

LICENSE AGREEMENT

This License Agreement [AGREEMENT] is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation [CITY], and WEIGHT WATCHERS NORTH AMERICA, INC., a Delaware corporation [LICENSEE], to be effective on May 1, 2017 when executed by the parties and approved by the San Diego City Attorney.

RECITALS

WHEREAS, CITY leases the premises located at 1200 Third Avenue, San Diego, California pursuant to the Lease Agreement between CITY, as Tenant, and CCP 1200, LLC, as Landlord, on file in the Office of the San Diego City Clerk as Document No. OO-20462 [Master Lease], a portion of which LICENSEE may use as further set forth in this AGREEMENT; and

WHEREAS, CITY desires to grant LICENSEE the non-exclusive right to enter onto the PREMISES for the LICENSE USE, as defined in this AGREEMENT, and as further described in Exhibit A, based upon the following terms and conditions:

I. DEFINITIONS

- 1.1. LICENSEE: WEIGHT WATCHERS NORTH AMERICA, INC. LICENSEE shall be responsible for all of the LICENSEE's agents, employees and volunteers and ensure that they adhere to all conditions stated in this AGREEMENT.
- 1.2. LICENSE USE: The non-exclusive use of the PREMISES to hold meetings once a week, on Tuesdays from 11:15 a.m. to 1:15 p.m., in accordance with this AGREEMENT.
- 1.3. PREMISES: The conference room located at 1200 Third Avenue, Suite 403, San Diego, California, leased by the CITY pursuant to the Master Lease.

II. AGREEMENT

- 2.1. License. Subject to the terms and conditions of this AGREEMENT, CITY grants permission to LICENSEE to enter upon the PREMISES solely for the purpose of the LICENSE USE. LICENSEE acknowledges and agrees that this AGREEMENT is subject and subordinate to the Master Lease.
- 2.2. Term. The term shall commence on May 1, 2017 and shall expire on April 30, 2019 [Term]. A reasonable extension to the Term may be granted at the sole discretion of CITY.
- 2.3. CITY's Consent/Approval. Whenever required under this AGREEMENT, CITY's consent or approval means the written consent or approval of the Mayor of the City of San Diego, or his or her designee [Mayor], unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.

- 2.4. Use of PREMISES. LICENSEE may use the PREMISES solely for the LICENSE USE and for no other purpose whatsoever, without CITY'S prior written consent in each instance. CITY is granting LICENSEE a non-exclusive right of entry to enter the PREMISES and make limited use of the PREMISES, based on the terms and conditions of this AGREEMENT. No provisions of this AGREEMENT shall be construed to either create a landlord/tenant or agency relationship between CITY and LICENSEE, or create any form of a limited estate in favor of LICENSEE. CITY reserves the right to enter upon the PREMISES at all times and to inspect and maintain the PREMISES as CITY deems necessary so long as LICENSEE'S conduct of business is not interrupted.
- 2.5. Revocable License. This AGREEMENT is not a lease. This AGREEMENT is a license to use the PREMISES, and may be revoked at will by CITY, in its sole discretion: (a) immediately upon written notice delivered to LICENSEE if LICENSEE breaches or defaults any of LICENSEE's obligations under this AGREEMENT, or in case of an emergency; or (b) upon reasonable prior written notice, but not less than thirty (30) days, delivered to LICENSEE if for CITY's convenience. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by LICENSEE as a result of such revocation or termination of this AGREEMENT. LICENSEE expressly waives any claim for expense or loss which LICENSEE might incur as a result of CITY'S revocation or termination of this AGREEMENT.
- 2.6. Assignment and Sublicense. LICENSEE shall not assign or sublicense any rights granted by this AGREEMENT or any interest in this AGREEMENT without CITY'S prior written consent. Approval of any such proposed assignment or sublicense may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this AGREEMENT.
- 2.7. Compliance with Law. LICENSEE shall, at its sole cost and expense, at all times in its occupancy, use and maintenance of the PREMISES comply with all rules, regulations and laws, and all direction by competent authority, which now or hereafter pertain to LICENSEE's occupancy, use, and maintenance of the PREMISES.
- 2.8. Drug-Free Workplace and Non-Discrimination. LICENSEE agrees to comply with the CITY's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952, and incorporated into this AGREEMENT by this reference.
- LICENSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or disability with respect to employment, contracting, admission, or services provided pursuant to this AGREEMENT.
- 2.9. Maintenance of PREMISES. CITY shall, at CITY'S sole cost and expense and to CITY'S satisfaction, maintain the PREMISES in good order and repair, including adequate heat and/or ventilation and in a safe, healthy and sanitary condition at all times during the Term. The CITY shall provide the usual custodial and maintenance services.

LICENSEE shall be responsible for removing their trash and cleaning table tops and counters at the end of their meetings.

