

RESOLUTION NO. 2015 - CC

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON
APPROVING A FACILITY USE AND LOCATION AGREEMENT WITH
LEFTFIELD PICTURES OF NY LLC**

WHEREAS, Leftfield Pictures of NY LLC, including its parents, affiliates, subsidiaries, licenses, and assigns, collectively hereinafter referred to as the "Producer" desires to temporarily access for Producer's exclusive use certain Town-owned property in connection with the production of a television show currently entitled, Never Surrender

WHEREAS, As compensation for use of the Property, Producer agrees to pay the sum of \$2000.00 for each day or part thereof on which Producer makes exclusive use of the Property. Fees for non-exclusive use of the Property will be included in the initial \$2000.00 location fee for filming exclusively at Little Mashell Falls on November 15, 2015 from 1:00pm to 5:00pm. Non-exclusive use of the Property includes B-Roll, beauty shots and cast & contestant interviews.; and

WHEREAS, Producer agrees to use reasonable care to prevent damage to the Property and to leave the Property and all property of any kind located thereon, in as good order and condition, as they were immediately prior to any use of the Property pursuant to this Agreement, reasonable wear and tear excepted, and to pay for any injury or damage that may occur through the use of the Property by Producer; and

WHEREAS, Producer shall comply with all federal, state, and local laws and ordinances applicable to the work to be done: and

WHEREAS, Producer shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use the Property by the Producer, its agents, representatives, or employees

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY
RESOLVES AS FOLLOWS:**

THAT: The Facility Use and Location Agreement between the Town of Eatonville and Leftfield Pictures of NY LLC is hereby approved in the form attached hereto as Exhibit A and the Mayor is authorized to sign the Agreement on the Town's behalf.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 13th day of November 2015.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

FACILITY USE AND LOCATION AGREEMENT

THIS AGREEMENT is entered into this 13th day of November, 2015 by and between the Town of Eatonville, a municipal corporation, hereinafter referred to as the "Town" and Leftfield Pictures of NY LLC, including its parents, affiliates, subsidiaries, licenses, and assigns, collectively hereinafter referred to as the "Producer."

WHEREAS, the Town is the owner of certain real property that is open to the general public; and

WHEREAS, the Producer desires to temporarily access for Producer's exclusive use certain Town-owned property in connection with the production of a television show currently entitled, Never Surrender, hereinafter referred to as the "Program;" now, therefore, the parties agree as follows:

1. Rights Granted to Producer. Town hereby grants to Producer the right:

A. To enter, remain on, and occupy Town's property situated at: a) Little Mashell Falls, b) Town-owned property immediately south of Mill Pond, including Smallwood Park, and c) such other areas as the parties agree, in the Town of Eatonville, Washington, hereinafter referred to as "the Property" for the term set forth below in Section 2 with personnel and equipment for the purpose of recording, filming, taping and/or photographing in connection with the Program;

B. To make audio and video recordings (including without limitation, photographs) on and of the Property (including, without limitation, any trademarks, trade names and logos owned or controlled by Town); and

C. To irrevocably use, edit, broadcast and/or transmit such recordings in all manners, formats and media now known or hereafter devised throughout the universe in perpetuity in such manner and to such extent as Producer may desire, whether or not in connection with the Program.

2. Term. Commencing on or about November 15, 2015, Producer may have such possession of the Property as is reasonably necessary to perform the Production, and such premises use may continue from day to day, Saturdays, Sundays, and Holidays included, and from time to time, until the proposed scenes and work are completed. It is estimated that it will require about 36 day(s) of use for the Producer to complete its principle use of the Property.

A. At any time within six (6) months from the date Producer first makes use of the Property, Producer may, following not less than seven (7) working days advance written notice to Town, on a mutually agreed date(s), re-enter upon and use the Property for such period as may be reasonably necessary to photograph retakes or added scenes desired by Producer, and in any such event, the rate specified in Section 3 shall apply.

3. Compensation. As compensation for use of the Property, Producer agrees to pay the sum of \$2000.00 for each day or part thereof on which Producer makes exclusive use of the Property. Fees for non-exclusive use of the Property will be included in the initial \$2000.00 location fee for filming exclusively at Little Mashell Falls on November 15, 2015 from 1:00pm to 5:00pm. Non-exclusive use of the Property includes B-Roll, beauty shots and cast & contestant interviews.

4. Rights Retained by Producer. All rights of every kind in such recordings in all manners, formats and media now known or hereafter devised (including, without limitation, all copyrights therein and all renewals, extensions and restorations of said copyrights) shall be solely owned throughout the universe in perpetuity by Producer. The rights herein granted include, without limitation, the right to record all structures, signs and activities, conduct, and conditions located on, occurring or existing on the Property, as well as the right to refer to the Property by its correct or any fictitious name. Producer shall not be obligated to produce the Program, to make any actual use of recordings made on or of the Property or to use any name connected with the Property in connection with the Program or any other program.

5. Damages. Producer agrees to use reasonable care to prevent damage to the Property and to leave the Property and all property of any kind located thereon, in as good order and condition, as they were immediately prior to any use of the Property pursuant to this Agreement, reasonable wear and tear excepted, and to pay for any injury or damage that may occur through the use of the Property by Producer.

6. Discrimination and Compliance with Laws.

A. Producer agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Producer shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 3 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by Town.

