

**MOTORCITY CASINO HOTEL**  
2022



**KAPNICK STRIVE**  
**SILVER SERVICE AGREEMENT**



## WORKSITE WELL-BEING

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## KAPNICK STRIVE SILVER SERVICE AGREEMENT |

This Kapnick Strive Silver Service Agreement, (hereinafter referred to as "Agreement") made and entered into as of **January 1, 2022** (hereinafter referred to as "Effective Date"), is between Detroit Entertainment, L.L.C. d/b/a MotorCity Casino Hotel (hereinafter referred to as "Client"), and Kapnick & Company, Inc. (hereinafter referred to as "Kapnick").

**WHEREAS**, Client has previously established and continues to maintain a wellness program (the "Program");

**WHEREAS**, Client desires the assistance of Kapnick for, among other things, strategic health and wellness planning and program implementation for the Program;

**WHEREAS**, Kapnick has superior knowledge and expertise in assisting employers with designing, servicing, program implementing and communicating health and wellness programs through its KAPNICK strive® program ("Kapnick Strive Program"); and

**WHEREAS**, the parties wish to set forth in this Agreement, among other things, their respective obligations with respect to the Program and the Services (as elsewhere herein defined).

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereby agree as follows:

### 1. Scope of Services to be Provided by Kapnick

**1.1** Client hereby engages Kapnick to perform, and Kapnick agrees to perform, for the benefit of Client, the wellness plan management and related services described on Exhibit A, attached hereto and incorporated herein by this reference (the "Services"). Exhibit A may be amended from time to time upon the mutual written agreement of the parties.

**1.2** Kapnick grants to Client and its licensed users a non-exclusive license to use the online Participant portal and mobile application described in Exhibit A (the "Website and Software"). Kapnick shall make the Website and Software available to Client and its licensed users through the Internet and a mobile application, as specified in writing from Kapnick to Client. Kapnick shall correct errors, or cause errors to be corrected, in the Website and Software in accordance with Kapnick's or its subcontractor's/supplier's then-current maintenance policies. Kapnick agrees to offer (or to cause to offer) such maintenance free of charge throughout the term of this Agreement. Such maintenance shall also include updates that Kapnick or its subcontractor/supplier makes available to its clients generally at no charge. Kapnick shall provide or cause to be provided all necessary support with respect to the Website and Software. Kapnick shall make available or provide updates, or caused to be made available or updates to be provided, for the Website and Software as required in Kapnick's or its subcontractor's/supplier's reasonable judgment to, among other things, maintain the Website and Software in compliance with applicable law. Kapnick shall cause the Website and Software to be made available 24 hours per day, 7 days per week, 365 days per year, except for scheduled upgrades and maintenance times, of which Kapnick shall provide (or cause to be provided to Client) not less than ten (10) days prior written notice.

### 2. Disclosure and Record Keeping

#### 2.1 Disclosure

Upon the request of Kapnick, Client shall provide to Kapnick information necessary for Kapnick to perform the Services or compute the Fees described in this Agreement and its Exhibits, including updated employee census information.

Kapnick may contract with subcontractors to perform Services (including provision of the Website and Software) under this Agreement, subject to the MGCB Requirements (as defined in Section 26 below). Prior



to the effective date of any such subcontractor arrangement, Kapnick shall notify Client and give Client a period of ten (10) calendar days from Client's receipt of such notice to notify Kapnick in writing of any objection to such subcontractor arrangement. If no written objection is received by Kapnick within such 10 calendar day period, Kapnick may proceed with the engagement of such subcontractor, subject to the MGC Requirements (as defined in Section 26 below).

**2.2 Record Keeping**

Kapnick will maintain accurate and current files in accordance with industry standard record retention practice and applicable laws.

