

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXTREME FITNESS, INC.

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

**MOTION RECORD OF THE MOVING PARTY,  
1079268 ONTARIO INC.  
(motion returnable May 28, 2013)**

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**NOTICE OF MOTION**

**THE MOVING PARTY**, 1079268 Ontario Inc. (the "Landlord") will make a motion to the Court, pursuant to the Endorsement of the Honourable Justice Morawetz of March 27, 2013, on May 28, 2013 at 10:00 a.m. or soon after that time as the motion can be read, at 330 University Avenue, Toronto, Ontario, M5G 1E6.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

- in writing under subrule 37.12.1(1) because it is (on consent/unopposed or made without notice);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally

**THIS MOTION IS FOR:**

1. An Order that \$838,045.00 for outstanding, additional rent, and occupancy rent be paid to the Landlord for the years of 2008 to 2012 for Extreme Fitness Inc.'s ("Extreme") occupancy

of the basement at the property municipally known as 635 Danforth Avenue, Toronto, ON (the "Property").

2. An Order that \$58,800.00 (plus applicable taxes) be paid to the Landlord for the outstanding amounts due under Extreme's lease of the parking spaces used by Extreme in relation to the Property.
3. An Order that \$27,141.80 be paid to the Landlord for unpaid realty taxes in accordance with the lease.
4. An Order that GoodLife Fitness Centres Inc. ("GoodLife") pay the Landlord \$24.786 per square foot for their use of the basement from April 1, 2013 until the end of the term of the lease, which was assigned to GoodLife as part of the CCAA proceeding herein, which amounts to \$167,609.00 per annum.
5. Such further and other relief as this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE**

1. On October 30, 2006, the Landlord and Extreme entered into a definite lease agreement ("Lease") for the Property. Prior to entering into the Lease, Extreme provided measurement diagrams for the area to be leased in the Property. The areas were: the ground floor, the second floor, the third floor, the platform area, and the mezzanine. The basement was not included as part of the leased premises. The lease base was set out in Schedule A of the



lease.

2. In early 2008, the Landlord discovered that Extreme had undertaken significant renovations to the basement of the Property and was using the space as their locker, shower, and ancillary facilities. Despite numerous attempts to collect rent on the basement, which was made up of approximately 6,500 square feet, Extreme refused to pay for same.
3. All of the above are required to put the Lease in goodstanding.
4. To date, Extreme has used the basement space for no cost and the Landlord seeks to be paid back rent from 2008 until the present for the basement space. On April 1, 2013, as part of the CCAA proceedings herein, the Property was assigned to GoodLife. The Landlord seeks that GoodLife pay for use of the basement at \$24.786 cents per square foot for the remainder of the term of the Lease.
5. Further, the landlord seeks re-payment of \$58,800.00 for 49 months of unpaid parking by Extreme.
6. When Extreme took occupancy of the Property in October 2006, they undertook a number of renovations to the Property. As a term of the renovations, Extreme appeared before the Committee of Adjustments who ordered that they obtain parking spots in order to continue carrying on their business as a gym.

7. The Landlord provided the parking spots for Extreme, but was not paid by Extreme for use of same from April 2007 until the end of April 2011.
8. Further, the Landlord seeks re-payment of unpaid of realty taxes from 2007 until 2012.
9. As a term of the lease, Extreme was to pay all realty taxes. The base year rent, which was determined by the 2006 Final Property Bill, was \$92,927.30. Extreme paid said amount during the years 2007 until 2012.
10. During 2007 and 2012, the realty taxes were in excess of \$92,927.30. The Landlord did not make demand for the arrears for the realty taxes until March 25, 2013.
11. Rules 37 of the *Rules of Civil Procedure*; and
12. Such further and other grounds as this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. Affidavit of Constantine Voidonicolas sworn April 5, 2013; and
2. Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

Date: April 5, 2013

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Court File No.: CV-13-100000-00CL

**ONTARIO  
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Proceeding commenced at Toronto

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**AFFIDAVIT OF CONSTANTINE VOIDONICOLAS**

I, **CONSTANTINE VOIDONICOLAS**, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am the President of the moving party, 1079268 Ontario Inc. (the "Landlord") and as such have knowledge of the matters hereinafter disposed to. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I indicate that I have obtained the information from other sources, I verily believe those facts to be true.
2. The Landlord owns the property municipally known as 635 Danforth Avenue ("635"). I am also the President of another corporation, 2010999 Ontario Inc. ("999"). 999 is the owner of the property municipally known as 627-629 Danforth Avenue ("627-629"). 627-629 is located directly beside and adjoining to 635.
3. In or around the summer/fall of 2006, I met with Morry Offman, the Director of real estate for Extreme Fitness Inc. ("Extreme"). I had numerous discussions and meetings with Mr. Offman, Jim Solomon and Steve Dacosta, relating to the lease of 635 Danforth Avenue

("635") by Extreme. After numerous discussions, it was agreed that the Landlord and Extreme would enter into a definitive lease agreement.

4. It was agreed that Extreme would provide measurements diagrams for the area of the premises of 635 to be leased. These were for the ground floor, being 11,461 square feet, second floor 5,526 square feet, third floor 1,026 square feet, platform area 1,654 square feet, mezzanine 4,443 square feet. After providing these diagrams and the measurements, they were accepted by me on behalf of the Landlord. The basement was not included as part of any area or schedule supplied to 635. I was to retain the basement area.
5. We orally discussed that should Extreme need to use the basement from time to time for some storage I would be happy to let them do so. It was never to be part of the leased space or actively used by Extreme.

#### **Lease Agreement**

6. The Landlord and Extreme entered into the written lease agreement (the "Lease") with respect to 635 Danforth Avenue on October 30, 2006. Attached hereto and marked as **Exhibit "A"** is a true copy of the executed Lease Agreement dated October 30, 2006,
7. Section 1.1( c ) defines the Premises as:

"The Premises consists of three floors plus mezzanine, and the floors have the following areas: ground floor 11,461 square feet,, second floor 5,526 square feet, third floor 1,026 square feet, a platform area of 1,654 square feet and a mezzanine of 4,443 square feet, which floors are shown on the plans annexed as Schedule "A"
8. The basement space, which is approximately 6,500 square feet, was not attached as part of the Schedules, nor was it part of the Premises as defined in set out Section 1.1( c ) of the Lease. The Schedules referred to above were prepared by Extreme.

9. Extreme advised that they intended to renovate the Premises. However in order to obtain the necessary right to do so, Application had to be made by Extreme to the Committee of Adjustments which is described below for the right to operate a fitness club. Despite the lease providing for same Extreme never did provide the plan for the renovations to me.
10. In early 2008, I discovered that without my knowledge, Extreme had undertaken significant renovations to the basement of 635. Pursuant to Section 9.4 of the Lease, Extreme was not permitted to make or erect in or to the premises any installations, alterations, additions or partitions without first submitting it to the Landlord and obtaining the Landlord's prior written consent. Furthermore this was not part of the leased space.
11. I had found out that Extreme had made material and substantial installations to the basement, which, as previously stated, did not make up part of the leased premises. The basement was being used by Extreme as their locker, shower and ancillary facilities.
12. Shortly after discovering, my solicitor, Michael Singer ("Singer") wrote a letter to David Bell ("Bell") of Extreme on April 4, 2008 to inform them that effective January 1, 2008, the Basic Rent was being increased to reflect the addition of the basement to the rentable area of 635. Singer's letter mistakenly stated that Extreme was using 4,600 square feet of the basement space. In fact, the basement is split up into two different areas. One being approximately 4,600 square feet and the other being just under 1,900 square feet. As at the time of Singer's letter, Extreme was using areas of the basement for a total of approximately 6,500 square feet. Attached hereto and marked as **Exhibit "B"** is a true copy of Singer's letter of April 4, 2008.
13. In his letter, Singer demanded that the rent was going to be increased by \$114,015.60 per annum based on the use of 4,600 square feet. In reality, the letter should have stated that the rent was going to increase by \$167,609.00 per annum based on Extreme's use of 6,500 square feet of basement space at the rate of \$24.786 per square foot.

**627-629 Danforth Avenue and Extreme**

14. Around the same time I was negotiating the Lease of 635 Extreme, 999 was in negotiations with Extreme regarding 627-629. It was understood that Extreme was going to lease a part of 627-629 to make up part of their fitness club. In fact, an Agreement to Lease was executed by 999 and Extreme regarding 627-629 on October 30, 2006, which was the same day that Extreme entered into their lease for the property at 635 Danforth. Attached hereto and marked as **Exhibit "C"** is a copy of the executed Agreement to Lease.
15. The Agreement to Lease stated the Tenant (Extreme) would lease up to 6,000 square feet but not less than 5,000 square feet to be built by 999 on the third floor of 627-629, with access to the Tenant's leased premises at 635 Danforth. The initial term was scheduled to be 2 years at \$16.00 per square foot. Attached hereto and marked as **Exhibit "D"** is a rendering of the two properties done at the time. What is seen as empty space in the blue building with "boutique" written on the outside was supposed to be the space that Extreme was to occupy.
16. In the months and years following I met with representatives from Extreme (Darco, Albin and others whose names I am unable to recall at this time) relating to the Agreement to Lease that was signed. This was to finalize the Lease for 627-629. We had provided a draft copy of the Lease for 627-629 and was in discussions with Extreme about certain amendments and changes that the parties wanted included in the Lease. They continued to promise me that they would be taking the space and I should be patient, unfortunately I believed them.
17. As stated earlier, in early 2008, I discovered that Extreme had done renovations to the basement of 635, whose square footage (approximately 6,500 square feet) was nearly identical to the space which was subject the Agreement to Lease for 627-629.
18. In the following months, Extreme continued to advise me that they still intended to take the space at 627-629. I presume that once they had completed the renovations at 635 without the

Landlord's consent, they never had any intention of leasing the premises at 627-629 as the basement area of 635 was the same amount of space as at 627-629.

19. From late 2008 to late 2010 I had personal problems with my health that caused me to lose focus on some of the buildings I owned. It was always my intention to collect the back rent for the basement of 635. For a number of years, Extreme led me on to believe that they were going to take over the premises at 627-629. As such, I did not want to commence any litigation against them as I wanted to continue to have a good business relationship with Extreme. Once I made aware of Application under the *Companies' Creditors Arrangement Act*, I realized that I had to make my claim for all the back rent for the 6,500 square foot basement area at 635. I am owed \$838,045.00 in back rent for the years 2008 - 2012. GoodLife Fitness Centres Inc. ("GoodLife") took assignment of 635 on April 2013. GoodLife should have to pay for the basement space from the date of assignment.
20. I now believe that once Extreme realized that they were "getting away" with using 6,000 square feet of the basement with no added cost, they no longer had any need for the space at 627-629 to which they had contractually committed. As I relied upon Extreme's insistence that they wanted to lease the space at 627-629, this space sat vacant for a number of years.

### **Tenant's Parking Facility**

21. On April 27, 2007, shortly after Extreme began their tenancy at 635, they appeared before Committee of Adjustments in Toronto. The purpose of the application was to maintain and to legalize the use of existing buildings as a fitness centre, which was established without previously without proper authorization. In the Committee of Adjustments decision, they ordered that in order to continue to carry on their business, Extreme had to secure an additional 10 parking spots. Attached hereto and marked as **Exhibit "E"** is a copy of the Committee of Adjustments decision.
22. As I had a number of acquaintances in the area, I began inquiring as to whether I could lease

parking spots from people I knew which I in turn would re-lease to Extreme. I obtained these parking spots for Extreme so that they would be able to comply with the requirements of the Committee of Adjustments. Attached hereto and marked as **Exhibit "F"** are the examples of leases that I entered into for parking spaces to be used by Extreme.

23. Extreme agreed that in exchange for my re-leasing these spaces they would pay me an additional \$1,200 per month plus applicable HST/GST for parking commencing in August 2007.
24. Between April 2007 and April 2011, despite me repeated requests, I did not receive any payments from Extreme for the use of the parking spaces.
25. The first payment I received for the parking was in May 2011. As such, Extreme still owes me \$58,800.00 (plus applicable taxes) for 49 months of unpaid parking.
26. Upon receipt of the *Companies' Creditors Arrangement Act* material, Singer wrote to Extreme on March 25, 2013 and informed them that they were in arrears for parking for 72 months. Attached hereto and marked as **Exhibit "G"** is a copy of the letter and the enclosure titled "Additional Rent Arrears". Upon further review of my records, I have determined that 45 months arrears is in fact the proper amount. I applied the payments from May 11, 2011 to the oldest receivables.

### **Unpaid Realty Taxes**

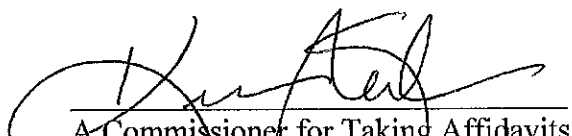
27. In Singer's March 25, 2013 (**Exhibit "G"**) he further noted that Extreme was in default for excess realty tax owed for 635. Prior to this letter, the Landlord had not made any demand for unpaid taxes. Upon realization that the *CCAA* proceedings were proceeding, I contacted counsel and was it was then that I discovered that we had not included the tax bills for the years in issue evidencing the increases. .
28. Section 5.1 and 5.2 state that Extreme is to pay all Realty taxes for 635 and that 2006 is to

be used as the "Base Year". The Lease further states that should the realty taxes escalate beyond the "base amount", Extreme will be responsible to pay for the any for the escalation in tax from the base year.

