

**FIRST AMENDMENT TO HEALTH AND WELLNESS AGREEMENT BETWEEN  
FITNESS & WELLNESS WORKS AND NORTHWEST FOCAL POINT SENIOR  
CENTER DISTRICT**

**THIS FIRST AMENDMENT TO THE HEALTH AND WELLNESS AGREEMENT** ("First Amendment") is made this 17 day of October, 2018, by and between **FITNESS AND WELLNESS WORKS** (hereinafter referred to as the "F&WW") and **NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT** (hereinafter referred to as the "NWFPSC").

**WITNESSETH:**

**WHEREAS**, on September 21, 2017, the Parties entered into an Agreement ("Original Agreement") whereby NWFPSC allows use of certain property for health and wellness classes taught by F&WW; and,

**WHEREAS**, the Original Agreement has been automatically renewed for a one year term, which term expires on September 20, 2019; and,

**WHEREAS**, certain sections of the Original Agreement require amendment; and,

**WHEREAS**, certain language and clauses need to be added to the Original Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, the F&WW and NWFPSC agree as follows:

**SECTION 1.** The foregoing "Whereas" clauses are hereby ratified as being true and correct, and incorporated herein.

**SECTION 2.** NWFPSC and F&WW hereby agree to the following amendments to the terms and conditions of the Original Agreement:

- 1) The section of the Original Agreement entitled "Alterations" is hereby amended as follows:

Alterations. Provider shall not, without consent of NWFPSC, make any alterations, additions or improvements in, on, or about the premises.

- 2) The section of the Original Agreement entitled "Ordinances and Statutes" is hereby amended as follows:

Ordinances and Statutes. Provider shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Provider. The parties agree to comply with Health

Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d ("HIPAA") and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 ("Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 ("Federal Security Regulations"), all collectively referred to herein as "HIPAA Requirements".

- 3) The section of the Original Agreement entitled "Assignment and Subletting" is hereby amended as follows:

Assignment and Subletting. Provider shall not assign this Agreement or sublet any portion of the premises without prior written consent of the NWFPSC. Any such assignment or subletting without consent shall be void and, at the sole discretion of the NWFPSC, may be cause for termination of this Agreement as provided for herein.

- 4) The section of the Original Agreement entitled "Venue" is hereby amended as follows:

Venue. This Agreement shall have been deemed to have been executed within the State of Florida and shall be governed by the laws of the State of Florida. Venue for any claim, objection or dispute arising out of or related to this Agreement shall be in Broward County, Florida.

**SECTION 3.** NWFPSC and F&WW hereby agree to the following additions to the terms and conditions of the Original Agreement:

- 1) Public Records. NWFPSC is a public agency subject to Chapter 119, Florida Statutes. F&WW shall comply with Florida's Public Records Law. Specifically, F&WW shall
  - a) Keep and maintain public records required by NWFPSC to perform under the Original Agreement;
  - b) Upon request from NWFPSC, provide NWFPSC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;
  - c) Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Original Agreement term and, following completion of the Original Agreement, F&WW shall destroy all copies of such confidential and exempt records remaining in its possession after F&WW transfers the records in its possession to the NWFPSC; and

- d) Upon completion of the Original Agreement, F&WW shall transfer to NWFPSC, at no cost to NWFPSC, all public records in F&WW's possession. All records stored electronically by F&WW must be provided to NWFPSC, upon request from NWFPSC's custodian of public records, in a format that is compatible with the information technology systems of NWFPSC.
- e) The failure of F&WW to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and NWFPSC shall enforce the Default in accordance with the provisions set forth herein.

**IF F&WW HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE ORIGINAL AGREEMENT AND THIS FIRST AMENDMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY CLERK, 5790 MARGATE BLVD., MARGATE, FL 33063, (954) 935-5327, [CityClerk@Margatefl.com](mailto:CityClerk@Margatefl.com)**

- 2) Execution in Counterparts. This First Amendment may be executed in counterparts, all of which taken together shall be deemed one original. The date of this First Amendment shall be the latest date on which any party executes this First Amendment.
- 3) Headings and Usage. The headings, captions, and section numbers contained herein are provided for convenience only and are not part of the terms of this First Amendment. When the context of the words used in this First Amendment indicate that such is the intent, words in the singular shall include the plural, and vice versa, and the references to the masculine, feminine or neuter shall be construed as the gender of the person, persons, entity or entities referred to require.
- 4) No Waiver of Sovereign Immunity. Nothing contained herein is intended to serve as a waiver of sovereign immunity by NWFPSC or as a waiver of limits of liability of rights existing under Section 768.28, Florida Statutes.
- 5) Independent Contractor. F&WW is intended to be an independent contractor. Neither the Original Agreement nor this First Amendment creates a partnership, joint venture, agency, fiduciary or employment relationship between the parties.
- 6) Scrutinized Companies. In accordance with section 278.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local government entity for goods or services if:

- a. Any amount of, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- b. One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contracts, the company is:
  - i. On the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.73 Florida Statutes; or
  - ii. Is engaged in business operations in Syria.
- c. By submitting a bid, proposal or response, the company, principals or owners certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Syria.

**SECTION 4.** The Parties agree that in all other respects the Original Agreement, as shall remain in full force and effect, except as specifically modified herein by this First Amendment.

**SECTION 5.** In the event of any conflict or ambiguity by and between the terms and provisions of this First Amendment and the Original Agreement, the terms and provisions of this First Amendment shall control to the extent of any such conflict or ambiguity.

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IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

**FITNESS & WELLNESS WORKS**

By: \_\_\_\_\_  
Signature

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT**

By: \_\_\_\_\_  
Arlene Schwartz

Title: Board Chair

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Karin Diaz

Title: Project Director

Date: \_\_\_\_\_

I HEREBY CERTIFY THAT I HAVE  
APPROVED THIS RESOLUTION  
AS TO FORM:

\_\_\_\_\_  
Jim Cherof, Interim City Attorney