**3. Term and Termination**

**3.1 Term**

Unless terminated earlier under Sections 3.2 or 3.3, this Agreement shall initially be in effect for a period commencing on the effective Date and ending one (1) year thereafter (the "Initial Term"), and, provided that it has not been terminated on or before such date, shall thereafter automatically renew for successive one (1) year periods until it expires or is terminated in accordance with this Agreement. Kapnick shall notify Client of any changes to the Fees under Exhibit B at least ninety (90) calendar days prior to the effective date of any such changes; provided, however, that no Fee increase shall occur during the Initial Term other than as provided under Section 3.6, and any increases thereafter shall occur no more than once during any renewal term; and provided further that any such increase shall be subject to the parties' mutual agreement in writing, and if the parties cannot mutually agree upon the applicable increase within the notice period described above and thus there is a dispute over the applicable increase, the parties agree to negotiate in good faith in an attempt to resolve the dispute. Absent agreement between the parties, either party may, at its discretion, terminate the Agreement at the end of the notice period described above.

**3.2 Termination for Cause**

This Agreement shall terminate: (i) immediately upon written notice by a party if the other party files a petition for bankruptcy or is adjudicated bankrupt; (ii) immediately upon written notice by Kapnick or Client if Kapnick or Client shall breach any material provision of this Agreement and fail to cure such breach within ten (10) calendar days after the breaching party receives written notice from the non-breaching party specifying the breach; or (iii) immediately upon written notice of Kapnick when Client is sixty (60) calendar days or more late in payment of any undisputed fee pursuant to this Agreement and the Exhibits hereto (the right to terminate the Agreement is in addition to any other remedies provided under this Agreement or as provided by law).

**3.3 Termination Without Cause**

Unless terminated earlier under this section and only after the expiration of the Initial Term, this Agreement may be terminated without cause at any time by either Client or Kapnick by delivering written notice to the other party of its intent to terminate the Agreement at least sixty (60) days in advance of the effective date of termination.

**3.4 Effect of Termination**

Upon any expiration or termination of this Agreement, the rights and obligations of the parties under this Agreement will terminate, except with respect to: (i) the confidentiality and indemnification provisions under Sections 7 and 10, respectively, of this Agreement, (ii) as provided for in the Business Associate Agreement (as elsewhere herein defined) and (iii) except for any preexisting and outstanding obligations for the payment of Fees for services already performed under this Agreement.

**3.5 General Fees.** Kapnick will be compensated by the fees (the "Fees") described in Exhibit B for Services rendered to Client as detailed in Exhibits A and B. Additional programs and services not indicated in this Agreement or its Exhibits will be provided for an additional fee only after the additional services have been disclosed in writing and shall be undertaken upon mutual agreement between Kapnick and Client in writing for the agreed upon fees for such services. Any additional programs and services will be added to the applicable Exhibits by a written amendment, signed by both parties, and become subject to the terms of this Agreement.

**3.6 Fee Increases.** In the event that Kapnick's suppliers/subcontractors materially increase their charges to

Kapnick in connection with providing Services under this Agreement, Kapnick may increase the component of the Fee structure under this Agreement directly related to such increase by no more than 3-5% in the



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year of the Term in which the increase occurs; subject to Kapnick providing to Client advance written notice of the proposed Fee at least thirty (30) calendar days prior to the proposed effective date of the increase, and subject to further to the parties' mutual agreement in writing to such increased Fee. If the parties cannot mutually agree upon an increased Fee within such thirty (30) day period and thus there is a dispute over the modified Fee structure, the parties agree to negotiate in good faith in an attempt to resolve the dispute. Absent agreement between the parties, either party may, at its discretion, terminate the Agreement at the end of the period that is thirty (30) days after the end of such thirty (30) day notice period.

**3.7 Travel.** Client will incur and pay Kapnick's travel costs associated with all onsite events such as educational classes, health coaching, health fair, etc. provided under this Agreement at any location greater than 150 miles from the nearest Kapnick location, provided that Client approves such costs in advance. Mileage will be based on the standard mileage rate for business travel at the then published rate set by the Internal Revenue Service at the time travel (e.g. 2022 rate is 56 cents per mile).