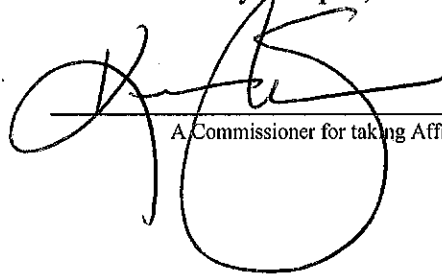
- 29. The Base Year rent, which was determined by the 2006 Final Property Tax Bill was \$92,927.30. In each additional year from 2007 - 2012, Extreme paid \$92,927.30 in taxes. However, in each of those years, the realty taxes were higher than the Base Year rent. As such, as set out in Singer's letter of March 25, 2013, Extreme was in arrears for Realty Taxes in the amount of \$27,141.80. In an email of March 26, 2013, my counsel Kevin Sherkin forwarded copies of the tax bills from 2006 to 2012 to Extreme's counsel. Attached hereto and marked as **Exhibit "H"** is a true copy of the email and attachments thereto.
- 30. Prior to the demand in Singer's letter of March 25, 2013, the Landlord had not made any previous demands for payment relating to excess realty taxes on 635 as it was not drawn to my attention until I consulted with counsel.
- 31. The landlord has never produced a notice making the final determination of realty taxes and other estimated additional rent based on the actual costs incurred as required by Section 5.5 of the Lease.
- 32. I make this Affidavit in support of the Landlord's Motion and for no other or improper purpose.

AFFIRMED BEFORE ME )  
 at the City of Toronto, )  
 in the Province of Ontario )  
 this 5<sup>th</sup> day of April, 2013 )

  
 \_\_\_\_\_  
 CONSTANTINE VOIDONICOLAS

  
 \_\_\_\_\_  
 A Commissioner for Taking Affidavits  
 Kevin Sherkin

This **Exhibit "A"** referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



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A Commissioner for taking Affidavits



THIS LEASE made the 30<sup>th</sup> day of October, 2006,

BETWEEN:

1079268 ONTARIO INC., a corporation incorporated under the laws of the Province of Ontario;

(the "Landlord")

AND

EXTREME FITNESS, INC., a corporation incorporated under the laws of the Province of Ontario;

(the "Tenant")

WITNESSETH AS FOLLOWS:

Article 1 — Basic Terms, Definitions

1.1 Basic Terms

- (a) Landlord: 1079268 ONTARIO INC.  
Address: 4211 Yonge Street, Suite 200  
Toronto, ON M2P 2A9
- (b) Tenant: EXTREME FITNESS, INC.  
Address: 635 Danforth Avenue  
Toronto, ON M4K 1R2
- (c) Property: the development situate on the Lands legally described as Part Lot 7-8, Plan 200 Toronto and Part Lot 24-27, Plan 306E Toronto as in CT782043, City of Toronto (being PIN 21062-0414 LT) and municipally known as 635 Danforth Avenue, Toronto, Ontario M4K 1R2.
- (d) Premises: the entire Property. The Premises consist of three floors plus mezzanine, and the floors have the following areas: ground floor 11,461 square feet, second floor 5,526 square feet, third floor 1,026 square feet, a platform area of 1,654 square feet and a mezzanine of 4,443 square feet, which floors are shown on the plans annexed as Schedule "A".
- (e) Rentable Area of Premises: approximately 24,110 square feet, subject to Section 2.2.
- (f) Term: two (2) years and two (2) days, subject to Sections 2.3 and 2.  
Commencement Date: October 30, 2006, subject to Sections 2.3 and 2.4  
End of Term: October 31, 2008, subject to Sections 2.3 and 2.4
- (g) Basic Rent (Section 4.1):
- | Period           | Per Sq. Ft./Year | Per Year     | Per Month   |
|------------------|------------------|--------------|-------------|
| Term 1-2         | \$24.786         | \$597,600.00 | \$49,800.00 |
| Renewal 1: 3-5   | \$24.786         | \$597,600.00 | \$49,800.00 |
| Renewal 2: 6-10  | \$25.881         | \$624,000.00 | \$52,000.00 |
| Renewal 3: 11-15 | \$26.768         | \$648,000.00 | \$54,000.00 |
- (h) Permitted Use (Section 8.1): Primarily a gym, health, spa, fitness facility and club (with liquor license), and any ancillary use related to this primary business of a fitness club as permitted by the applicable zoning, such as but not limited to a snack bar, a juice bar, sale of health foods, chiropractic,

medical, naturopathic, hair salon, equipment and sport clothing sales and rental.

- (i) Security Deposit: \$52,788.00 which includes GST shall be held as a security deposit in accordance with Section 3.4  
Rent Deposit: the sum of \$105,576.00 which includes GST shall be applied to Rent as it first come due hereunder in accordance with Section 3.4
- (j) Fixturing Period: Not applicable
- (k) Renewal Rights, as set out in Schedule "E"
- (l) Schedules forming part of this Lease:
  - Schedule "A" Plan
  - Schedule "B" Rules and Regulations
  - Schedule "C" Landlord's and Tenant's Work
  - Schedule "D" Indemnity Agreement
  - Schedule "E" Renewal Rights
  - Schedule "F" Additional Provisions
  - Schedule "G" Exterior Renovations to be completed by Landlord

#### 1.2 Definitions

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following terms have the following respective meanings:

- (a) "Additional Rent" means the Proportionate Share of Operating Costs, payments on account of Realty Taxes, payments for utilities, and all other amounts, excluding Basic Rent and Rental Taxes, payable by the Tenant in accordance with the terms of this Lease;
- (b) "Basic Rent" means the basic rent payable by the Tenant pursuant to Section 4.1;
- (c) "Building Systems" means: (i) the heating, ventilating and air-conditioning equipment and facilities and all other systems, services, installations and facilities from time to time installed in or servicing the Premises (or any portion thereof) including, but not limited to, the elevators and escalators and the following systems, services, installations and facilities: mechanical (including plumbing, sprinkler, drainage and sewage), electrical and other utilities, lighting, sprinkler, life safety (including fire prevention, communications, security and surveillance), computer (including environmental, security and lighting control), ice and snow melting, refuse removal, window washing, and music; and (ii) all machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them;
- (d) "Capital Taxes" means any tax or taxes levied against the Landlord and any owner of the Property by any governmental authority having jurisdiction (including, without limitation, the Large Corporations Tax imposed under the *Income Tax Act* (Canada) and the tax imposed under any applicable provincial corporate tax legislation) based on or computed by reference to the paid-up capital or place of business of the Landlord or any owner of the Property or the taxable capital employed in Canada by the Landlord or any owner of the Property as determined for the purposes of such tax or taxes;
- (e) "Commencement Date" is defined in Section 2.3;

(f) "Common Areas" means those areas, facilities, utilities, improvements, equipment and installations within, adjacent to or outside the Property which serve or are for the benefit of the Property, which do not comprise part of the Premises and which, from time to time, are not designated or intended by the Landlord to be for the Landlord's exclusive use, and are not designated or intended by the Landlord to be leased to the Tenant or any other tenants of the Property, and which include all corridors, hallways, lobbies and stairwells, all walkways and sidewalks, all landscaped and planted areas, the roof and exterior walls of the Property, exterior and interior structural elements and walls of the Property, common washrooms, all parking and loading areas and all entrances and exits thereto and all structural elements thereof, all access ways, truck courts, driveways, delivery passages, loading docks and related areas, all electrical, telephone, meter, valve, mechanical, mail, storage, service and janitorial rooms, fire prevention, security and communication systems, and generally all areas forming part of the Property which do not constitute rented or rentable premises;

(g) "Event of Default" is defined in Section 1.4.1;

(h) "Fixturing Period" means the period, if any, set out in Section 1.1(j) granted to the Tenant for possession prior to the Commencement Date for the purpose of fixturing and improving the Premises;

(i) "Lands" means the lands described in Section 1.1(d) and all rights and easements which are or may hereafter be appurtenant thereto;

(j) "Lease Year", in the case of the first Lease Year, means the period beginning on the Commencement Date and terminating on the first anniversary of the last day of the month in which the Commencement Date occurs, unless the Commencement Date is the first day of a month, in which case the first Lease Year will terminate on the expiry of the period of twelve (12) months thereafter. Each subsequent Lease Year shall commence on the first day following the expiry of the preceding Lease Year and terminate on the earlier to occur of: (i) the expiry of the period of twelve (12) months thereafter; or (ii) the termination of this Lease;

(k) "Leasehold Improvements" means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant or any former occupant of the Premises, including doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding trade fixtures and furniture and equipment not in the nature of fixtures. The Landlord agrees that the Tenant's track lighting, athletic equipment and exercise equipment are trade fixtures;

(l) "Mortgage" means any mortgage or other security against the Property and/or the Landlord's interest in this Lease, from time to time;

(m) "Mortgagee" means the holder of any Mortgage from time to time;

(n) "Normal Business Hours" means such hours as the Tenant reasonably determines from time to time as the required hours of business for the Tenant;

(o) "Operating Costs" means, for any period, the total of all costs and expenses without profit or duplication attributable to the maintenance, repair, replacement, administration, management and operation of the Property (including the Common Areas) during such period including, without limiting the generality of the foregoing:

(i) all charges for utilities and similar services to the Property including, without limiting the generality of the foregoing, water, gas, heat, electrical power or energy, steam or hot water used on or in respect of the Property and for fittings, machinery, apparatus, meters, or other things leased in respect thereof and for all work or services performed by any corporation or commission in connection with such public utilities and similar services;

(ii) all costs incurred by the Landlord in connection with the maintenance, repair, replacement and operation of the Property (including all services, equipment, Common Areas and other fixtures and appurtenances) and every part thereof, and of complying with all applicable laws, directions, rules and regulations of the governmental authorities having jurisdiction and in connection therewith including, without limiting the generality of the foregoing, the cost of providing garbage removal and maintenance services, the cost of heating and cooling and ventilating the Property and the cost of maintaining, repairing and replacing all Building Systems, the cost of window cleaning, and any and all other costs incurred by the Landlord in connection with the maintenance, repair and operation of the Property;

(iii) depreciation or amortization in an amount determined by the Landlord in accordance with general real estate industry practice on any costs incurred by the Landlord, whether before or after the Commencement Date, which the Landlord has determined to be capital in nature and which the Landlord is depreciating or amortizing in accordance with general real estate industry practice, together with interest on the undepreciated or unamortized capital cost thereof;

(iv) the cost of providing security, supervision, landscaping, window cleaning, waste collection, disposal and recycling, and snow removal services, and the costs of machinery, supplies, tools, equipment and materials used in connection with such services or any rentals thereof, and the amount of salaries, wages and fringe benefits paid to employees engaged in the maintenance or operation of the Property and amounts paid to independent contractors for any services in connection with such maintenance or operation;

(v) the cost of direct supervision and management and indirect expenses, to the extent applicable to the maintenance and operation of the Property, and all expenses of every nature incurred in connection with the management, maintenance and operation of the Common Areas;

(vi) the cost of insuring the Property in accordance with the terms of this Lease;

(vii) all costs and expenses (including legal and other professional fees, interest and penalties on deferred payment) incurred in good faith by the Landlord in contesting, resisting or appealing any Realty Taxes;

(viii) the portion of the Capital Taxes that, in the Landlord's reasonable discretion, is attributable to the Property, as if the Property was the only property of the Landlord and/ or any owner of the Premises; and

(ix) an administrative fee not greater than ten percent (10%) of the aggregate of all Operating Costs;

provided that Operating Costs shall exclude:

(A) all such costs determined by separate metering or assessment, or otherwise incurred for the exclusive benefit of the premises leased by the Tenant or any other tenant of the Property and billed to and paid for directly by the Tenant or such other tenant, including charges to tenants for above-normal utilization of utilities;

(B) the cost to the Landlord of debt service in connection with any Mortgage;

(C) taxes on the income of the Landlord;

(D) the cost of improvements to particular premises intended for leasing and real estate, or other commissions relating to leasing premises within the Property; and

(E) Capital Taxes

(p) "Premises" means that portion of the Property identified in Section 1.1(d) and having the Rentable Area as set out in Section 1.1(e);

(q) "Property" means the development which is comprised of the Lands together with the improvements, buildings, fixtures and equipment (whether chattels or fixtures) on such Lands (but not including tenants' fixtures, improvements or chattels) from time to time;

(r) "Proportionate Share" - [Intentionally Deleted]

(s) "Realty Taxes" means all real property taxes, rates, duties and assessments (including local improvement rates), impost charges or levies, whether general or special, that are levied, charged or assessed from time to time by any lawful authority, whether federal, provincial, municipal, school or otherwise, and any taxes payable by the Landlord which are imposed in lieu of, or in addition to, any such real property taxes, whether of the foregoing character or not, and whether or not in existence at the commencement of the Term, and any such real property taxes levied or assessed against the Landlord on account of its ownership of the Property or its interest therein, but specifically excluding any taxes assessed on the income of the Landlord;

(t) "Rent" means all Basic Rent and Additional Rent;

(u) "Rentable Area of the Premises" means the Premises measured to the outside surface of the outer building wall and to the centre line of any interior walls separating the Premises from adjoining premises intended for leasing or separating the Premises from corridors or other parts of the Common Areas;

(v) "Rentable Area of the Property" means the aggregate of the rentable area of all premises in the Property that are rented, or designated or intended by the Landlord to be rented (whether actually rented or not), calculated in the same manner as the Rentable Area of the Premises;

(w) "Rental Taxes" means any and all taxes or duties imposed on the Landlord or the Tenant measured by or based in whole or in part on the Rent payable under the Lease, whether existing at the date hereof or hereinafter imposed by any governmental authority, including, without limitation, Goods and Services Tax, value added tax, business transfer tax, retail sales tax, federal sales tax, excise taxes or duties, or any tax similar to any of the foregoing;

(x) "Rules and Regulations" means the rules and regulations promulgated by the Landlord from time to time pursuant to the terms of this Lease;

(y) "Term" means the period specified in Section 1.1(g) and, where the context requires, any renewal, extension or overholding thereof;

(z) "Transfer" means an assignment of this Lease in whole or in part, a sublease of all or any part of the Premises, any transaction whereby the rights of the Tenant under this Lease or to the Premises are transferred to another person, any transaction by which any right of use or occupancy of all or any part of the Premises is shared with or conferred on any person, any mortgage, charge or encumbrance of this Lease or the Premises or any part thereof, or any transaction or occurrence whatsoever which has changed or will change the identity of the person having lawful use or occupancy of any part of the Premises; and

(aa) "Transferee" means any person or entity to whom a Transfer is or is to be made.

