

LICENSE AGREEMENT

This License Agreement ("Agreement") is made this 30th day of November, 2020, by and between the CITY OF LONG BEACH, a New York municipal corporation with offices located at 1 West Chester Street, Long Beach, New York 11561 ("Licensor") and SKUDIN SWIM, INC., a New York State domestic limited liability company, having an address of 218 East Park Avenue #552, Long Beach, New York 11561 ("Licensee"). Licensor and Licensee may be referred to collectively as "Parties" and sometimes referenced individually as "Party".

RECITALS:

A. Licensor is the owner of a municipal pool located at 700 Magnolia Blvd, Long Beach New York 11561 (the "Property").

B. On October 27, 2020, Licensor issued a Request for Proposals for Recreation Programs ("RFP").

C. On November 12, 2020, Licensee submitted its RFP response to the Licensor ("RFP Response").

D. Licensee desires to use the municipal pool located at the Property (the "Licensed Space").

E. Licensee desires to obtain the right to use Licensed Space to conduct the following activities:

- i. Private & Group Swim Lessons;
- ii. Club Swim Team Programs;
- iii. Junior Watermen Program;
- iv. Red Cross Water Safety Instructor Course;
- v. Red Cross Lifeguard Course;
- vi. Baby & Me Parent Swim Lessons;
- vii. Water Safety Classes;
- viii. Water Aerobics Classes;
- ix. Lifeguard Services;
- x. Water Polo Programs;
- xi. Scuba Diving Classes; and
- xii. Noncompetitive swimming water activities.

F. Licensor is willing to permit Licensee to use the Licensed Space as a facility to conduct the activities specified in Recital "E" and its subsections, *supra*, in accordance with the terms and conditions set forth herein.

ACCORDINGLY, the Parties agree as follows:

1. Recitals. The foregoing preambles and all other recitals set forth above, as well as the documents referenced therein, are hereby incorporated into and made a part of this Agreement.

2. Grant of License. Licensor hereby grants to Licensee a license to use the Licensed Space to conduct the activities specified in Recital "E" and its subsections, pursuant to the terms and conditions set forth in this Agreement, on a strict month-to-month basis ("Term"), unless terminated sooner as provided herein. Licensee shall provide a proposed monthly use schedule in advance, approval of which is subject to the sole discretion of the Licensor.

3. License Fee. Licensee shall pay the Licensor a license monthly fee in accordance with the following fee schedule;

- a. While COVID-19 restrictions are in place, thereby reducing capacity due to social distancing requirements, the fee for entire licensed space is \$105.00 per hour;
- b. Once COVID-19 restrictions are lifted, the fee for entire licensed space is \$150.00 per hour;
- c. Regardless of any COVID-19 restrictions, the fee for partial licensed space is \$18.00 per hour, per lane;

License fees are to be paid on or prior to the first day of each month of Licensee's use of the Licensed Space.

4. Use of the Licensed Space. During the Term, Licensee shall have the right to enter upon and use the Licensed Space for the purposes set forth in Paragraph 2 and Recital "E", above and in accordance with the following:

- a. Licensee shall comply with and use the Licensed Space in accordance with all local, state and federal laws, ordinances and regulations (the "Laws"), now or hereafter in effect, including any Laws relating to access for persons with disabilities and any Laws, guidance or emergency orders issued in response to a City, State or Federally declared disaster or emergency, including COVID-19, including any and all guidance, now or hereafter in effect, issued by the New York State Department of Health and the Centers for Disease Control and Prevention in response to COVID-19.
- b. Licensee shall be responsible for obtaining, at its sole cost and expense, any and all licenses, certifications, accreditations and/or approvals (collectively the "Approvals") necessary in order to operate its program in the Licensed Space, shall maintain the same in good standing for the Term of this Agreement, and shall comply with all requirements associated therewith. Licensee shall provide to Licensor a copy of all Approvals prior to commencement of the Term/Licensee's use of the Licensed Space.
- c. Licensee shall, at its sole cost and expense, have the Long Beach Police Department conduct background checks on all employees, instructors, agents, representatives, invitees, and volunteers involved in the program(s) conducted by Licensee in the Licensed Space prior to commencement of the Term of Licensee's use of the Licensed Space. Licensee shall provide to Licensor copies of all such background checks prior to commencement of the Term of Licensee's use of the Licensed Space.

d. Licensee shall not hold the Licensor liable or seek reimbursement, abatement, or remuneration for any interruption in business, utilities, supplies, programming, or other operation resulting from any City, Local, State or Federally declared disaster or emergency, including any shutdowns required in response to COVID-19.