#### 4. Billing of Fees

Client can request invoicing on quarterly, semi-annual or annual installments. In the second year of the term of this Agreement, the first invoice will be sent upon the first anniversary of the Effective Date of this Agreement.

Notwithstanding anything to the contrary in this Agreement, Kapnick may separately invoice Client for additional services not included in this Agreement and for which the parties mutually agree in writing.

Client must remit payment to Kapnick of any undisputed invoiced Fees within thirty (30) calendar days of Client's receipt of the applicable invoice. If Client fails to timely remit payment of the applicable invoice by the end of this thirty (30) calendar-day period, Kapnick, at its sole discretion, may charge an additional late payment fee equal to 1% per month on the balance due on all late payments over five (5) calendar days past due. Client also will reimburse Kapnick for all collection costs incurred by Kapnick as a result of any payment default by Client under this Agreement.

#### 5. Personnel

Kapnick shall assign or cause to be assigned such personnel to the performance of the Services as are appropriate to meet Client's needs and to ensure the timely and professional performance of the Services, and Kapnick shall promptly remove or cause to be removed any personnel reasonably deemed objectionable by Client in its sole discretion. Notwithstanding the foregoing, Kapnick shall employ, pay, and supervise all persons needed to perform the Services (except those who are employees of its subcontractors/suppliers), all such personnel to be employees of Kapnick or persons under contract with Kapnick.

#### 6. Client's Responsibilities

**6.1** Client will make available such information as is reasonably required for Kapnick to provide the Services under this Agreement, including employee census information. Such data will be made available to Kapnick as promptly as possible following Client's receipt of Kapnick's request therefor, but not later than ten (10) calendar days following such request. If the information requested by Kapnick cannot be reasonably fulfilled within the ten (10) calendar-day time period, Client shall notify Kapnick within such ten (10) calendar-day

period and the parties shall agree to a different time period. Kapnick understands that the time of Client's personnel is limited, and judicious use of that time is a requirement of this Agreement.



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### 6.2 Client's additional responsibilities under this Agreement include Client:

- i. Continuing to offer a financial incentive arrangement under the Program, in consultation with Kapnick, which encourages participation in the Client's Program. Client agrees that such Program and the financial incentives offered thereunder, shall be compliant, in all material respects, with all applicable laws, including the Health Insurance Portability and Accountability Act ("HIPAA") (as amended by the Patient Protection and Affordable Care Act ("ACA")) and applicable regulations thereunder.
- ii. Distributing to eligible persons (as determined solely by Client and communicated in writing to Kapnick) materials prepared by the Client (along with any additional materials prepared by Kapnick describing the Kapnick Strive Program), describing Program terms, including any financial incentive arrangement provided by Client thereunder.
- iii. Making all decisions regarding amendment and termination of the Program.
- iv. Serving as the Plan Administrator and named fiduciary of the Plan associated with the Program pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"). As such, the Client's powers and duties include, but are not limited to:
  - Plan Interpretation. Client shall have sole discretionary authority to decide all questions of eligibility and entitlement to benefits, and determine the amount, manner and time payments are to be made.
  - Participant communications. Client shall communicate to Participants all information concerning the Plan and Program, as required by law, including written information informing Participants of: (A) what benefits are being provided and (B) any changes of benefits.

## 7. Confidentiality

7.1 The Confidential Information of a party (the "disclosing party") which is disclosed to the other party (the "receiving party") will be held by the receiving party in the strictest confidence at all times and will not be used by the receiving party (or its affiliates, employees, officers, directors or limited liability company managers ("Representatives")) for any purpose not previously authorized by the disclosing party, except as necessary for the receiving party to perform its obligations under this Agreement. The Confidential Information of the disclosing party will not be disclosed or divulged by the receiving party to anyone, except as otherwise permitted under the Agreement or with the prior written permission of the disclosing party and on the condition that the party to whom the Confidential Information is disclosed needs to know such information in connection with the receiving party performing its obligations under this Agreement, is informed of the confidential nature of the Confidential Information, and agrees in writing in advance to be bound by these terms and conditions. The receiving party may disclose the Confidential Information to those of its Representatives who need to know such information in connection with the receiving party performing its obligations under this Agreement, but only after the receiving party has informed them of the confidential nature of the Confidential Information and directs them to treat the

Confidential Information in accordance with the terms of this Agreement. The disclosing party retains all right, title and interest in and to its Confidential Information.