## Article 2 — Demise and Term

### 2.1 Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant and the Tenant rents from the Landlord the Premises. Save and except for any Landlord's Work set out in Schedule "C" and the other provisions contained herein, the Tenant accepts the Premises on an "as is" basis.

### 2.2 Measurement

[Intentionally Deleted]

### 2.3 Term

The Term shall commence on the date set out in Section 1.1 (f) (the "Commencement Date") and shall run for the period set out in Section 1.1(f), save that if the Commencement Date is not the first day of a month, then the initial Term shall expire on the last day of that month in which the second (2<sup>nd</sup>) anniversary of the Commencement Date occurs, unless terminated earlier pursuant to the provisions of this Lease.

### 2.4 Delay in Possession

Should the Tenant be delayed by any fault of the Landlord or any other reason (other than the fault of the Tenant) in taking possession of the Premises at the start of the Fixturing Period or on the Commencement Date (if there is no Fixturing Period), then and only then shall the start of the Fixturing Period (if any), the Commencement Date and the Term be postponed for the same number of days that the Tenant is delayed in taking possession of the Premises. The Tenant acknowledges and agrees that such postponement shall be full settlement for any claims it might have against the Landlord for such delay.

### 2.5 Overholding

If, at the expiration of the initial Term or any subsequent renewal or extension thereof, the Tenant shall continue to occupy the Premises without further written agreement, there shall be no tacit renewal of this Lease, and the tenancy of the Tenant thereafter shall be from month to month only, and may be terminated by either party on one (1) month's notice. Rent shall be payable in advance on the first day of each month equal to the sum of one hundred twenty-five percent (125%) of the monthly instalment of Basic Rent payable during the last year of the Term and one-twelfth (1/12) of all Additional Rent charges provided for herein, determined in the same manner as if the Lease had been renewed, and all terms and conditions of this Lease shall, so far as applicable, apply to such monthly tenancy.

## Article 3 — Rent

### 3.1 Covenant to Pay, Net Lease

The Tenant covenants to pay Rent as provided in this Lease.

### 3.2 Rental Taxes

The Tenant will pay to the Landlord the Rental Taxes assessed on: (a) the Rent; and/or (b) the Tenant pursuant to the laws, rules and regulations governing the administration of the Rental Taxes by the authority having jurisdiction, and as such may be amended from time to time during the Term of this Lease or any extension thereof. The Rental Taxes shall not be deemed to be Additional Rent under this Lease, but may be recovered by the Landlord as though they were Additional Rent.

### 3.3 Payment Method

The Landlord may at any time, and from time to time, require the Tenant to provide to the Landlord a series of monthly post-dated cheques, each cheque in the amount of the monthly instalment of Rent. In the event of any change in the estimates of Additional Rent,

the Landlord may require a new series of monthly post-dated cheques or new documentation (as applicable).

### 3.4 Deposit

The amount of any such rent deposit described in Section 1.1(i) shall be applied to the first and second month Rent and Rental Taxes as they fall due under this Lease. The amount of any security deposit described in Section 1.1(i) shall be held by the Landlord as security for the due performance by the Tenant of its obligations under this Lease and may be applied, in the Landlord's discretion, to remedy any default by the Tenant hereunder and, in the absence of such default, the deposit shall be applied to the Rent and Rental Taxes for the last month of the Term. If the Landlord draws moneys from the deposit for the purpose of remedying any default of the Tenant, the Tenant shall, at the request of the Landlord, pay forthwith to the Landlord the amount of money required to replace the moneys so drawn by the Landlord. The Landlord agrees that the deposit will be placed in a guaranteed income certificate of a recognized national Canadian bank and the interest shall accrue to the benefit of the Tenant, but which interest may be realized upon by the Landlord if the Tenant is in default.

### 3.5 Rent Past Due

If the Tenant fails to pay any Rent when the same is due and payable, such unpaid amount shall bear interest at the Royal Bank of Canada prime rate of interest to its best commercial clients plus three (3%) percent, and, such interest to be calculated from the time such Rent becomes due until paid by the Tenant. All amounts due and payable by the Landlord to the Tenant other than the deposit, shall bear an identical rate of interest.

### 3.6 Partial Periods

If the Term commences on any day other than the first day of the month or ends on any day other than the last day of the month, Rent for the fractions of a month at the commencement and at the end of the Term shall be calculated on a *pro rata* basis and shall be payable on the first day of the partial month.

## Article 4 — Basic Rent

### 4.1 Basic Rent

The Tenant covenants and agrees to pay, from and after the Commencement Date, to the Landlord at the office of the Landlord, or to such other person or at such other location as the Landlord shall direct by notice in writing, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement or set-off whatsoever, save where provided in this Lease as annual Basic Rent, the sum(s) set out in Section 1.1(g) of this Lease in equal monthly instalments in advance in the amounts set out in Section 1.1(g), on the first day of each and every month during the Term.

## Article 5 — Additional Rent

### 5.1 Additional Rent

(1) In addition to the Basic Rent reserved in favour of the Landlord, the Tenant shall, throughout the Term, pay to the Landlord in lawful money of Canada, without any deduction, abatement or set-off whatsoever save where provided in this Lease, as Additional Rent, the following costs incurred and attributable to the entire Rentable Area of the Premises:

(a) any and all costs relating to the Premises that would otherwise be included in Operating Costs but are determined by separate metering or assessment of the Premises [provided such assessment is made by a governmental official] or otherwise incurred for the exclusive benefit of the Premises;

(b) all Excess Realty Taxes levied, rated, charged or assessed on or in relation to the Premises;

(c) the cost of insuring the Property in accordance with the terms of this Lease; and

(d) all other sums, amounts, costs, cost escalations and charges specified in this Lease to be payable by the Tenant.

(2) All of the payments set out in this Lease (other than Rental Taxes) shall constitute Basic Rent or Additional Rent, and shall be deemed to be and shall be paid as rent, whether or not any payment is payable to the Landlord or otherwise, and whether or not paid as compensation to the Landlord for expenses to which it has been put. The Landlord has all the rights against the Tenant for default in payment of Additional Rent that it has against the Tenant for default in payment of Basic Rent.

(3) The Landlord agrees that included in the Basic Rent is:

(i) any contribution on account of Operating Costs, save as otherwise provided in this Lease; and

(ii) Realty Taxes for the calendar year 2006 (the "Base Year"), and the Landlord shall provide to the Tenant a copy of the Realty Tax bill for 2006, prior to the Tenant commencing to pay the Realty Taxes for the calendar year 2007.

#### 5.2 Realty Taxes Escalation – Base Year 2006

Notwithstanding anything else herein contained, the Tenant shall pay to the Landlord, as Additional Rent, the amount by which all Realty Taxes levied, rated, charged or assessed in the calendar year 2007 and each calendar year throughout the Term, on or in relation to the Premises, or any part thereof exceeds the Realty Taxes levied, rated, charged or assessed for the Base Year, on or in relation to the Premises, or any part thereof (each such excess amount of Realty Taxes referred to as the "Excess Realty Taxes"), in accordance with the following:

(a) payment shall be due in equal monthly instalments over each such calendar year or such shorter period as required such that the Landlord will have in its hands an amount sufficient to pay such Excess Realty Taxes for each instalment of Realty Taxes when due to the taxing authorities. Prior to the commencement of each year, the Landlord shall estimate the amount of the Excess Realty Taxes for such equal monthly instalments and notify the Tenant in writing of such estimate. From time to time during the year, the Landlord may re-estimate the amounts payable for such year, in which event the Landlord shall notify the Tenant in writing of such re-estimate and fix monthly instalments for the remaining balance of such year; and

(b) Within one hundred and twenty (120) days of each calendar year, the Landlord shall provide to the Tenant with a copy of the Realty Tax bill for the immediately preceding year and a statement in sufficient detail indicating how the Landlord determined the Excess Realty Taxes payable for that calendar year, failing which the Tenant need not pay any increase in Excess Realty Taxes for the current calendar year or any subsequent calendar year until all of this documentation has been received by the Tenant.

(c) If at any time during the Term or any renewal thereof the Tenant is obligated to pay Realty Taxes directly to a governmental authority, then the Tenant shall pay such Realty Taxes on or before the due date. Upon such payment, the Tenant may deduct from the next instalments of Basic Rent falling due, that remainder determined by subtracting from the amount of Realty Taxes paid by the Tenant the Base Year Realty Taxes.

#### 5.3 Business and Other Taxes

In each and every year during the Term, the Tenant shall pay as Additional Rent, discharge within fifteen (15) days after they become due, and indemnify the Landlord from and against payment of, and any interest or penalty in respect of, the following:

(a) every tax, licence fee, rate, duty and assessment of every kind with respect to any business carried on by the Tenant in the Premises or by any subtenant,



any illegal or unlawful purpose or any dangerous, noxious or offensive trade or business, and shall not cause or permit any nuisance in, at or on the Premises.

#### **Article 9 — Maintenance, Repairs and Alterations of Premises**

##### **9.1 Maintenance, Repair and Cleaning of Premises**

Except as set out in this Article 9, the Tenant shall, at its own expense and cost, operate, maintain and keep in good and substantial repair, order and condition the Premises and all parts thereof (including, without limitation, all plumbing, drains, electrical and other utility services within or exclusively serving the Premises), save and except repairs required to be made by the Landlord pursuant to Section 7.1 or elsewhere in this Lease and save and except for reasonable wear and tear. All repairs shall be in all respects equal in quality and workmanship to the original work and materials in the Premises and shall meet the requirements of all authorities having jurisdiction.

##### **9.2 Inspection and Repair on Notice**

The Landlord, its servants, agents and contractors shall be entitled to enter on the Premises at any time for the purpose of making emergency repairs and otherwise during the business hours of the Tenant. The Landlord shall provide notice of such emergency entry as soon as reasonably possible, and otherwise on at least twelve (12) hours prior written notice, for the purpose of inspecting and making repairs, alterations or improvements to the Premises or to the Property, or for the purpose of having access to the under floor ducts, or to the access panels to mechanical shafts (which the Tenant agrees not to obstruct). The Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby, save as provided elsewhere in this Lease. The Landlord, its servants, agents and contractors may at any time, and from time to time, on reasonable prior written notice [which notice must specify the article or situation that is causing the potential insurance cancellation], enter on the Premises to remove any article or remedy any condition which, in the opinion of the Landlord, would likely lead to the cancellation of any policy of insurance. The Landlord shall take reasonable precautions and attempt to schedule such work so as not to unreasonably interfere with the operation of the Tenant's business and to minimize interference with the Tenant's use and enjoyment of the Premises. The Tenant shall promptly effect all repairs necessitated by the Tenant's negligence or wilful misconduct or the negligence or wilful misconduct of others for whom the Tenant is in law responsible.

##### **9.3 Repair where Tenant at Fault**

If the Property, including the Premises, the boilers, engines, controls, pipes and other apparatus used for the purpose of heating or air-conditioning the Property, the water and drainage pipes, the electric lighting, any other equipment or the roof or outside walls of the Property are put in a state of disrepair or are damaged or destroyed through the negligence, carelessness or misuse of the Tenant, its servants, agents, employees or anyone permitted by it to be in the Property, the Landlord shall advise the Tenant in writing of the need for such repair and if the Tenant has not completed such repair within fifteen days after receipt of such notice, or if such repair can not be completed within a fifteen day period, if the Tenant has not commenced or is not proceeding diligently to complete such repair within this fifteen day period, then the Landlord may undertake such repair and the expense of the necessary repairs, replacements or alterations plus an administration fee of ten percent thereon shall be borne by the Tenant and paid to the Landlord within thirty days of receipt of the Landlord's invoice and reasonable substantiating documentation.