5. Lifeguard Service. Licensee is capable of staffing Nassau County Certified Lifeguards. Licensor may request Licensee to staff and lifeguard the Licensed Space at a cost of \$23.00 per hour (the "Credit"). Licensee may only staff lifeguards at the Licensor's request and only during times of Licensee's use of the Licensed Space. This "Credit" is a flat rate fee that takes in to consideration the supervising and administration fee(s) of staffing Lifeguards for the Licensor. The Credit will be applied to the cost of Licensee's license fee.

6. Lifeguard Requirements. Any person to be staffed as a lifeguard at the Licensed Space, under the jurisdiction of the Nassau County Department of Health, must possess an appropriate current lifeguard certification issued by the Nassau County Department of Parks, Recreation and Museums.

7. Indemnification. Licensee hereby agrees to defend, indemnify, and to hold harmless Licensor and its agents, Council members, representatives, employees, contractors, and invitees from and against any claim, liability, cause of action, lawsuit, loss, damage, cost, or expense (including, without limitation, reasonable attorney's fees and court costs) (collectively the "Losses") including any Losses relating to damage to the Property or injury, sickness or death to any person arising out of or otherwise relating to the exercise of Licensee's rights under this Agreement and/or Licensee's use of the Licensed Space, and Licensee further agrees to pay all costs and expenses (including reasonable attorneys' fees and court costs) incurred by Licensor in enforcing this indemnity.

8. Insurance: During the Term, Licensee shall maintain in force, at its sole cost and expense:

- a. Commercial General Liability including contractual liability for bodily injury and property damage of at least \$1,000,000 per occurrence, \$2,000,000 aggregate;
- b. Personal Injury Liability Insurance in the amount of \$1,000,000;
- c. Personal Property Insurance in an amount sufficient to cover the replacement of Licensee's personal property used in connection with the Licensed Space;
- d. Workers' Compensation and Disability Benefits Insurance in the amounts required by statute; and
- e. Business Interruption Insurance.

The policy[ies] required by this paragraph shall name Licensor as additional insured, where applicable. The Licensee shall provide Licensor certificates evidencing the required insurance prior to the commencement of the Term of its use of the Licensed Space. All such policies, where applicable, shall be written by a reputable insurance company licensed to do business in the State of New York and shall provide that Licensor will be given notice at least thirty (30) days prior to

termination or cancellation of the same. Notwithstanding the foregoing, the Licensor reserves the right to require higher liability limits for the above insurance policies if, in the opinion of the Licensor's Risk Manager, Licensee's program warrants the same.

9. Mutual Waiver of Subrogation. Notwithstanding any inconsistent provisions of this License, neither of the parties hereto, their respective agents, employees, or invitees shall be liable, and each is hereby released from all liability to the other party, its insurance carrier, or to anyone claiming under or through it by way of subrogation or otherwise, for any loss or damage whatsoever to the Building, or to the Equipment or contents thereof, or to any personal property owned by Licensee, resulting from fire, explosion, or any other insured casualty, regardless of cause or origin, specifically including the negligence of the respective parties hereto, their agents, employees, or guests so long as any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance.

10. Termination. This Agreement may be terminated as set forth below.

- a. Licensor reserves the absolute right to terminate this Agreement at any time by service of written notice sent by certified mail to the Licensee's address set forth above. Upon termination of this Agreement, Licensee shall, at its sole cost and expense, promptly remove or cause to be removed from the licensed areas of the Premises any and all of the machinery, equipment, supplies and other personal property, and Licensee shall restore any areas within the Premises affected by the entry of Licensee to the condition existing prior to the entry; or
- b. Licensee may terminate this Agreement upon fourteen (14) days' notice to the Licensor.

The exercise by Licensor of its rights of termination as provided in Subparagraph (a) above is a nonexclusive remedy and Licensor shall have the right to pursue any other remedies available to it under applicable law.

11. Maintenance and Utilities. Licensee shall maintain the Licensed Space in good repair and condition. Licensee shall not make, or suffer to be made, any alterations of the improvements to or of the Licensed Space without the prior written consent of Licensor, which may be withheld or conditioned in Licensor's sole discretion. Licensor shall be responsible for the payment of utilities servicing the Licensed Space.

12. Records. The Licensee shall, at its sole expense, maintain full, complete and accurate books and records, documents, accounts and other evidence of accounts, whether maintained electronically or manually ("Records") pertinent to its use and operation of the Licensed Space. Records shall be maintained in accordance with generally accepted accounting principles and, if the Licensee is a non-profit entity and receives any local, state or federal funds, must comply with the accounting guidelines set forth by the local, state and/or federal agency. The Licensee shall maintain the Records for a period of six (6) years following termination or expiration of this Agreement. Such Records shall at all times be available for audit and inspection by the City Comptroller, the City Manager, any other governmental authority with jurisdiction over the administration of the Licensed Space and the payment therefore, and any of their duly designated representatives. Licensee further agrees to provide a response to any request from the

Licensor's Records Access/FOIL Officer.