7.2 The term “Confidential Information” includes, but is not limited to, any confidential and/or proprietary information of either the receiving or disclosing party (whether oral, written, visual or fixed in any tangible medium



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of expression), relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, cost and pricing data, trade secrets, know-how, processes, the Program, reports, designs, information regarding Client's policies and procedures for employees, and any other confidential and proprietary information of or relating to either party's business, including its therapeutic, disease management, and health education programs, but does not include information which (a) was known to the receiving party before it was disclosed to the receiving party by the disclosing party, (b) was or becomes available to the receiving party from a source other than the disclosing party, provided such fact is evidenced in writing and the source is not bound by a confidentiality obligation to the disclosing party, or (c) is developed by the receiving party independently of the disclosing party's Confidential Information, provided that such fact can be documented. Each party will also keep the terms of this Agreement confidential as Confidential Information, except as required by law or regulation.

7.3 If the receiving party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, any informal or formal investigation by any government or governmental agency or authority, law or regulation, or otherwise) to disclose any of the Confidential Information, the receiving party will notify the disclosing party promptly in writing so that the disclosing party may seek a protective order or other appropriate remedy or, in its sole discretion, waive compliance with the terms of this Agreement. The receiving party agrees not to oppose any action by the disclosing party to obtain a protective order or other appropriate remedy. If no such protective order or other remedy is obtained, or the disclosing party waives compliance with the terms of this Agreement, the receiving party will furnish only that portion of the Confidential Information which it is advised by counsel is legally required and will exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

7.4 Client and Kapnick may not utilize the service marks, trademarks or trade names of any other party to this Agreement, or any service marks, trademarks, or trade names so similar as likely to cause confusion, without express written approval of such other party. The programs implemented by Kapnick will remain the sole property of Kapnick and will only be used by Client in connection with the Kapnick Strive Program and so long as Kapnick provides services to Client.

7.5 Kapnick and Client will comply with all applicable laws and regulations regarding participant confidentiality.

7.6 Kapnick understands and agrees to limit its use and disclosure of protected health information as described in the Business Associate Agreement between the parties dated July 21, 2012 (“Business Associate Agreement”). Kapnick further agrees to limit the use and disclosure of protected health information provided to any subcontractor in the performance of Services under this Agreement as required under law.

## 8. Fiduciary Responsibility

Client and Kapnick acknowledge that: (i) Kapnick shall have no discretionary authority or discretionary control with respect to the management of Client's health plan or Program; (ii) Kapnick shall exercise no authority or control with respect to management or disposition of the assets of Client's health plan or Program; and (iii) the parties intend for Kapnick to perform Services pursuant to this Agreement in a non-fiduciary capacity. Client agrees to notify Kapnick as soon as possible of any proposed amendments to the Plan associated with the Program's legal documents to the extent that the amendments would affect Kapnick in the performance of its obligations under this Agreement.