##### **9.4 Alterations**

The Tenant will not make or erect in or to the Premises any installations, alterations, additions or partitions (individually an "Alteration") without first submitting drawings and specifications to the Landlord and obtaining the Landlord's prior written consent, which the Landlord shall not unreasonably withhold. The Tenant must further obtain the Landlord's prior written consent to any change or changes in such drawings and specifications. The Tenant will pay to the Landlord the Landlord's reasonable out-of-

pocket costs of having its architects approve such drawings and specifications and any changes. Such work shall be performed by qualified contractors engaged by the Tenant (and approved by the Landlord), but in each case only under a written contract approved in writing by the Landlord and subject to all reasonable conditions which the Landlord may impose, provided nevertheless that the Landlord may, at its option, require that the Landlord's contractors be engaged for any structural, mechanical or electrical work. Any changes to the lighting undertaken by the Tenant as part of an approved alteration must result in energy efficient lighting compatible with the Property standard. Without limiting the generality of the foregoing, any work performed by or for the Tenant shall be performed by competent workers. The Tenant shall submit to the Landlord's reasonable supervision over construction and promptly pay to the Landlord's or the Tenant's contractors, as the case may be, when due, the cost of all such work and of all materials, labour and services involved therein and of all decoration and all changes to the Property, its equipment or services, necessitated thereby. Notwithstanding the aforesaid, the Landlord's supervision is not required for any non-structural Alteration.

#### 9.5 Signs

The Tenant shall install exterior signage on the outside of the Premises as may be approved by the Landlord, such approval not to be unreasonably withheld, and by the applicable governmental authority. All Tenant signage shall remain the property of the Tenant, and the Tenant shall remove such sign (or sign face in the case of a pylon or pole sign) at the end of the Term and make good on all damage caused by such installation and removal. Except as provided in this Section 9.5, the Tenant shall not, at any time, cause or permit any sign, picture, advertisement, notice, lettering, flag, decoration or direction to be painted, displayed, inscribed, placed, affixed or maintained within the Premises and visible outside the Premises or in or on any windows or the exterior of the Premises nor anywhere else on or in the Property without the prior written consent of the Landlord.

#### 9.6 Construction Liens

If any construction or other lien or order for the payment of money shall be filed against the Property by reason of or arising out of any labour or material furnished to the Tenant or to anyone claiming through the Tenant, the Tenant, within five (5) days after receipt of notice of the filing thereof, shall cause the same to be discharged by bonding, deposit, payment, court order or otherwise. The Tenant shall defend all suits to enforce such liens or orders against the Tenant, at the Tenant's sole expense. The Tenant indemnifies the Landlord against any expense or damage incurred as a result of such liens or orders.

#### 9.7 Removal of Improvements and Fixtures

(1) All Leasehold Improvements shall immediately on their placement become the Landlord's property, without compensation to the Tenant. Except as otherwise agreed by the Landlord in writing, no Leasehold Improvements, shall be removed from the Premises by the Tenant, either during or on the expiry or earlier termination of the Term except that:

(a) the Tenant may, during the Term, in the usual course of its business, remove its trade fixtures, provided that the Tenant is not in default under this Lease for which it has received written notice, and at the end of the Term or the renewal thereof, the Tenant shall remove its trade fixtures.

(2) The Tenant shall, at its own expense, repair any damage caused to the Property by the Leasehold Improvements or trade fixtures or the removal thereof. In the event that the Tenant fails to remove its trade fixtures prior to the expiry or earlier termination of the Term, such trade fixtures shall, at the option of the Landlord, become the property of the Landlord and may be removed from the Premises and sold or disposed of by the Landlord in such manner as it deems advisable. Notwithstanding anything in this Lease, the Landlord shall be under no obligation to repair or maintain the Tenant's trade fixtures or chattels.

## 9.8 Surrender of Premises

At the expiration or earlier termination of this Lease, the Tenant shall peaceably surrender and give up unto the Landlord vacant possession of the Premises in the same condition and state of repair as the Tenant is required to maintain the Premises throughout the Term and in accordance with its obligations in Section 9.7.

## Article 10 — Insurance and Indemnity

### 10.1 Tenant's Insurance

(1) The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:

(a) "All Risks" insurance on property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Premises or on the Property, including, without limitation, stock-in-trade, furniture, equipment, partitions, trade fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time. Notwithstanding the aforesaid it is acknowledged that the Tenant is not responsible to insure for any structural component of the Property including but not limited to foundations, structural walls, structural floors and the structural roof nor the heating, ventilating and air conditioning system serving the Premises;

(b) general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the Premises which coverage shall include the business operations conducted by the Tenant and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of three million dollars (\$3,000,000);

(c) when applicable, broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis, with limits for each accident in an amount not less than the full replacement costs of the property, with respect to all boilers and machinery owned or operated by the Tenant or by others on behalf of the Tenant in the Premises or relating to or serving the Premises;

(d) business interruption insurance in an amount sufficient to cover the Tenant's Rent for a period of not less than twelve (12) months;

(e) plate glass insurance with respect to all glass windows and glass doors in or on the Premises for the full replacement value thereof, provided however that if the Tenant is Extreme Fitness Inc. or a Non Consent Transferee, the Tenant may self insure the risk of plate glass damage.

(2) All such insurance shall be with insurers licensed in the Province of Ontario. The insurance described in Sections 10.1(a) and 10.1(c) shall add as an additional insured the Landlord any Mortgagee but solely with regard to the Landlord's interest in the Premises.

(3) The Tenant shall obtain from the insurers under such policies undertakings to notify the Landlord in writing at least thirty (30) days prior to any cancellation thereof. The Tenant shall furnish to the Landlord on written request, certificates of all such policies. The Tenant agrees that if it fails to take out or to keep in force such insurance or if it fails to provide a certificate of every policy and evidence of continuation of coverage as herein provided, the Landlord shall have the right to take out such insurance and pay the premium therefor and, in such event, the Tenant shall pay to the Landlord the amount paid as premium plus ten percent (10%), which payment shall be deemed to be Additional Rent payable within thirty days of receipt of the Landlord's invoice and reasonable substantiating documentation.

## 10.2 Landlord's Insurance

The Landlord shall, at the Landlord's expense provide and maintain insurance on the whole of the Property including all structural components of the Property, (including but not limited to foundations, structural walls, structural floors and the structural roof), and the heating, ventilating and air conditioning system serving the Premises, against loss, damage or destruction caused by fire and extended perils or such other perils under an "all risks" property insurance policy at full replacement cost. The amount of insurance shall be at full replacement cost. The Landlord may maintain such other insurance in respect of the Property and its operation and management as the Landlord determines, acting reasonably. The Landlord shall also maintain comprehensive general liability insurance in the amount of three million dollars per occurrence. Notwithstanding anything herein contained to the contrary, the Tenant shall pay to the Landlord the sum of \$3,000.00 in equal monthly instalments of \$250.00 as the Tenant's contribution to the Landlord for premium for such insurance, which payment shall be deemed to be Additional Rent and is payable on the first day of each month, in advance.

## 10.3 Increase of Landlord's Premiums

[Intentionally Deleted]

## 10.4 Tenant Indemnity and Landlord Indemnity

- (a) The Tenant will indemnify the Landlord and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property:
- (i) arising out of any occurrence in or about the Premises, save if occasioned by the act or omission of the Landlord and/or those in law for whom the Landlord is responsible, or save where occasioned by any breach of the Landlord of any of its obligations contained in this Lease;
  - (ii) occasioned or caused wholly or in part by any act or omission of the Tenant or anyone for whom it is in law responsible; or
  - (iii) arising from any breach by the Tenant of any provision of this Lease.
- (b) The Landlord will indemnify the Tenant and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property:
- (i) arising out of any occurrence in or about the Property [other than the Premises, save if occasioned as stated in § 10.4(b)(ii) below], save if occasioned by the act or omission of the Tenant and/or those in law for whom the Tenant is responsible, or save where occasioned by any breach of the Tenant of any of its obligations contained in this Lease;
  - (ii) occasioned or caused wholly or in part by any act or omission of the Landlord or anyone for whom it is in law responsible; or
  - (iii) arising from any breach by the Landlord of any provision of this Lease.

## 10.5 Mutual Release

(1) Each of the Landlord and the Tenant releases the other and waives all claims against the other and those for whom the other is in law responsible with respect to occurrences insured against or required to be insured against by the releasing party, whether any such claims arise as a result of the negligence or otherwise of the other or those for whom it is in law responsible, subject to the following:

- (a) such release and waiver shall be effective only to the extent of proceeds of insurance received by the releasing party or proceeds which would have been received if the releasing party had obtained all insurance required to be obtained by it under this Lease (whichever is greater) and, for this purpose, deductible amounts

shall be deemed to be proceeds of insurance received (subject to the right of the Landlord to include such deductible amounts in Operating Costs); and

#### Article 11 — Assignment and Subletting

##### 11.1 Assignment, Subletting

The Tenant shall not effect any Transfer without the prior written consent of the Landlord, which shall not be unreasonably withheld. No consent to any Transfer shall relieve the Tenant from its obligation to pay Rent and to perform all of the covenants, terms and conditions herein contained. In the event of a Transfer, the Landlord may collect Rent or sums on account of Rent from the Transferee and apply the net amount collected to the Rent payable hereunder, but no such Transfer or collection or acceptance of the Transferee as tenant, shall be deemed to be a waiver of this covenant.

##### 11.2 Landlord's Consent

If the Tenant desires to effect a Transfer, then and so often as such event shall occur, the Tenant shall make its request to the Landlord in writing. The Tenant's request shall contain the information required by Section 11.3, and the Landlord shall, within fourteen (14) days after receipt of such request, notify the Tenant in writing either that the Landlord consents or does not consent, as the case may be to such Transfer and shall provide in writing its reasons for its non consent. Failure of the Tenant to deliver notice to the Landlord within such fifteen (15) day period advising of the Tenant's desire to refrain from such Transfer shall be deemed to be an acceptance by the Tenant of the Landlord's cancellation of this Lease (in whole or in part, as the case may be).

##### 11.3 Requests for Consent

Requests by the Tenant for the Landlord's consent to a Transfer shall be in writing and shall be accompanied by the name, address, telephone numbers, business experience, credit and financial information and banking references of the Transferee, and shall include a true copy of the document evidencing the proposed Transfer, and any agreement relating thereto. The Tenant shall also provide such additional information pertaining to the Transferee as the Landlord may reasonably require. The Landlord's consent shall be conditional on the following:

- (a) the Tenant remaining fully liable to pay Rent and to perform all of the covenants, terms and conditions herein contained;
- (b) the Landlord being satisfied, acting reasonably, with the financial ability and good credit rating and standing of the Transferee and the ability of the Transferee to carry on the permitted use;
- (c) [Intentionally deleted];
- (d) the Landlord being satisfied, acting reasonably, that the Transfer will not result in the Landlord being in breach of any covenants, restrictions or commitments given by the Landlord to other tenants, any Mortgagee or any other party in the Property;
- (e) the Transferee having entered into an agreement with the Landlord agreeing to be bound by all of the terms, covenants and conditions of this Lease;
- (f) the Tenant paying to the Landlord, prior to receiving such consent, an administrative fee and all reasonable legal fees and disbursements incurred by the Landlord in connection with the Transfer, which fees and disbursements shall not exceed six hundred and fifty dollars (\$650.00) in aggregate;
- (g) the Tenant paying to the Landlord, as Additional Rent, all excess rent and other profit earned by the Tenant in respect of the Transfer excluding therefrom any bona fide franchise, license, legal or administration fee or any bona fide amount payable pursuant to a franchise or licensing agreement, or bona fide consideration for the value of Leasehold Improvements, and Tenant's chattels and goodwill; and

(h) the Landlord receiving sufficient information from the Tenant or the Transferee to enable it to make a determination concerning the matters set out above.

#### 11.4 Change of Control

Any transfer or issue by sale, assignment, bequest, inheritance, operation of law, or other disposition, or by subscription, of any part or all of the corporate shares of the Tenant or any other corporation which would result in any change in the effective direct or indirect control of the Tenant, shall be deemed to be a Transfer, and the provisions of this Article 11 shall apply *mutatis mutandis*. The Tenant shall make available to the Landlord or to its lawful representatives such books and records for inspection at all reasonable times in order to ascertain whether there has, in effect, been a change in control. This provision shall not apply if the Tenant is a public company or is controlled by a public company listed on a recognized stock exchange and such change occurs as a result of trading in the shares of a corporation listed on such exchange.

#### 11.5 No Advertising

The Tenant shall not advertise that the whole or any part of the Premises is available for assignment or sublease, and shall not permit any broker or other person to do so unless the text and format of such advertisement is approved in writing by the Landlord. No such advertisement shall contain any reference to the rental rate of the Premises.