13. Assignment and Subletting. Licensee shall not assign this Agreement or any interest in it, nor sublicense the Licensed Space or any part of it or any right or privilege, nor permit the occupancy or use of any part of it by any other person or entity, without the prior written consent of Licensor, which may be withheld or conditioned in Licensor's sole discretion. In the event of any permitted assignment or sublicense, Licensee shall remain liable to Licensor for performance of all of the terms and conditions of this Agreement. Consent by the Licensor to an assignment or sublicense shall not be a consent to subsequent assignment or sublicense.

14. Taxes. The Property is exempt from real property taxes. Licensee shall be responsible for the payment of all taxes applicable to the operation of its program conducted in the Licensed Space.

15. Request for Proposal. Licensee shall operate its program in the Licensed Space in accordance with the standards and requirements as set forth in the RFP issued by Licensor and in accordance with Licensee's RFP Response, both of which are incorporated herein and made a part of this Agreement. In the event of any conflict between the RFP, the RFP Response and this Agreement, this Agreement shall prevail. Any representations given by Licensee in the RFP Response shall be true as of the date of the execution of this Agreement and throughout the Term. Should Licensee fail to follow the requirements as set forth in this Agreement, the RFP or as indicated in the RFP Response (unless such change is otherwise approved by Licensor in writing), such failure shall be deemed a default under this Agreement.

16. Rules and Regulations. Licensor reserves the right to adopt rules and regulations with respect to the Licensed Space. Said rules and regulations as may be adopted shall apply to Licensee and Licensee hereby agrees to be bound thereby and to cooperate as to their enforcement by Licensor and to disseminate or communicate them to its employees, instructors, agents, representatives, invitees and volunteers. Smoking is not permitted at, near or in the Property. Licensee shall take all reasonable steps to enforce the "no smoking" policy.

17. Notices. All notices hereunder shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, or by nationally-recognized overnight courier to the address of the other party as set in the preamble to this Agreement or to such other address as such party shall have designated. Any notice shall be deemed received upon delivery, if delivered in person, three (3) days after deposit with the United States Postal Service, if sent by registered or certified mail, postage prepaid, and the next day after deposit with the nationally-recognized overnight courier, if sent by nationally-recognized overnight courier.

18. Independent Contractor. In performing, directing, or otherwise managing its respective duties and obligations hereunder, Licensee shall be deemed to be acting as an independent contractor and nothing herein shall be considered or deemed to establish or otherwise create a relationship of employer and employee, principal and agent, partnership, agency, or joint venture as between the parties, or between either party and any employee or subcontractor of the other party. Each party shall at all times maintain complete control over its employees and operations, including the activities of its instructors, agents, representatives, invitees and volunteers and shall be responsible for all payments to and claims by any of its employees,

instructors, agents, representatives, invitees and volunteers in connection with the program(s) operated by Licensee in the Licensed Space.

19. Entry and Inspection. Licensor and its agents may enter upon the Licensed Space at any time and for any purpose, including to assess Licensee's compliance with the terms of this Agreement. In the event Licensor or its agents find violations, liquidated damages may be assessed to the Agreement for each violation.

20. Limitations of Licensor's Liability. The Licensor shall not be liable for any damage or injury to the Licensed Space, or any person therein, or to goods, wares, merchandise or property of the Licensee, or of any other person contained therein, done or occasioned by or from, unless the aforesaid occurs as a result of the negligence of the Licensor.

21. Expiration of Term. Upon expiration or earlier termination of this Agreement, Licensee shall immediately vacate the Licensed Space and leave the Licensed Space in the same condition as it existed upon execution of this Agreement, excepting reasonable wear and tear.

22. Miscellaneous.

- a. *Entire Agreement.* This Agreement sets forth all the promises, agreements and understandings between the parties with respect to the subject matter hereof. It is further agreed that any amendment or modification to this Agreement shall not be binding unless such amendment or modification is reduced to writing and signed by all of the parties hereto.
- b. *Governing Law.* Any controversy or claim arising from or relating in any way to this Agreement shall be governed and controlled by the laws of the State of New York.
- c. *Invalidity of Particular Provision.* If any term or provision of this Agreement or the application hereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- d. *Paragraph Headings.* The paragraph headings in this Agreement are for convenience only and shall not limit or be deemed to construe or interpret the terms and provisions of this Agreement.
- e. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. PDF signatures shall be treated as original signatures for all purposes hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first set forth above.

LICENSOR:

CITY OF LONG BEACH

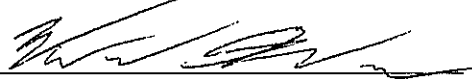
By: 

Name: _____

Title: _____

LICENSEE:

~~SKUDIN SWIM, INC.~~

By: 

Name: Woodward L. Skudin

Title: CEO