## 9. Intentionally omitted



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- 10. Indemnity.** Subject to the limitation on liability set forth below, Kapnick shall indemnify, defend and hold harmless Client, its members, affiliates, successors, assigns, and each of their employees, officers and agents for, from, and against any claims, actions, investigations, demands, obligations, liabilities, losses, costs, damages, fines, and expenses, including reasonable attorneys' and consultants' fees and court costs, arising out of or resulting from any claim by a third party that the Website and/or Software infringes any patent, trademark, copyright, trade secret, or other intellectual property right. Kapnick's obligation to indemnify Client will only apply if Client notifies Kapnick, in writing, as promptly as reasonably possible under the circumstances, as to any such claim and does not settle such claim without Kapnick's prior consent, which shall not be unreasonably withheld or delayed; the parties will cooperate in good faith in the defense of such claims.
- 11.** Subject to the limitation on liability set forth below, Client agrees to indemnify and hold harmless Kapnick and its directors, officers, employees, and agents (collectively, the "Kapnick Indemnified Parties") against any and all third party claims, lawsuits, settlements, judgments, costs, penalties, and expenses, including attorney fees, that the Kapnick Indemnified Parties may suffer or incur, resulting from or arising out of or in connection with Client's gross negligence or willful misconduct in performing Client's obligations hereunder. Each of Kapnick's and Client's aggregate liability in all instances under this Agreement is limited to two (2) times the fees paid to Kapnick for the Initial Term of this Agreement. Client's obligation to indemnify Kapnick will only apply if Kapnick notifies Client, in writing, as promptly as reasonably possible under the circumstances, as to any such claim and does not settle such claim without Client's prior consent, which shall not be unreasonably withheld or delayed; the parties will cooperate in good faith in the defense of such claims.
- Limitation on Services.** Kapnick does not assume any obligations with respect to Client's Program other than the duties and responsibilities expressly stated in, and as limited by, this Agreement or in a subsequent writing signed by both Client and Kapnick. Specifically, Kapnick does not have the following obligations:
- Not a fiduciary. Kapnick is not the Plan Administrator, as defined in ERISA Section 3(16), the trustee of any assets associated with the Plan or Program, or a fiduciary of the Plan as defined in Section 3(21) of ERISA.
  - Not Benefit Guarantor. Kapnick does not guarantee payment of any benefits due under the Program, and does not provide insurance for any such benefits provided for under the Program.
  - Compliance. Although Kapnick may assist the Client in legal compliance efforts, Kapnick does not assume responsibility for operating Client's Plan or Program in compliance with applicable laws.
- 12. Notices.** Any notice, demand, acknowledgment or other communication which under the terms of this Agreement must be given or made by either party shall be in writing and delivered personally or by nationally recognized overnight courier service or by U.S. certified mail, postage, prepaid, return receipt requested, addressed to the respective party as set forth below or as changed in accordance with this Section 12. Such notice, demand, acknowledgment or other communication shall be deemed to have been given or made upon receipt if delivered personally, one business day following delivery to the overnight courier service if delivered by overnight courier service, and three business days following mailing if delivered by certified mail.

**Detroit Entertainment, L.L.C**

Attention: Benefits Manager  
2901 Grand River Avenue  
Detroit, MI 48201-2907

**Kapnick & Company, Inc.**

Attention: Kapnick Wellness Department

333 Industrial Drive  
Adrian, Michigan 49221



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- 13. Binding Effect and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their permitted assigns. Neither party shall assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other and subject to the other provisions contained herein (including without limitation the MGCB Requirements, as defined in Section 22 below); provided, however, Client shall have the right to assign its interest in this Agreement, with the consent of Kapnick after providing thirty (30) days' notice of such assignment, to any present or future affiliate or member of Client without securing the consent of Kapnick and may grant to any such assignee the same rights and privileges Client enjoys under this Agreement, and upon such assignment (and assumption by the assignee of the assignor's obligations under this Agreement), Client shall have no further obligation or liability under this Agreement. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Client and Kapnick any rights or remedies whatsoever, whether in contract, statute, tort (such as negligence) or otherwise, and no person or entity shall be deemed a third-party beneficiary under or by reason of this Agreement.
- 14. Waiver.** No valid waiver of any provision of this Agreement at any time shall be deemed a waiver of such provision on any other occasion or a waiver of any other provision. .
- 15. Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Michigan, unless preempted by federal law.
- 16. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument, and the parties may rely upon signatures provided by fax or scanned and delivered by email.
- 17. No Agency Created or Third Party Beneficiaries.** The relationship created between Kapnick and Client under this Agreement is an independent contractor relationship; in no event shall it be construed to be any other type of relationship. Accordingly, all persons performing all or any part of the Services or otherwise acting by or for Kapnick for the benefit of Client shall be considered solely the employees or agents or contractors of Kapnick. Kapnick shall be responsible for compliance with all employment-related laws, rules and regulations including, but not limited to, employment of labor, hours of labor, working conditions, workers' compensation, payment of wages, and payment of taxes, such as unemployment, social security and other payroll taxes, including the applicable contributions from such persons when required by law.
- 18. Taxes and TPA.** Any applicable sales, use or other similarly assessed and administered tax imposed on Services provided under this Agreement or any other amounts Kapnick may incur or be required to pay arising from or relating to Kapnick's performance of Services as a third-party administrator in any jurisdiction (in each case, excluding income tax), will be the sole responsibility of Client. If Kapnick is legally obligated to collect and remit sales, use or other similarly assessed and administered tax in a particular jurisdiction, or to incur or pay any amount relating to third-party administrator services (in each case, excluding income tax), such tax or other amount will be reflected on the applicable invoice or subsequently invoiced at such time as Kapnick becomes aware of such obligation or as such obligation becomes due.