#### 11.6 Assignment by Landlord

In the event of the sale or lease by the Landlord of its interest in the Property or any part or parts thereof, and in conjunction therewith the assignment by the Landlord of this Lease or any interest of the Landlord herein, the Landlord shall be relieved of any liability under this Lease in respect of matters arising from and after the date that such purchaser, lessee or assignee has agreed in writing with the Tenant to be bound by the provisions of this Lease including an acknowledgement of the transfer of any deposit to the purchaser, lessee or assignee.

#### 11.7 Status Certificate

The Tenant or Landlord shall, on ten (10) days' notice from the other, execute and deliver to the requesting party a statement as prepared by the requesting party in writing certifying the following: (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the modifications and that the same is in full force and effect as modified; (b) the amount of the Basic Rent then being paid; (c) the dates to which Basic Rent, by instalments or otherwise, and Additional Rent and other charges have been paid; and (d) whether or not there is any existing default on the part of the Landlord or Tenant of which the Tenant or Landlord, as the case may be, has notice.

#### 11.8 Subordination and Non-Disturbance

Subject to Section 8 of Schedule "F", this Lease and all of the rights of the Tenant hereunder are and shall at all times be subject and subordinate to any and all Mortgages and any renewals or extensions thereof now or hereinafter in force against the Premises. Upon the request of the Landlord, the Tenant shall promptly subordinate this Lease and all its rights hereunder in such form or forms as the Landlord may require to any such Mortgage or Mortgages, and to all advances made or hereinafter to be made on the security thereof and will, if required, attorn to the holder thereof. No subordination by the Tenant shall have the effect of permitting a Mortgagee to disturb the occupation and possession by the Tenant of the Premises or of affecting the rights of the Tenant pursuant to the terms of this Lease, provided that the Tenant performs all of its covenants, agreements and conditions contained in this Lease and contemporaneously executes a document of attornment as required by the Mortgagee.

## Article 12 — Quiet Enjoyment

### 12.1 Quiet Enjoyment

The Tenant, on paying the Rent hereby reserved, and performing and observing the covenants and provisions herein required to be performed and observed on its part, shall peaceably enjoy the Premises for the Term.

## Article 13 — Damage and Destruction

### 13.1 Damage or Destruction to Premises

If the Premises or any portion thereof are damaged or destroyed by fire or by other casualty, rent shall abate in proportion to the area of that portion of the Premises which, in the opinion of the Landlord's architect or professional engineer, is thereby rendered unfit for the purposes of the Tenant until the Premises are repaired and rebuilt, and the Landlord shall repair and rebuild the Premises. The Landlord's obligation to repair and rebuild shall not include the obligation to repair and rebuild any chattel, fixture, leasehold improvement, installation, addition or partition in respect of which the Tenant is required to maintain insurance hereunder, or any other property of the Tenant. Rent shall commence to be payable one (1) day after the Landlord notifies the Tenant that the Tenant may reoccupy the Premises for the purpose of undertaking its work.

### 13.2 Rights to Termination

Notwithstanding Section 13.1:

(a) if the Premises or any portion thereof are damaged or destroyed by any cause whatsoever and cannot, in the opinion of the Landlord's architect or professional engineer, be rebuilt within two hundred and forty (240) days of the date of damage or destruction, the Landlord or Tenant may, instead of rebuilding the Premises, terminate this Lease by giving to the other within thirty (30) days after receipt of the "Architect's Opinion" [as hereinafter defined] and thereupon rent and other payments hereunder shall be apportioned and paid to the date of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Premises to the Landlord; and

(b) The Landlord's architect or professional engineer will provide to the Landlord and Tenant within thirty days of the date of the damage and destruction, its written opinion (the "Architect's Opinion") as to the amount of time required to remedy the damage and destruction. If the Tenant has not received the Architect's Opinion within this thirty day period, the Tenant may terminate this Lease on ten days notice to the Landlord.

(c) The Landlord will not terminate this Lease unless it terminates the leases of all other tenants of the Property concurrent with the termination of this Lease.

(d) If the Landlord has not terminated this Lease but within one year from the date of damage has failed to either rebuild the Property to that condition it was in immediately prior to the date of damage and destruction, or failed to rebuild the Premises such that the Tenant has recommenced its business from the Premises, then the Tenant may terminate this Lease on thirty days written notice to the Landlord.

(e) If, (i) the damage and destruction is caused by a peril for which the Landlord is not insured and the Landlord has not elected to rebuild that portion of the Property (including the Premises) damaged by such peril; or (ii) there are not sufficient proceeds of insurance to complete the Landlord's repair obligations and the Landlord has not elected to rebuild that portion of the Property (including the Premises) damaged by such peril; or (iii) the consent of the Landlord's mortgagee has not been obtained, then the Tenant may terminate this Lease upon thirty days written notice to the Landlord. The Landlord will advise the Tenant within sixty (60) days of the date of damage and destruction whether or not; (A) the Landlord has elected to undertake all repairs required to be performed by the Landlord regardless of the extent of the proceeds or insurance; and/or (B) the Landlord's mortgagee has consented to the Landlord performing its repair obligations; failing which the Landlord will be deemed to have elected not to undertake such repairs

and the Landlord's mortgagee will be deemed to have not consented to the Landlord performing its repair obligations.

(f) Notwithstanding the aforesaid, if the damage and destruction occurs during the last two (2) year of any Term and the Architect's Opinion indicates that the Premises can not be rebuilt within sixty (60) days of the date of damage or destruction, then the Tenant may terminate this Lease by written notice to the Landlord given to the Landlord within thirty (30) days after receipt of Architect's Opinion.

### 13.3 Certificate Conclusive

Any decisions regarding the extent to which the Premises or any portion of the Property has become unfit for use shall be made by an architect or professional engineer appointed by the Landlord, whose decision shall be final and binding on the parties.

### 13.4 Insurance Proceeds

Notwithstanding Sections 13.1 and 13.2, in the event of damage or destruction occurring by reason of any cause in respect of which proceeds of insurance are substantially insufficient to pay for the costs of rebuilding the Property or the Premises, or are not payable to or received by the Landlord, or in the event that any mortgagee or other person entitled thereto shall not consent to the payment to the Landlord of the proceeds of any insurance policy for such purpose, or in the event that the Landlord is not able to obtain all necessary governmental approvals and permits to rebuild the Property or the Premises, the Landlord may elect, on written notice to the Tenant, within thirty (30) days of such damage or destruction, to terminate this Lease, and the Tenant shall immediately deliver up vacant possession of the Premises to the Landlord.

### 13.5 Landlord's Work

In performing any reconstruction or repair, the Landlord may effect changes to the Property and its equipment and systems and minor changes in the location or area of the Premises, subject to the Tenant's approval, which approval shall not be unreasonably withheld. The Landlord shall have no obligation to grant to the Tenant any Tenant's allowances to which it may have been entitled at the beginning of the Term, and shall have no obligation to repair any damage to Leasehold Improvements or the Tenant's fixtures, save if same is insured by the Landlord or the Landlord is obligated to insure for such item pursuant to this Lease.

## Article 14 — Default

### 14.1 Default and Right to Re-enter

Any of the following constitutes an Event of Default under this Lease:

- (a) any Rent due is not paid within five (5) days after notice in writing from the Landlord to the Tenant;
- (b) the Tenant has breached any of its obligations in this Lease and, if such breach is capable of being remedied and is not otherwise listed in this Section 14.1, after notice in writing from the Landlord to the Tenant:
  - (i) the Tenant fails to remedy such breach within fifteen (15) days (or such shorter period as may be provided in this Lease); or
  - (ii) if such breach cannot reasonably be remedied within fifteen (15) days (or such shorter period), the Tenant fails to commence to remedy such breach within fifteen (15) days of such breach, or thereafter fails to proceed diligently to remedy such breach;
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any proceeding is commenced by any person for the dissolution, winding-up or other termination of the Tenant's existence or the



liquidation of its assets and such proceeding is not set aside within twenty (20) days of its commencement;

(d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Tenant and such appointment is not set aside within twenty days of its commencement;

(e) the Tenant makes a sale in bulk of all or a substantial portion of its assets, other than in conjunction with an assignment or sublease approved by the Landlord where such approval is required;

(f) this Lease or any of the Tenant's assets in the Premises are taken under a writ of execution and such writ is not stayed or vacated within fifteen (15) days after the date of such taking;

(g) the Tenant makes an assignment or sublease, other than in compliance with the provisions of this Lease;

(h) [Intentionally deleted];

(i) the Tenant moves or commences, attempts or threatens to move significant portion of its trade fixtures, chattels and equipment out of the Premises; or

(j) any insurance policy covering any part of the Property is cancelled as a result of any action or omission by the Tenant or any person for whom it is legally responsible.

#### 14.2 Default and Remedies

If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

(a) to terminate this Lease by notice to the Tenant or to re-enter the Premises and repossess them and, in either case, enjoy them as of its former estate, and to remove all persons and property from the Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant. If the Landlord enters the Premises without notice to the Tenant as to whether it is terminating this Lease under this Section 14.2(a) or proceeding under Section 14.2(b) or any other provision of this Lease, the Landlord shall be deemed to be proceeding under Section 14.2(b), and the Lease shall not be terminated, nor shall there be any surrender by operation of law, but the Lease shall remain in full force and effect until the Landlord notifies the Tenant that it has elected to terminate this Lease. No entry by the Landlord during the Term shall have the effect of terminating this Lease without notice to that effect to the Tenant;

(b) to enter the Premises as agent of the Tenant to do any or all of the following:

(i) re-let the Premises for whatever length and on such terms as the Landlord, in its discretion, may determine and to receive the rent therefor;

(ii) take possession of any property of the Tenant on the Premises, store such property at the expense and risk of the Tenant, and sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant;

(iii) make alterations to the Premises to facilitate their re-letting; and

(iv) apply the proceeds of any such sale or re-letting first, to the payment of any expenses incurred by the Landlord with respect to any such re-letting or sale, second, to the payment of any indebtedness of the Tenant to the Landlord other than Rent, and third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future

Rent as it becomes due and payable, provided that the Tenant shall remain liable for any deficiency to the Landlord;

(c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter on the Premises for such purposes. No notice of the Landlord's intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease, and the Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such default. The Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith;

(d) to recover from the Tenant all damages, costs and expenses incurred by the Landlord as a result of any default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Premises; and

(e) in the event of the bankruptcy of the Tenant only, to recover from the Tenant the full amount of the current month's Rent together with the next three (3) months' instalments of Rent, all of which shall immediately become due and payable as accelerated rent.

#### 14.3 Distress

Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during the Term or any renewal thereof shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress.

#### 14.4 Costs

(a) The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Landlord and so ordered by a court of competent jurisdiction incurred by the Landlord in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to indemnify the Landlord.

(b) The Landlord shall pay to the Tenant all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Tenant and so ordered by a court of competent jurisdiction in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Landlord under this Lease, or in respect of which the Landlord has agreed to indemnify the Tenant.

#### 14.5 Remedies Cumulative

Notwithstanding any other provision of this Lease, the Landlord or Tenant may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant or the Landlord, as the case may be, either by any provision of this Lease, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord or Tenant by statute or common law.

## Article 15 — General

### 15.1 Entry

(1) Provided that the Tenant has not exercised any option to extend or renew this Lease as provided herein, the Landlord shall be entitled at any time during the last six (6) months of the Term:

(a) with reasonable notice to the Tenant, to place on the exterior of the Premises, the Landlord's usual notice(s) that the Premises are for rent; and

(b) on reasonable prior notice, to enter on the Premises during Normal Business Hours for the purpose of exhibiting same to prospective tenants.

(2) The Landlord may enter the Premises at any time during the Term on reasonable notice for the purpose of exhibiting the Premises to prospective Mortgagees and/or purchasers or for the purpose of inspecting the Premises.

### 15.2 Force Majeure

Notwithstanding any other provision contained herein, in the event that either the Landlord or the Tenant should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section 15.2 shall not under any circumstances operate to excuse the Tenant from prompt payment of Rent and/or any other charges payable under this Lease.

### 15.3 Effect of Waiver or Forbearance

No waiver by any party of any breach by any other party of any of its covenants, agreements or obligations contained in this Lease shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations nor shall any forbearance by any party to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the Landlord's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Tenant to the Landlord hereunder shall be paid without any deduction, set-off or abatement whatsoever save as otherwise provided in this Lease, and the Tenant waives the benefit of any statutory or other right in respect of abatement or set-off in its favour at the time hereof or at any future time.

### 15.4 Notices

(1) Any notice, delivery, payment or tender of money or document(s) to the parties hereunder may be delivered personally or sent by prepaid registered or certified mail or prepaid courier to the address for such party as set out in Section 1.1(a), (b) or (c), as applicable, and any such notice, delivery or payment so delivered or sent shall be deemed to have been given or made and received on delivery of the same or on the third (3<sup>rd</sup>) business day following the mailing of same, as the case may be. Each party may, by notice in writing to the others from time to time, designate an alternative address in Canada to which notices given more than ten (10) days thereafter shall be addressed. The Landlord agrees that any notice sent to the Tenant that a copy of such notice must be sent concurrently to Falconhead Capital LLC, 450 Park Avenue, 3<sup>rd</sup> Floor, New York, NY 10022, or such other company as the Tenant designates, by notice in writing to the Landlord, and the time period for the Tenant to remedy such default shall not commence until such notice has been given to Falconhead Capital LLC or such other designated company to which notice has been given to the Landlord more than ten (10) days prior thereto.