7. Indemnification.

D. Producer shall defend, indemnify, save, and hold harmless Town from and against any and all claims, demands, causes of action, suits or judgments, including but not limited to any claims of insurance carriers, reasonable, outside attorney fees, verifiable costs, and expenses, for deaths or injuries to persons or for loss of or damage to property arising out of or in connection with the use of the Property by Producer, its agents, servants, employees, or invitees. In the event of any claims made or suits filed

against Town, Town may, at its option, require Producer to resist or defend such action or proceeding at Producer's sole cost and expense by counsel reasonable satisfactory to Town.

E. To the fullest extent allowed by law, this indemnity and hold harmless shall include any claim made by an employee or agent of Producer, even if Producer is thus otherwise immune from liability pursuant to Title 51 RCW. Producer for itself, and its subcontractors and agents, specifically and expressly waives the right to assert against Town any immunity that may be granted it under the Title 51 RCW. Producer shall include such waiver in all agreements with subcontractors. Producer specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Producer provide the broadest scope of indemnity permitted by RCW 4.24.115.

F. Neither this paragraph nor any other part of this Agreement shall obligate Producer to defend or indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Town, its agents or employees; provided that Producer shall be obligated to indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of Town and Producer, their agents or employees, to the extent of Producer's negligence.

G. This indemnification shall survive any termination or expiration of this Agreement.

8. Insurance. Producer shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use the Property by the Producer, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Producer shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury, and liability assumed under an insured contract. The Town shall be named as an additional insured under the Producer's Commercial General Liability insurance policy with respect to the acts, duties, and responsibilities covered under this Agreement using ISO Additional Insured endorsement CG 20 10 10 01 or substitute endorsements providing equivalent coverage. Producer's Commercial General Liability

policy shall include Waiver of Transfer of Rights of Recovery Against Others to Us endorsement CG 24 04 05 09, or equivalent coverage.

3. Workers' Compensation coverage as required by the industrial insurance laws of the State of Washington.

B. Minimum Amounts of Insurance. Producer shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

If alcohol is served, Producer shall provide proof of Host Liquor Liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate. If alcohol is being sold, or if Producer is required to obtain a liquor license from the Washington Liquor Cannabis Board, Producer shall provide proof of Liquor Liability Insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

If fireworks, special effects or other explosive devices are being discharged or used, Producer shall have minimum of \$5,000,000 each occurrence Commercial General Liability coverage.

3. Industrial Insurance with Washington Stop Gap Employer's Liability minimum limits of \$1,000,000 each accident, \$1,000,000 disease – each employee, \$1,000,000 disease – policy limit.

Town will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Producer or any subcontractor or employee which might arise under the industrial insurance laws during the performance of duties and services under this Agreement. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed in connection with this Agreement, those payments shall be made by Producer; Producer shall indemnify Town and guarantee payment of such amounts.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Producer's insurance coverage shall be primary insurance as respect the Town. Any insurance, self-insurance, or insurance pool coverage maintained by the Town shall be excess of the Producer's insurance and shall not contribute with it.
2. The Producer's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written

notice by certified mail, return receipt requested, has been given to the Town.

3. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for Producer. Producer is responsible for ensuring that all subcontractors meet all of the insurance requirements of the subcontractors.
4. If any coverage is written on a "claims made" basis, then a minimum, of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to Town.
5. Town shall not waive its right to subrogation against Producer's insurance coverage. Producer's policies shall be endorsed to indicate Producer's policies include the waiver of subrogation.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Producer's insurance for other losses. Producer shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Producer's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Producer or its agents, employees, or subcontractors, as well as any temporary structures, scaffolding or protective fences.

F. Verification of Coverage. Producer shall furnish the Town with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Producer before commencement of the work.

9. Notice. Any notices required to be given by Town to Producer or by Producer to Town shall be in writing and delivered to the parties at the following addresses:

TOWN:

Mike Schaub, Mayor
210 Center Street West
P.O. Box 309
Eatonville, WA 98328
Phone: 360.832.3361
Fax: 360.832.3977

PRODUCER:

Leftfield Pictures
460 W. 34th St., Floor 16
New York, NY 10001

10. Assignment. Producer may transfer and assign this Agreement or all or any of its rights or privileges hereunder to any entity or individual without restriction.

11. Termination. Either party shall have the right to terminate this Agreement at any time, with or without cause.

12. Confidentiality. Town agrees to keep strictly confidential and not to disclose, or cause, to be disclose, to any third party any information which may be confidential/trade secret information regarding Producer or the Program, subject to Washington state law, Chapter 42.56 RCW.

13. Disputes. Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court. In no event shall the Town be entitled to injunctive relief, or to otherwise restrain the broadcast, exhibition, distribution, or other exploitation of the Program.

14. Attorney Fees. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

15. Extent of Agreement/Modification. This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties. This Agreement shall be binding upon Town and Producer and their respective successors, assigns, licensees, heir, and personal representatives.

TOWN OF EATONVILLE:

LEFTFIELD PICTURES OF NY, LLC:

By: _____
Mike Schaub
Mayor

By: _____

Date: _____

Name: _____

Attest:

Title: _____

By: _____
Kathy Linnemeyer
Town Clerk

Date: _____