**19. Enforceability and Construction.** If any of the provisions of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement but the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Kapnick and Client shall be construed and enforced accordingly.



Kapnick  
Strive

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- 20. Potential Non-Performance and Force Majeure.** If Kapnick, or any of its subcontractors/suppliers, at any time has knowledge of anything that prevents or threatens to prevent the timely performance of the Services under this Agreement, Kapnick shall notify Client within a reasonable period thereof and include all relevant information concerning the delay or potential delay. If performance of the Services is delayed by reason of fire, flood, war, terrorism, riot, earthquake or other natural disaster, or other Act of God or similar event that is beyond the control and without negligence of the applicable party, then the time period for performance shall be extended for the time that the event precludes performance, but, in the event Kapnick is the party invoking force majeure hereunder, Client may procure substitute service from another third party vendor for all or any part of the period of non-performance. Upon mutual agreement of the parties, Kapnick will freeze collection of Fees for any such period of non-performance, and to the extent that Fees have been paid in advance for such period, Kapnick shall refund those Fees to Client within thirty (30) days of Client's reasonable request of such refund.
- 21. Entire Agreement, Amendment.** This Agreement, together with the exhibits, constitutes the entire agreement of the parties and supersedes all prior negotiations, representations, correspondence, and agreements (whether oral or written) with respect to the subject matter of this Agreement. No amendment to this Agreement will be effective unless it is in writing and signed by both Kapnick and Client. The section headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they pertain. No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the waiver is sought to be enforced.
- 22. Survival of Obligations.** Except as otherwise provided in this Agreement, Client's and Kapnick's obligations under this Agreement which by their nature would continue beyond termination or expiration of this Agreement (including without limitation the provisions of Paragraphs 7, 10, and 27) shall survive such termination or expiration of this Agreement.
- 23. Licenses.** No licenses, express or implied, are granted by Client to Kapnick under this Agreement. Likewise, except as expressly herein set forth, no other licenses, express or implied, are granted by Kapnick to Client under this Agreement.
- 24. Insurance.** Kapnick will, at its own expense, purchase and maintain and keep in full force and effect during the term of this Agreement, all insurance and/or bond required by Client and by applicable law, including but not limited to:
- (A) Worker's compensation coverage in the amounts required for employers under the Michigan's Worker's Compensation statutes. Kapnick shall be responsible for making sure workers' compensation coverage is in effect for all employees of Kapnick or its subcontractors supplied to Client;
  - (B) Employer's Liability Insurance with a limit of One Million Dollars (\$1,000,000);

- (C) Comprehensive General liability insurance (including product/completed operations liability insurance and broad form comprehensive general liability endorsement or its equivalent) with minimum coverage limits of at least One Million Dollars (\$1,000,000) each occurrence for bodily injury, death or property damage;
- (D) Comprehensive Automobile Liability insurance with minimum coverage limits of One Million Dollars (\$1,000,000) each occurrence for bodily injury, death or property damage;
- (E) Errors and Omissions (Professional Liability) insurance with minimum coverage limits of at least \$4,000,000 per occurrence; and
- (F) Such other insurance as is customary in connection with providing services of the nature of the Services and such other insurance as Client reasonably deems appropriate to provide reasonable and adequate protection



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in connection with Kapnick and its subcontractors/suppliers providing the Services, all in such amounts as Client reasonably deems appropriate.