(2) Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of Canada Post shall be deemed to have been received only if delivered personally or sent by prepaid courier.

#### 15.5 Registration

Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant (including any Transferee) shall register this Lease or any Transfer against the Property. The Tenant may register a notice or caveat of this Lease provided that: (a) a copy of the Lease is not attached; (b) no financial terms are disclosed; (c) the Landlord gives its prior written approval to the notice or caveat, which approval shall not be unreasonably withheld or delayed; and (d) the Tenant pays the Landlord's reasonable costs on account of the matter. Upon the expiration or earlier termination of the Term, the Tenant shall immediately discharge or otherwise vacate any such notice or caveat. If any part of the Property is made subject to any easement, right-of-way or similar right, the Tenant shall immediately, at the request of the Landlord, postpone its registered interest to such easement, right-of-way or similar right.

#### 15.6 Number, Gender, Effect of Headings

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and *vice versa*. The division of this Lease into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Lease.

#### 15.7 Severability, Subdivision Control

If any Article or Section or part or parts of an Article or Section in this Lease is or is held to be illegal or unenforceable, it or they shall be considered separate and severable from the Lease and the remaining provisions of this Lease shall remain in full force and effect and shall be binding on the Landlord and the Tenant as though such Article or Section or parts or parts thereof had never been included in this Lease. It is an express condition of this Lease that the subdivision control provisions of the applicable provincial legislation be complied with, if necessary. If such compliance is necessary, the Tenant covenants and agrees to diligently proceed, at its own expense, to obtain the required consent and the Landlord agrees to cooperate with the Tenant in bringing such application.

#### 15.8 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein and this Lease constitutes the entire agreement duly executed by the parties, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties.

#### 15.9 Successors and Assigns

The rights and liabilities of the parties shall enure to the benefit of their respective heirs, executors, administrators, successors and permitted assigns, subject to any requirement for consent by the Landlord hereunder.

#### 15.10 Confidentiality and Personal Information

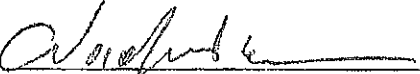
The contents, terms and conditions of this Lease shall be kept strictly confidential by the Tenant and Landlord. Neither the Landlord nor the Tenant shall under any circumstances, discuss or reveal the details of this Lease with any arm's-length parties including, but not limited to, any other tenants in the Property, prospective tenants, real estate agents or others except the Tenant's or Landlord's existing and potential lenders,

bankers, investors, purchasers, legal and financial advisors, any *bona fide* Transferee, and except as may be required by law.

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD

1079268 ONTARIO INC.

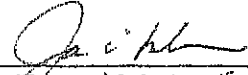
Per:   
Name: C. VOIDONI COLAS  
Title: PRESIDENT c/s

I/We have the authority to bind the Corporation

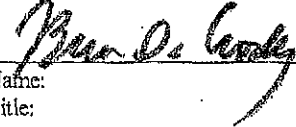
Per: \_\_\_\_\_  
Name:  
Title:

TENANT

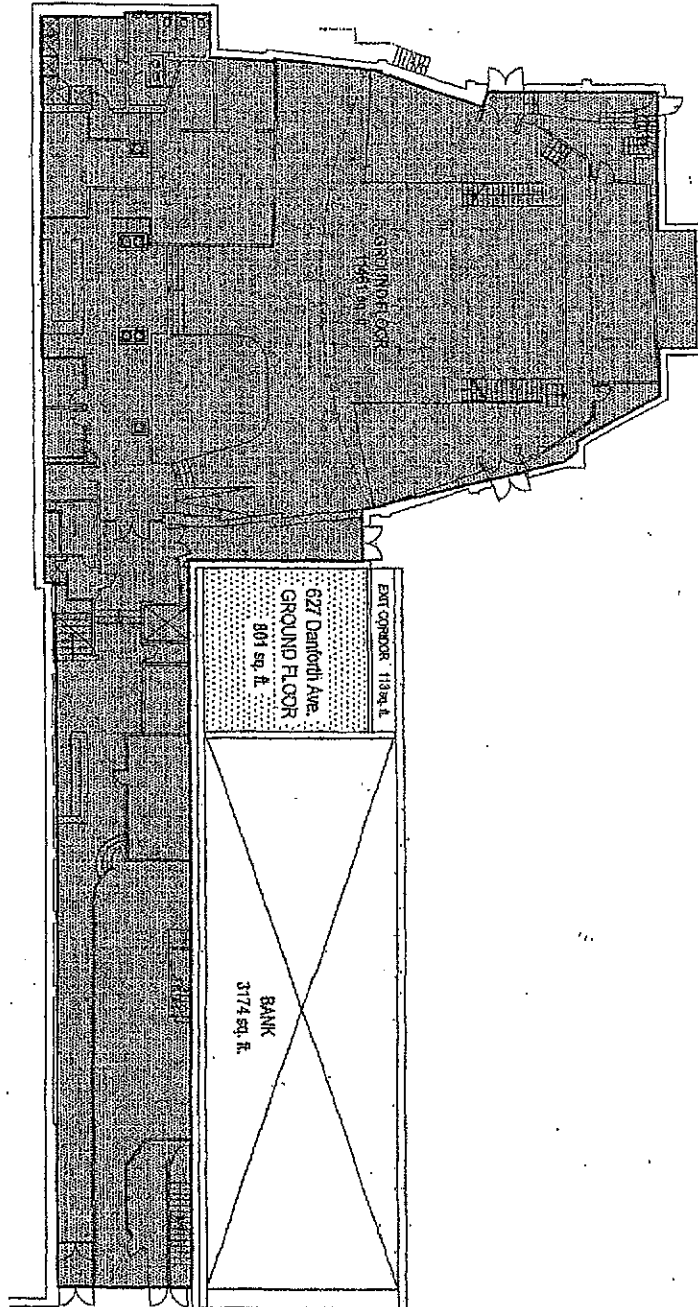
EXTREME FITNESS, INC.

Per:   
Name: JAMES E. SOLOMON  
Title: COO c/s

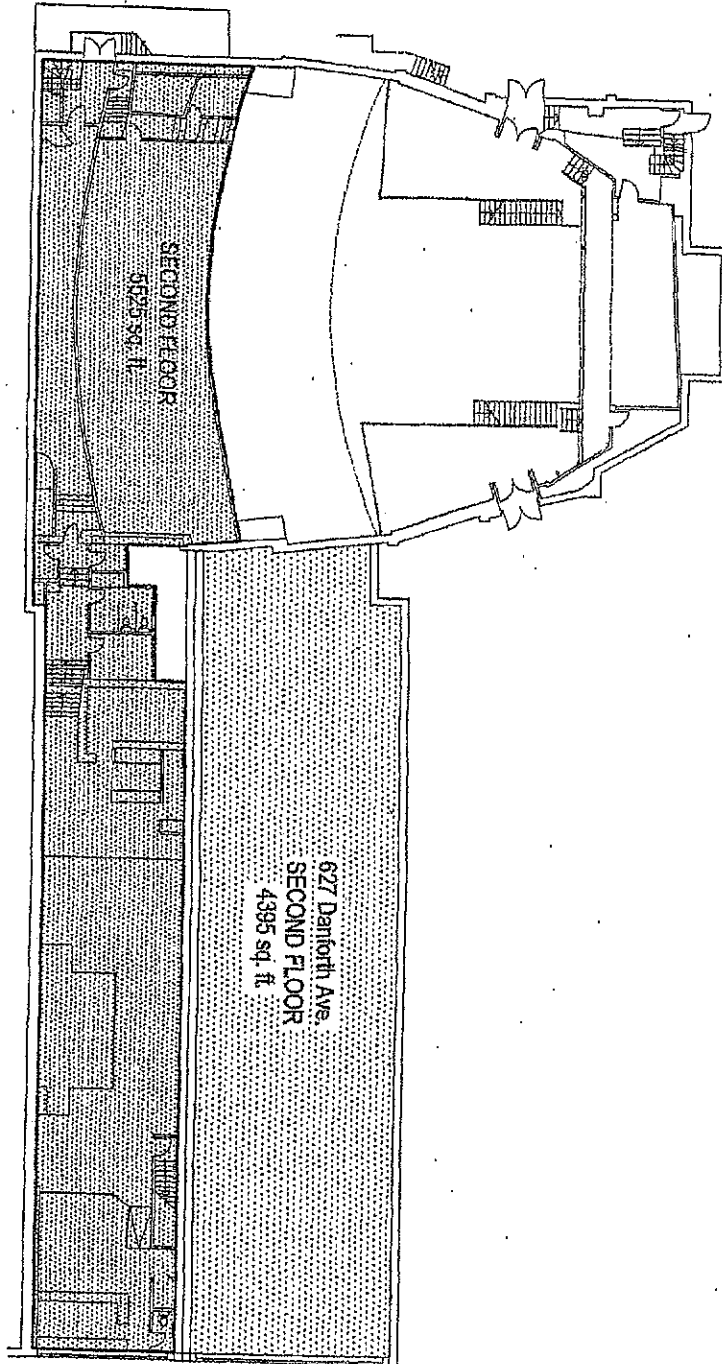
I/We have the authority to bind the Corporation

Per:   
Name:  
Title:

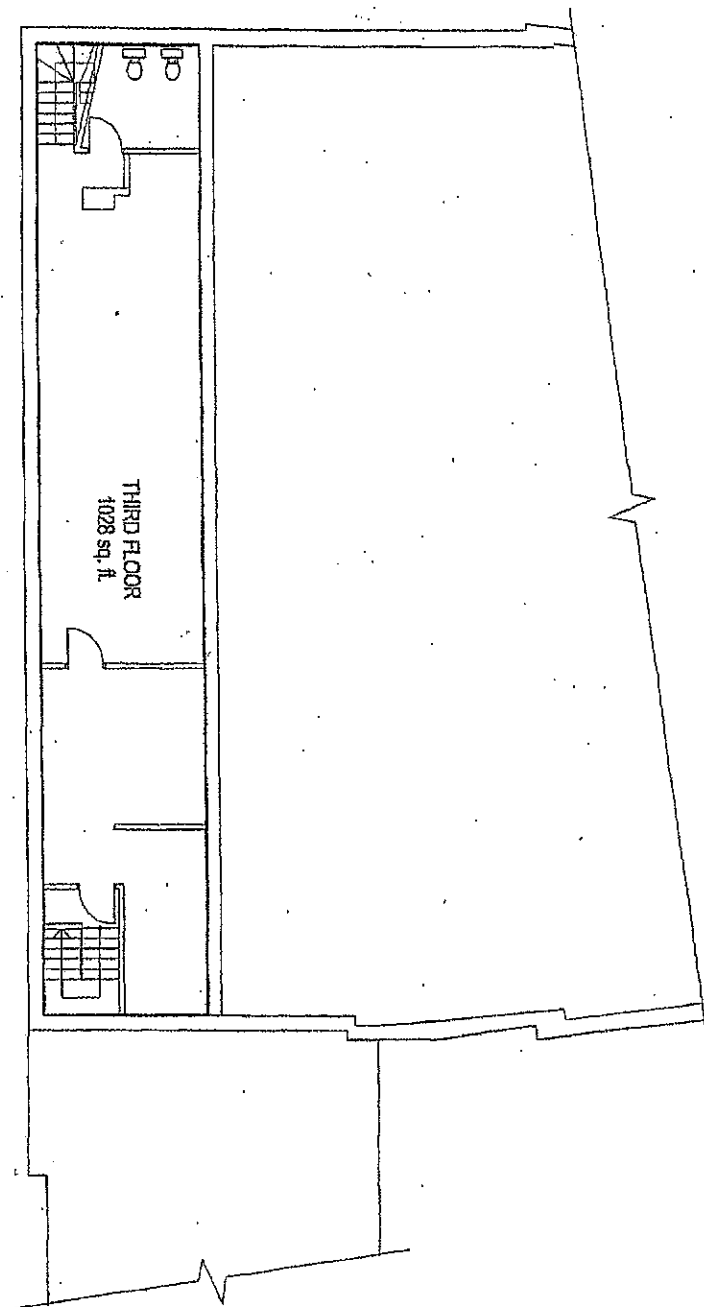
Schedule "A"



Schedule "A"

