third business day following the date of mailing; or (c) if placed in the custody of Federal Express Corporation or other nationally recognized carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice. Until further notice, notices under this Agreement shall be addressed as follows:

If to the City: Town of Addison, Texas
 16801 Westgrove Dr.
 Addison, TX 75001
 Attn: Slade Strickland, Director of Parks, Recreation and
 Landscape Development

If to Licensee: _____

 Attn: _____

Each Party may specify a different address (in Dallas County, Texas) and to whose attention notice is to be given by giving five (5) days written notice to the other Party.

3.7 Severability. The terms and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

3.8 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

3.9 Recitals. The above and foregoing Recitals to this Agreement are incorporated herein and made a part hereof for all purposes.

3.10 Exhibits. The exhibits to this Agreement are incorporated herein and made a part hereof.

3.11 Governing Law; Venue. This Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas, without reference to the choice of law rules of any jurisdiction. All obligations of the parties created by this Agreement are performable in Dallas County, Texas. Venue for any action or suit under this Agreement shall lie exclusively in the state courts located in Dallas County, Texas, and the parties hereby

expressly consent to the personal jurisdiction of such state courts and waive any objection they may now or hereafter have to such venue.

3.12 Amendment. This Agreement may be amended solely by the mutual agreement of authorized representatives of the Parties, in writing and attached to and incorporated in this Agreement.

3.13 Survival of Covenants; Rights, Remedies. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the expiration or earlier termination of this Agreement, shall survive such expiration or termination. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other rights or remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance, or otherwise.

3.14 Construction of Certain Terms. Section and subsection headings herein are for convenience only and shall not be used in interpretation of this Agreement. The words “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

3.15 No Waiver of Immunity. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

3.16 No Third-Party Beneficiaries. Except as provided for in this Agreement, the provisions of this Agreement are solely for the benefit of Licensor and Licensee and are not intended to and do not create or grant any rights, contractual or otherwise, to any third person or entity.

3.17 Authorized Persons. The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the respective parties hereto.

EXECUTED to be effective on the Effective Date as first set forth above.

LICENSOR:

LICENSEE:

TOWN OF ADDISON, TEXAS

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
LICENSED LOCATIONS

Contact Information:

Name: _____ Address: _____

Phone #: _____ Alternate Phone #: _____ Email: _____

Licensed Locations	Start Time	Ending Time	Day(s) of Week	Participant Nos.	Name of Contact / Phone #
	_____	_____	_____	_____	_____