Kapnick covenants and agrees that the foregoing insurance coverage shall apply on a primary basis irrespective of any other insurance, whether collectible or not. Any policy deductibles or retentions, whether self-insured or self-funded, shall be the obligation of Kapnick and shall not apply to Client. Client shall be named as an additional insured for all of the above insurance requirements and shall be given not less than fourteen (14) days prior written notice of any cancellation. Upon Client's request, Kapnick shall furnish Client with certificates or other proof of insurance reasonably satisfactory to Client as evidence of Kapnick's compliance with these insurance requirements.

25. **Authority.** Each party hereby represents and warrants to the other party that it has the right, power and legal authority to enter into and fully perform its obligations under this Agreement, and that the person signing this Agreement on the party's behalf is fully authorized to do so. This Agreement, when executed and delivered by the parties, will be a legal, valid and binding obligation enforceable against the parties in accordance with its terms.
26. **MGCB Requirements.** Kapnick acknowledges and agrees as follows: Client operates under privileged licenses in a highly regulated industry and seeks to protect and preserve its name, reputation, integrity, and good will by, among other things, only contracting with individuals and entities meeting the highest standards of integrity and fitness. In furtherance of the foregoing, this Agreement and the association of the parties are contingent on Client's continued approval of Kapnick and all subcontractors/suppliers providing Services under this Agreement. To that end, Kapnick shall, and shall require its subcontractors/suppliers to agree in writing to, cooperate with Client and shall provide such information as Client reasonably requests in connection with such approval. The parties to this Agreement, Kapnick's subcontractors/suppliers, and this Agreement itself are also subject to the jurisdiction of the Michigan Gaming Control Board (the "MGCB") and must comply, to the extent applicable, with the Michigan Gaming Control and Revenue Act, MCL 432.201, et. seq. and the rules and resolutions adopted by the MGCB (collectively, "MGCB Requirements"), including requirements for supplying information and in some cases obtaining licensure for itself and certain of its employees. Kapnick agrees to comply, and to require its subcontractors/suppliers to agree in writing to comply, with the applicable MGCB Requirements. If at any time Client discovers any facts regarding Kapnick or any of Kapnick's subcontractors/suppliers that in Client's opinion would jeopardize its reputation or any license or permit held by Client or potentially subject Client to MGCB or other governmental agency sanction or if Kapnick or any such subcontractor/supplier is found unsuitable or not in compliance with MGCB Requirements or if this Agreement is found to be inconsistent with MGCB Requirements, then Client may terminate this Agreement upon thirty (30) days' notice to Kapnick, to the extent such notice period is permitted by the MGCB, and without further liability except for payment of Fees applicable to the period prior to such termination, to the extent such payment is permitted by the MGCB.

\*\*\*\* Signatures on Following Page \*\*\*\*



DETROIT ENTERTAINMENT, L.L.C.

Bruce R. Dall  
Bruce Dall (Mar 11, 2022 10:54 EST)

March 11, 2022

Signature

Date

Bruce Dall, President

Name/Title

KAPNICK & COMPANY, INC.

Signature

Date

3/15/22

Name/Title

Stephen J. Pede President

©Kapnick & Company, Inc. (Kapnick strive® Service Agreement rev 06/2017)



Kapnick  
Strive

## EXHIBIT A KAPNICK STRIVE® PROGRAM SERVICES

Kapnick shall provide or otherwise arrange for the provision of the following Services in connection with Client's creation and implementation of the Program as part of its group health plan:

### 1. Incentive Design and Development

Kapnick will assist Client with the continued design and development of incentive solutions to maximize enrollment and keep participants in the Program ("Participants") engaged in the Program. Industry research thus far has shown that the greater the level of incentive, the greater the program participation. Typically high participation rates increase the chances of success in modifying unhealthy behaviors and reducing healthcare costs.