- 2.10. Improvements/Alteration. LICENSEE shall not construct any improvements, structures, or installations on the PREMISES, and shall not alter the PREMISES in any way without the prior written consent of CITY in each instance. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to PREMISES.
- 2.11. Storage. LICENSEE'S supplies will consist of a scale, several boxes of literature, clerical supplies and products which must be stored on site. LICENSEE will be allowed to store supplies in a locked cabinet provided by Weight Watchers and placed in the PREMISES. Cabinet size, design, and location must be approved by CITY prior to cabinet installation.
- 2.12. Signs. CITY reserves the right to require LICENSEE to remove any display, banner, pennant, flag, poster, sign, decoration, awning, or similar advertising that CITY deems offensive or inappropriate for a professional environment. If any such unauthorized item remains on the PREMISES twenty-four hours after CITY's request to remove, CITY may thereafter remove the item at LICENSEE's cost.
- 2.13. Entry and Inspection. CITY reserves the right to enter and inspect the PREMISES at any time, without notice, so long as a LICENSEE's conduct of business is not interrupted.
- 2.14. Insurance. LICENSEE shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the use, occupancy and maintenance of the PREMISES.
 - a. MINIMUM SCOPE AND LIMIT OF INSURANCE
Coverage shall be at least as broad as:
 - i. Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - ii. Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
 - iii. Property Insurance against all risk of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If LICENSEE maintains broader coverage and/or higher limits than the minimums shown above, CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by LICENSEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY.

- b. OTHER INSURANCE PROVISIONS. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- i. Additional Insured Status. CITY, CCP 1200, LLC, Wilmington Trust, National Association, as trustee for the registered certificate holders, from time to time, of the CGA Capital Credit Lease-Back Pass Through Trust, Series 2015-CTL-1, and CBRE, Inc., their officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of LICENSEE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
 - ii. Primary Coverage For any claims related to this AGREEMENT, LICENSEE's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of LICENSEE's insurance and shall not contribute with it.
 - iii. Certificate Holder. The City of San Diego, c/o CBRE, Inc. 1200 Third Avenue, Suite 405, San Diego, CA 92101.
 - iv. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to CITY.
 - v. Waiver of Subrogation. LICENSEE hereby grants to CITY a waiver of any right to subrogation which any insurer of said LICENSEE may acquire against CITY by virtue of the payment of any loss under such insurance. LICENSEE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not CITY has received a waiver of subrogation endorsement from the insurer.
- c. Self-Insured Retentions. Self-insured retentions must be declared to and approved by CITY. CITY may require LICENSEE to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations,

claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or CITY.

- d. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise acceptable to CITY.

CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

- e. **Verification of Coverage.** LICENSEE shall furnish CITY with standard certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive LICENSEE's obligation to provide them.
- f. **Special Risks or Circumstances.** CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- g. **Additional Insurance.** LICENSEE may obtain additional insurance not required by this AGREEMENT.
- h. **Excess Insurance.** All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

- 2.15. **Indemnification.** LICENSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LICENSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this AGREEMENT or LICENSEE's occupancy, use or maintenance of the PREMISES, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LICENSEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole gross negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LICENSEE shall pay all reasonable costs related thereto, including

without limitation reasonable attorney fees and costs.

- 2.16. LICENSEE's Risk and Accident Reports. LICENSEE shall bear all risks and liability arising out of or in any manner directly connected with the LICENSEE's occupancy, use and maintenance of the PREMISES, and any damages to CITY improvements and property on, under, or in the vicinity of the PREMISES. LICENSEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the LICENSE USE or the PREMISES. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

- 2.17. The PREMISES shall not be used to engage in activities other than those authorized by LICENSE USE. Use of CITY-provided resources shall be limited to necessary and reasonable use related to LICENSE USE, as authorized by this AGREEMENT.

Any activities carried on at PREMISES beyond those authorized by LICENSE USE may be treated by CITY as a material breach of this AGREEMENT.

- 2.18. Termination Rights

- a. CITY's Right to Terminate for Convenience. CITY may, at its sole option and for its convenience, terminate this AGREEMENT, and as further set forth in Section 2.5, above.
- b. LICENSEE'S Right to Terminate for Convenience. LICENSEE may terminate this AGREEMENT for convenience by giving notice as provided for in Sections 2.19 and 2.20 (below). The termination of this Agreement shall be effective 30 calendar days after receipt of the notice by the CITY.
- 2.19. Notice. In all cases where written notice is required under this AGREEMENT, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage prepaid. Proper notice shall be effective on the date it is mailed, unless otherwise provided in this AGREEMENT.
- 2.20. For the purposes of this AGREEMENT, unless otherwise modified by written amendment to this AGREEMENT, notice to CITY shall be addressed to:

City of San Diego
Real Estate Assets Department
Attn: Director
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Notice to LICENSEE shall be addressed to:

Weight Watchers North America, Inc.
999 Stewart Avenue, Suite 215
Bethpage, NY 11714

- 2.21. No Affiliation. This AGREEMENT is between independent entities. Nothing in this AGREEMENT is intended to create the relationship of agent, servant, employee, partnership, joint venture, or association. Any provisions in the AGREEMENT that may appear to give CITY any right to direct the LICENSEE concerning the details of performance, or to exercise any control over such performance, shall mean only that LICENSEE shall follow the direction of CITY concerning the LICENSE USE.
- 2.22. Hazardous Materials. LICENSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the PREMISES by any of LICENSEE's officers, employees, agents, contractors, invitees and guests. LICENSEE and LICENSEE's officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the PREMISES without CITY's prior written consent. LICENSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
- a. Release. For all purposes of this AGREEMENT, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
 - b. Hazardous Substance. For all purposes of this AGREEMENT, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
 - c. Remediation. If LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES results in a release of a Hazardous Substance, LICENSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the PREMISES, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
 - d. Removal. If LICENSEE or LICENSEE's officers, employees, agents, contractors, invitees and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the PREMISES, LICENSEE shall remove all Hazardous Substances in any type of container, equipment or device from the PREMISES immediately upon or prior to the expiration or earlier termination of this AGREEMENT. CITY reserves the right to conduct inspections of the PREMISES and/or request documentation demonstrating the

legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the PREMISES. LICENSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- e. Indemnity. LICENSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LICENSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If LICENSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the PREMISES, LICENSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LICENSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LICENSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LICENSEE shall take all actions necessary to alleviate the danger. LICENSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the PREMISES.
- g. Environmental Assessment. Upon reasonable cause to believe that LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES resulted in any Hazardous Substance being released on, from or beneath the PREMISES, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LICENSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the PREMISES, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LICENSEE shall cause, or

if LICENSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the PREMISES and compliance with environmental laws and regulations are achieved, and LICENSEE shall pay all costs and expenses therefor.

- 2.23. Storm Water Pollution Prevention Program. LICENSEE shall, at its sole cost and expense, comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the CITY's Jurisdictional Runoff Management Plan, in performing the Activity or delivering services at CITY owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

LICENSEE shall comply with the CITY's Jurisdictional Runoff Management Plan encompassing CITY-wide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the City Council on July 1, 2015, by Resolution No. 309791, as may be amended.

LICENSEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the Activity to minimize any negative impact to the storm water collection system and environment.

- 2.24. Severability. The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision of this AGREEMENT unenforceable, invalid, or illegal.
- 2.25. Cumulative Remedies. CITY's rights and remedies under this AGREEMENT are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 2.26. Survival. Any obligation which accrues under this AGREEMENT prior to its expiration or termination shall survive such expiration or termination.
- 2.27. Exhibits Incorporated. All Exhibits referenced in this AGREEMENT are incorporated into this AGREEMENT by this reference.
- 2.28. Entire Agreement. This AGREEMENT supersedes all previous Agreements between the parties relating to LICENSEE's use of the PREMISES and constitutes the entire agreement between the parties. Any modification, alteration, or amendment of this AGREEMENT shall be in writing and signed by all the parties hereto.
- 2.29. Applicable Law, Venue, and Jurisdiction. This AGREEMENT shall be governed by and construed in accordance with California law. Any action by a party to this AGREEMENT to enforce or interpret its terms shall be maintained in the San Diego County Superior Court or the Federal District Court for the Southern District of

California.

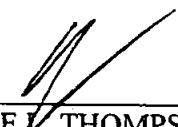
- 2.30. Authority to Contract. Each individual executing this AGREEMENT on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this AGREEMENT on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this AGREEMENT is binding upon such person or entity in accordance with its terms. Each person executing this AGREEMENT on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the later date the Agreement is signed by the parties and approved by the City Attorney.

Licensor:

CITY OF SAN DIEGO, a California municipal corporation

Date: 4/17/17

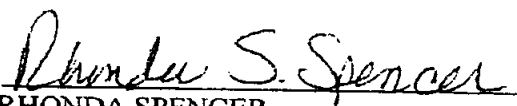
By: 

CYBELE L. THOMPSON, Director
Real Estate Assets Department

Licensee:

WEIGHT WATCHERS NORTH AMERICA, INC., a Delaware corporation

Date: _____

By: 

RHONDA SPENCER
Territory Manager

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

By: 
ALYSSA MUTO, Deputy Director
Environmental & Policy Analysis

Approved as to form this 10th day
of May, 2017.

MARA W. ELLIOTT, City Attorney

By: 
Name: Marco A. Verdugo
Title: Deputy City Attorney

EXHIBIT A

CIVIC CENTER PLAZA
1200 3rd AVENUE
SAN DIEGO, CA
FOURTH FLOOR
(As Modified February 2015)