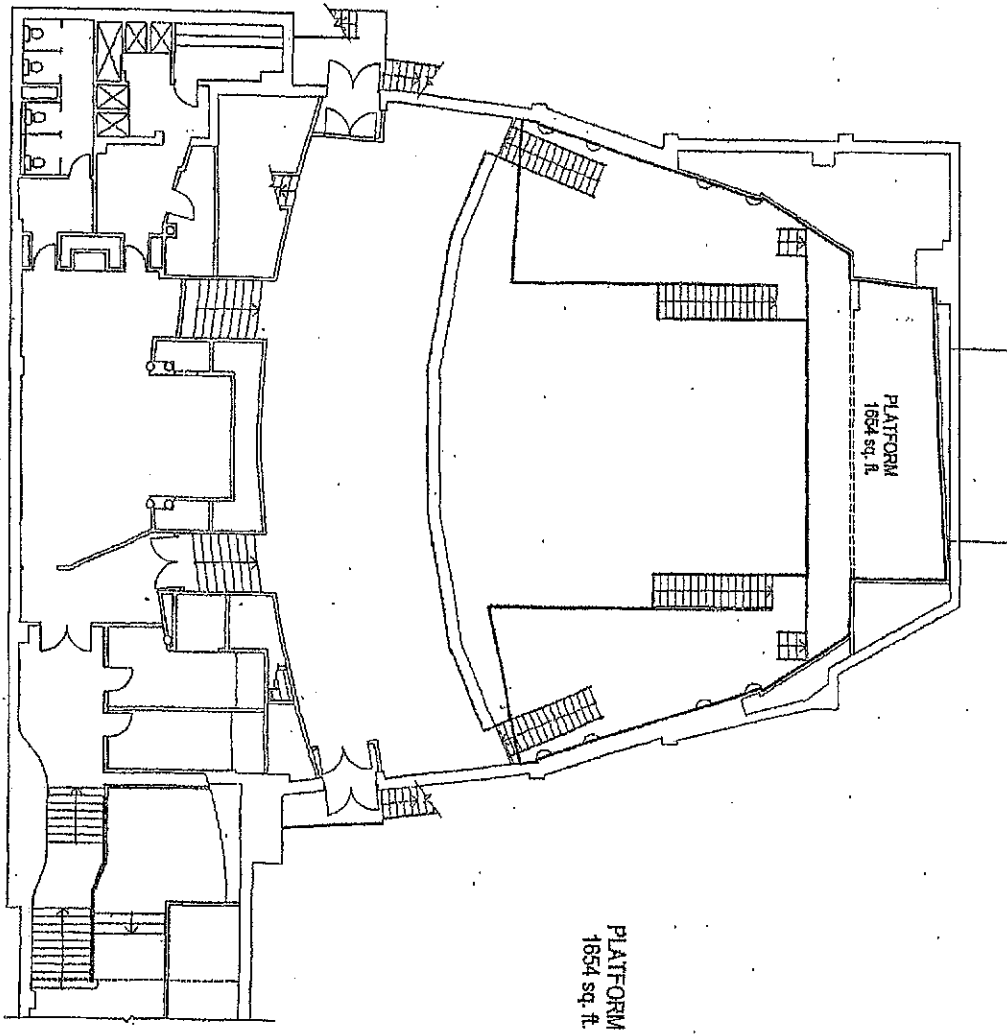


Schedule "A"

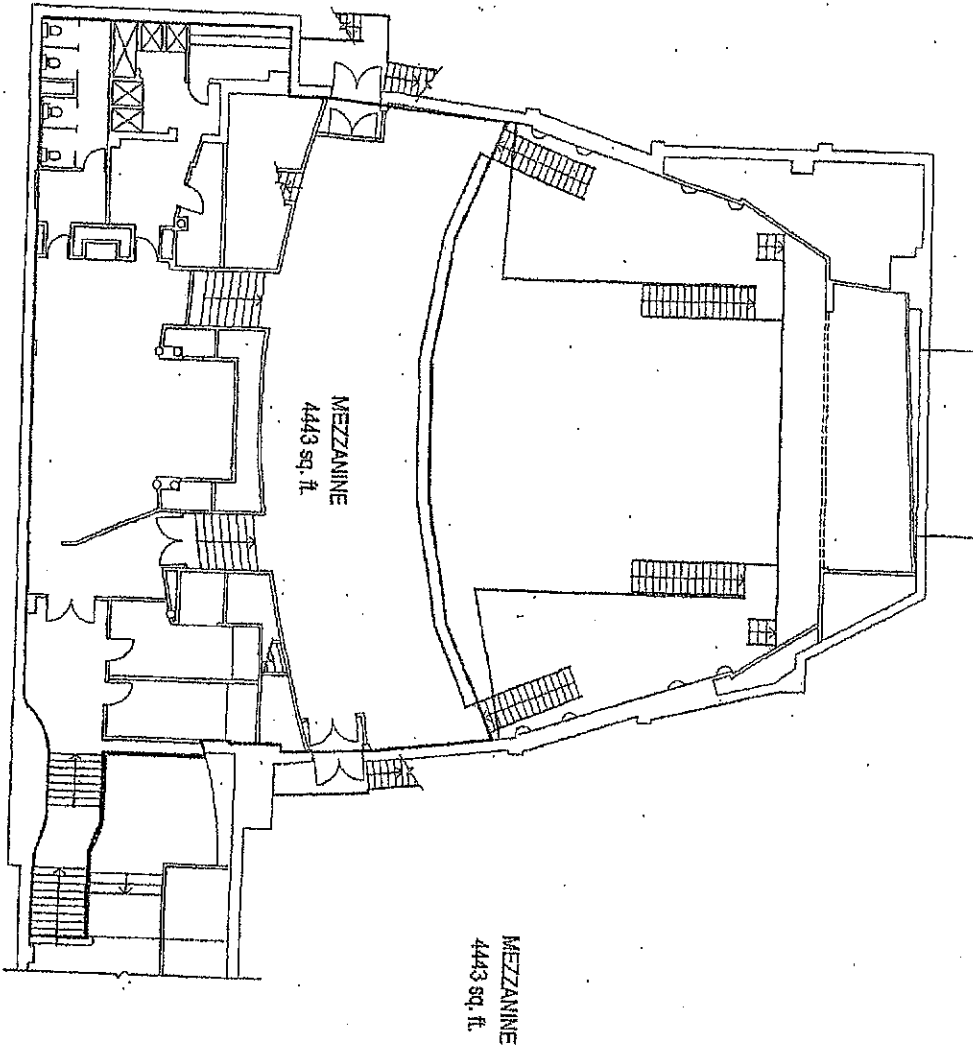




Schedule "A"



Schedule "A"



## Schedule "B"

### Rules and Regulations

1. The Tenant shall have the exclusive use of the parking area and the driveway on the Property located in the rear of the Premises, subject to the Landlord's right of use and access for the purpose of carrying out any repairs, maintenance, additions and/or improvements to the Property or to the property known municipally as 627 Danforth Avenue, Toronto and subject to the rights of the abutting property owners and their respective tenants to any easements or right-of-way in, over or along said parking area and driveway, if any. Tenant shall be prohibited from permitting, granting a license or any other rights to any party to use or otherwise occupy said parking area and/or driveway.
2. The sidewalks, entries, passages and staircases shall not be obstructed or used by the Tenant, its agents, servants, contractors, invitees or employees for any purpose other than ingress to and egress from the Premises. The Landlord reserves entire control of all parts of the Property employed for the common benefit of the tenants and, without restricting the generality of the foregoing, the Landlord reserves entire control of the sidewalks, entries, corridors and passages not within the Premises, washrooms, air-conditioning closets, fan rooms, janitor's closets, electrical closets and other closets, stairs, flues, stacks, pipe shafts and ducts, and shall have the right to place such signs and appliances therein as it may deem advisable, provided that ingress to and egress from the Premises is not unduly impaired thereby.
3. The Tenant, its agents, servants, contractors, invitees, employees or others for whom the Tenant is in law responsible, shall not bring in or take out, position, construct, install or move any safe, machine or other heavy equipment without first obtaining the consent in writing of the Landlord.
4. [Intentionally deleted].
5. The washroom facilities shall not be used for any purpose other than those for which they were constructed, and no sweeping, rubbish, rags, ashes or other substances shall be thrown therein.
6. No one shall use the Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for business purposes.
7. Canvassing, soliciting and peddling in the Property are prohibited.
8. Any hand trucks, carryalls, or similar appliances used in the Property shall be equipped with rubber tires, side guards and such other safeguards as the Landlord shall require.
9. No animals or birds shall be brought into the Property.
10. Intentionally deleted.
11. Intentionally deleted.
12. The Tenant shall not in any case erect or cause to be erected any aerial anywhere in the Property.

Schedule "C"

Landlord's and Tenant's Work

Landlord's Work

None - as is where is condition.

Tenant's Work

As per Section 9.4 above.

Schedule "D"  
Indemnity Agreement

[Intentionally deleted]

Schedule "E"

See paragraph 7 of Schedule "F"

Schedule "F"  
Additional Provisions

- 1.(a) The Tenant or a Non Consent Transferee shall have the right upon written notice to the Landlord, to assign, transfer, sublet or otherwise dispose of the Lease (individually a "Transfer"), without the Landlord's consent to any of the following:
- (i) any associated, affiliated or controlled corporation of the Tenant (as such term is defined in the Canada Business Corporations Act, or any replacement legislation), or any corporation formed or resulting from the merger, amalgamation, re-organization or the re-structuring of the Tenant; (individually a "Non Consent Transferee");
  - (ii) a bona fide franchisee of the Tenant, or a bona fide franchisee of any Non Consent Transferee;
  - (iii) a concessionaire or licensee of a portion of the Property, provided the aggregate area occupied by all concessionaires and/or licensees in the Property is less than fifty percent (50%) of the floor area of the Property; and
  - (iv) any third party where the Premises are included in the sale, transfer or other disposition to this party of at least fifty percent (50%) of the retail outlets in the province in which the Premises are located and operating under the same name as that which the Premises is being operated at the date of such sale, transfer or disposition

Such Transfer shall not relieve the Tenant from its obligation to pay Rent and to perform all of the covenants, terms and conditions contained in the Lease. In the event of a Transfer, the Landlord may collect Rent or sums on account of Rent from the Non Consent Transferee and apply the net amount collected to the Rent payable under the Lease, but no such Transfer or collection or acceptance of the Non Consent Transferee as tenant, shall be deemed to be a waiver of this covenant.

- (b) Notwithstanding anything to the contrary set forth in this Lease, (i) the change of control of the Tenant or of any Non Consent Transferee and (ii) the bona fide charging, mortgaging, encumbering or hypothecation of this Lease and/or the Tenant's property in the Property by the Tenant or any holding body corporate in the course of a financing of their respective business undertakings, shall not under any circumstance be deemed to constitute a Transfer of the Property for the purpose of this Lease;
- (c) If the Landlord has not consented to any Transfer or provided its written reasons for such non consent within thirty (30) days of receipt of the Tenant's request to such Transfer, then the Landlord shall be deemed to have consented to such Transfer.

2. The Landlord agrees that any certificate or professional opinion required to be prepared according to this agreement or the Lease, such certificate or professional opinion shall be prepared by an independent arm's length professional acting within the scope of his appointment and specialty. Such certificate shall not be binding if shown to be in error.

3. Wherever the Landlord's or Tenant's determination, estimate, approval or consent is required in this agreement or the Lease, such determination, estimate approval or consent shall not be unreasonably withheld or delayed, unless otherwise stated to the contrary in this Lease. Any work performed by the Landlord, or organized by the Landlord but which the Tenant is responsible to pay will be done at competitive prices, based on an arm's length relationship. The parties hereto confirm that this agreement is a business contract as well as a lease. The parties expect that each will act in good faith and in a commercially reasonable manner (unless specifically provided to the contrary) in

accordance with this Lease and in performing their respective rights and obligations as contained herein.

4. Notwithstanding any provision contained in the Lease to the contrary the Tenant's obligation to pay Taxes shall not include:

- (a) The Landlord's income taxes or capital taxes,
- (b) Penalties relating to the late, partial and/or non payment by the Landlord of Taxes which are not the result of any late, partial and/or non payment by the Tenant of its share of Taxes,
- (c) Any amount that the Landlord or others (other than the Tenant) may elect to pay in support of any educational facility other than the public school system of Ontario.

5. The Landlord shall provide to the Tenant within 120 days after the end of each lease year, a statement in reasonable detail and certified by the president of the Landlord detailing those costs and expenses applicable to the Property and payable by the Tenant (and if requested such substantiating documentation of the amounts contained in the statement as reasonably requested by the Tenant). The Landlord agrees that if the Landlord has not provided to the Tenant with such statement within this 120 day period or the substantiating documentation within thirty (30) days of the Tenant's request, then the Tenant need not pay any increase in such costs as estimated by the Landlord until such statement and/or substantiating documentation has been given to the Tenant.

6. The Landlord acknowledges that the Landlord shall be responsible for the payment of any commission and/or fee payable to any broker or agent as a result of such party introducing the Tenant to the Property, or the Landlord to the Tenant for the Property. The Tenant represents to the Landlord that no agent or broker acted on the Tenant's behalf with regard to the Property.

7. Provided the Tenant is not then in default under the Lease for which it has received written notice, the Tenant shall have the right to renew this Lease for four (4) periods (individually the "Renewal"), the first Renewal being for a period of three (3) years, and the remaining three Renewals each of five (5) years. Each Renewal shall be on the same terms and conditions as contained in this Lease save for the Basic Rent set out in Section 1.1(g) of this Lease. The Tenant shall exercise each Renewal by providing written notice of its intention to renew at least six months prior to the commencement of the next applicable Renewal. The Basic Rent for the first, second and third Renewal term shall be as set out in the Basic Terms, Section 1.1(g). The Basic Rent for the fourth Renewal term shall be the greater of (a) the Basic Rent for the third Renewal term and (b) the Basic Rent agreed upon by the Landlord and Tenant and based upon the then [as of the commencement of the fourth Renewal term] fair market value for similar premises with a similar use in a similar building and located within a two (2) kilometer radius of any point along the perimeter of the Property, but without taking into consideration the value of the Tenant's leasehold improvements. If the Landlord and Tenant can not agree upon such Basic Rent prior to commencement of the fourth Renewal term, then the Basic Rent shall be determined by arbitration pursuant to the Arbitrations' Act, or any replacement legislation, and based upon the fair market value for similar premises with a similar use in a similar building and located within a two (2) kilometer radius of any point along the perimeter of the Premises, but without taking into consideration the value of the Tenant's leasehold improvements.