### 2. Program Design and Implementation/Employee Kick-Off Session

Kapnick will develop and provide customized communications materials to promote and explain the Program. Materials may include posters, letters, postcards and/or videos. All such materials are subject to Client's prior review and approval. Program representatives will also conduct at least one Employee Kick-Off session to review the program with Participants.

Kapnick will work with Client to develop a customized calendar of events and assist with implementation of programs.

### 3. Educational/Communication Campaigns

Consultant will provide customized monthly communication campaigns (including newsletters, emails and posters) regarding various health and/or employee benefit-related topics, such as heart disease, utilization of preventive services, etc. All campaign materials are subject to Client's prior review and approval. These engaging communication campaigns are intended to inform and motivate Participants to change and improve health behaviors.

### 4. Online Participant Portal and Mobile App

Kapnick shall make available to all Participants a personal online health portal and PDA mobile app with resources to begin the process towards better health by providing access to the following information and reports:

- Interactive medical library
- BMI tracker
- Smoking cessation tool/ cost analysis
- Body fat calculator
- Target Heart Rate Calculator
- Risk specific links to additional resources
- Point/Reward Tracking
- Health Coaching
- Fitness wearable synchronization
- Educational Library
- Virtual Educational Classes
- Healthy Living Tracking

### 5. Educational Health Classes and Challenge Programs

Kapnick shall provide to Client up to two (2) (at Client's election) onsite events per year and up to four (4) (at Client's election) online challenge programs per year. An onsite event is defined as any one event scheduled at any physical



Client location. Examples of available events are as follows:

○ Educational Health Classes

Kapnick is available to provide customized on-site seminars on a variety of topics. The classes range from 30 minutes to 1 hour in length. Health awareness and education are key tools to leading a healthier life. Individuals who are educated with clear, easy-to-understand, up-to-date information are more likely to take the next step in changing their attitudes and behaviors for better health.

\*NOTE: A minimum of 10 attendees is required to conduct any on-site class pursuant to Section 5.4 of the Agreement. If this minimum standard is not met, it is at Kapnick's reasonable discretion, in consultation with Client, to either cancel the event or impose a \$250 fee (in addition to the other fees outlined in Exhibit B).

○ Health Fair

Kapnick can assist with coordination of one health fair per year.

○ On-site Challenge Programs

Sometimes a little competition is needed to motivate employees to make improvements in their health. Client may inspire Participants to increase physical activity, reduce stress, and/or practice good eating habits by implementing a challenge program.

If a Client wishes to receive more than two (2) onsite classes per year, an additional fee in the amount set forth in Exhibit B will be charged for each additional onsite Educational Health class.

## **6. Program Evaluation and Reporting**

○ Program Evaluation

Evaluates goals and objectives and determines whether the Program achieved the desired result. Program evaluation further allows Client to celebrate goals that have been achieved, to discontinue or change ineffective initiatives, and to establish new benchmarks. Kapnick will evaluate the Program on an on-going basis and provide reports to the Client as described below.

● Reporting

Overview of generated reports provided by Kapnick Strive Program team member to ensure understanding and provide recommendations to target identified risk areas moving forward.

Aggregate Summary Report: displays the overall raw numbers and percentages.



**EXHIBIT B**  
**FEES**

**Kapnick Strive Program Services** ..... \$42.50 Per Participant Per Year  
Package as described in Exhibit A (Number based on eligibility file)

**Customization of** .....\$3,000 (1x fee)  
**Online Participant Portal and Mobile App**

**Additional Wellness Education Classes Upon Request** ..... \$250.00





# 4875-6199-3995.1 - 2022 Kapnick Strive Silver Contract FINAL

Final Audit Report

2022-03-11

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