8. The Landlord shall obtain, at the Landlord's sole cost, from any holder of any security granted by the Landlord on the Property or the Landlord's interest in the Lease (the "Lender"), a non-disturbance agreement, or similar agreement with the Tenant and in a form acceptable to the Tenant acting reasonably, wherein the Lender agrees that the Tenant shall be permitted to remain in occupation of the Property pursuant to and upon the terms and conditions contained in this Lease provided the Tenant is not in default of such Lease and the appropriate curative period has expired, notwithstanding that such mortgage, security or bond financing is in default. If the Tenant has not received the NDA by January 1, 2007, then the Tenant's obligation to pay Basic Rent shall abate and not accrue until such non disturbance agreement is received.

9. ~~The Landlord hereby covenants, warrants and represents and it is a condition of this agreement and the Lease, that as of the commencement of the Fixturing Period the~~



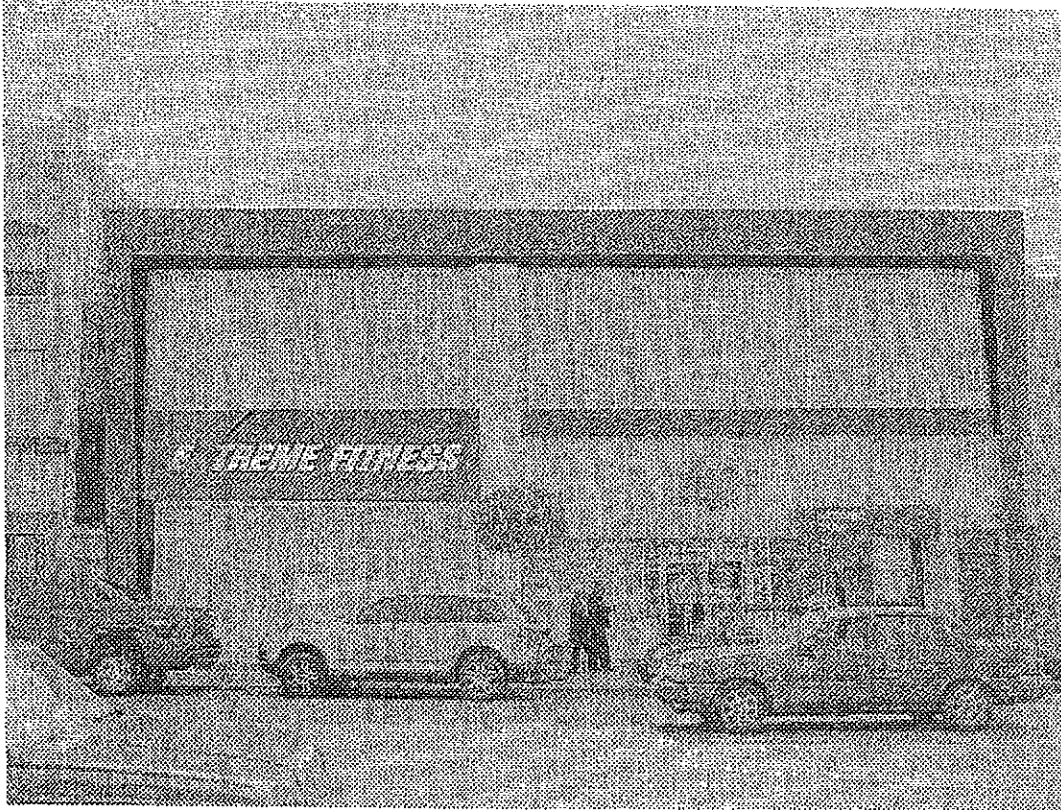
~~Premises shall comply with all federal, provincial, municipal or other governmental statutes, laws, by-laws, rules and regulations, including zoning for that use as provided in this agreement.~~

- 10.(a) The Landlord covenants that it will not lease, license or permit any premises, other than the Premises in the Building or within any building (the "Other Building") owned, leased and/or managed by the Landlord which is located within a one (1) mile radius from any point along the perimeter of the Building as the Building and Other Building exist from time to time, to be occupied by a tenant, licensee or occupant whose business is that of a fitness club, athletic club, dance studio, exercise club, yoga studio, pilates studio, martial arts studio, and/or any facility that offers its premises for exercise in any form.
  - (b) In the event the Landlord is in breach of the provision so this restrictive covenant, as of and from the date of such breach up to and including the date that such breach is remedied, the Tenant's obligation to pay Rent shall abate and not accrue. If such breach continues for a period in excess of thirty (30) days after the Landlord has received written notice of such breach from the Tenant, the Tenant may terminate this Lease.
  - (c) The Landlord agrees that the Tenant may register a notice of this restrictive covenant on title to the Building and any Other Building.
11. The Landlord hereby releases and holds harmless the Tenant from any claim, action, cause of action, demand and/or damage (individually a "Claim") arising from any Claim that the Landlord has, had or may have against 1377738 Ontario Inc. and 1284368 Ontario Ltd. (individually and collectively the "Previous Occupant") of the Property and the property of such Previous Occupant. The Landlord represents and warrants and acknowledges the Tenant's reliance thereon, that the Landlord has no Claim against any property of the Previous Occupant located at the Property. In the event that the Landlord commences any Claim against the Tenant for any Claim that the Landlord has, had or may have against the Previous Occupant, the Landlord shall pay all of the Tenant's costs arising in defending such Claim on a substantial indemnity basis and the Tenant may set off against Rent all of its costs arising therefrom against the next installments of Rent.
12. The Landlord at its sole cost shall renovate the exterior of the building on the Property as per those drawings attached hereto as Schedule "G", and the Tenant's signage shall be at the Tenant's cost.
13. The Landlord acknowledges and agrees that the Tenant is permitted to access from the Premises that building municipally known as 627 Danforth Avenue, Toronto, Ontario pursuant to plans approved by the Landlord acting reasonably.
14. Tenant Purchase Option
- (a) At any time during the Term and any renewal or extension thereof, if the Landlord receives from an arm's length party, a bona fide offer in writing to purchase the Property (the "Offer") and the Offer is acceptable to the Landlord, then the Landlord shall provide the Tenant with written notice (the "Option Notice") of the terms and conditions of such Offer, and a copy of the Offer. Within ten (10) days of receiving the Option Notice, the Tenant shall advise the Landlord in writing (the "Acceptance Letter") that it is prepared to purchase the Property upon the same terms and conditions as contained in the Option Notice and Offer, failing which the Tenant shall be deemed to have refused to purchase the Property and the Landlord may accept the Offer, sell the Property upon the terms and conditions set out in such Offer and to complete the sale of the Property.
  - (b) If the Tenant provides the Acceptance Letter as aforesaid, there shall be constituted between the Landlord and Tenant a binding agreement of purchase and sale with respect to the Property at the same purchase price and upon the same terms and conditions as contained in the Option Notice and Offer. Forthwith thereafter the Tenant shall instruct its solicitor to prepare an agreement of purchase and sale for the Property (the "Tenant's Offer") upon the terms of the Option Notice and Offer amended accordingly, and forthwith thereafter the Landlord and Tenant shall execute the Tenant's Offer.

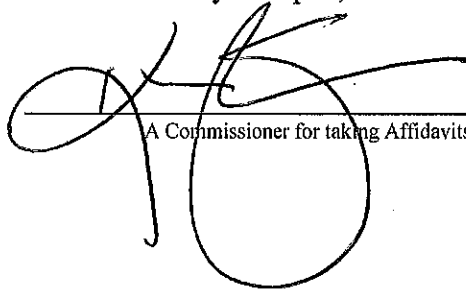
- (c) If the Landlord does not close the purchase agreement pursuant to the terms of the Offer, then the provisions of paragraph (a) of this paragraph entitled 'Tenant Purchase Option' shall again apply.

Schedule "G"

Attach exterior renovation plans



This Exhibit "B" referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



A Commissioner for taking Affidavits



Michael Singer &lt;michael.s.singer@gmail.com&gt;

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## 1079268 Ontario Inc. - Extreme Fitness - Lease 635 Danforth Avenue, Toronto

---

Michael Singer &lt;michael.s.singer@gmail.com&gt;

Fri, Apr 4, 2008 at 11:10 AM

To: David Bell &lt;DavidB@extremefitness.info&gt;

Dear Mr. Bell:

As you know, Extreme Fitness has carried out an extensive construction job at 635 Danforth Avenue, Toronto. In addition to the alterations made by Extreme Fitness to the ground level floor, second floor, third floor, platform area and mezzanine, Extreme Fitness also made extensive alterations to the basement level and changed the basement area from a storage area a functional area for use by the members of the fitness club. The alterations to the basement area and the change of use was not made apparent to or anticipated by my client, the Landlord. As a result of the construction alterations made by Extreme Fitness to the basement area, the usable rental area of the building has been increased by approximately 4,600 square feet.

Under the provisions of the Lease, the "Premises" consists of three floors plus mezzanine, and the floors have the following areas: ground floor 11,461 square feet, second floor 5,526 square feet, third floor 1,026 square feet, a platform area of 1,654 square feet and a mezzanine of 4,443 square feet, which floors are shown on the plans annexed as Schedule "A". The basement area was not included in the definition of the "Premises" nor was it included in the floor plans attached to Schedule "A" of the Lease.

Effective January 1, 2008, the Basic Rent is increased to reflect this addition to the rentable area of the Premises. The increase in the Basic Rent resulting from the additional 4,600 square feet is \$114,015.60 per annum (\$24.786 per square foot X 4,600 square feet = \$114,015.60), or an additional \$9,501.30 per month. Accordingly, please provide a cheque payable to the Landlord, 1079268 Ontario Inc. in the sum of \$39,905.46, representing the additional monthly Basic Rent for January, February, March and April, 2008 plus GST (\$9,501.30 X 4 = \$38,005.20 + \$1,900.26 GST = \$39,905.46).

Please give this matter your immediate attention.

--

NOTE NEW ADDRESS

Regards,

Michael S. Singer  
23 Lesmill Road, Suite 300  
Toronto, ON M3B 3P6

Tel 416.224.8383  
Fax 416.224.2408  
Email [michael.s.singer@gmail.com](mailto:michael.s.singer@gmail.com)

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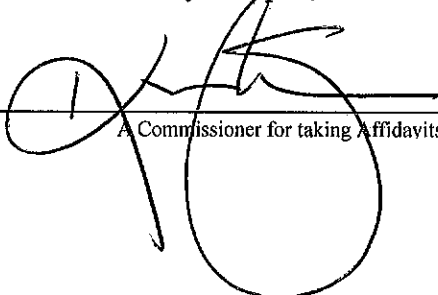
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This Exhibit "C" referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



A Commissioner for taking Affidavits

2010999 Ontario Inc.  
c/o Michael S. Singer  
Barrister and Solicitor  
4211 Yonge St., Suite 200  
Toronto, Ontario M2P 2A9

October 30, 2006

Extreme Fitness, Inc.  
635 Danforth Avenue  
Toronto, Ontario M4K 1R2

Dear Sirs:

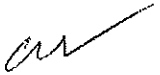
**Re: 2010999 Ontario Inc. ("Landlord")  
Agreement to Lease to Extreme Fitness, Inc. ("Tenant")  
Approximately 6,000 square feet to be constructed at  
627-629 Danforth Avenue, Toronto**

This letter will serve to set forth our understanding with respect to the agreement to lease certain premises to be constructed by the Landlord above the ground floor level at the lands and premises known municipally as 627-629 Danforth Avenue, Toronto.

**Leased Premises:** The Tenant will lease up to 6,000 square feet but not less than 5,000 square feet to be built by the Landlord on the 3<sup>rd</sup> floor of 627-629 Danforth Avenue, Toronto, with access to the Tenant's leased premises at 635 Danforth Avenue, Toronto, from the 3<sup>rd</sup> floor thereof, subject to the Landlord obtaining all necessary approvals and permits.

The following is a summary of the basic terms of the Lease:

**Initial Term:** two (2) years

**Commencement Date:** The day immediately following the expiration of the Fixturing Period. 

**Basic Rent:**

<u>Period</u>	<u>Per Sq. Ft./Year</u>
Initial Term: 1-2 years	\$16.00
Renewal 1: 3-5 years	\$16.00
Renewal 2: 6-10 years	\$18.00
Renewal 3: 11-15 years	\$20.00



**Permitted Use:** Primarily a gym, health, spa, fitness facility and club (with liquor license), and any ancillary use related to this primary business of a fitness club as permitted by the applicable zoning, such as but not limited to a snack bar, a juice bar, sale of health foods, chiropractic, medical, naturopathic, hair salon, equipment and sport clothing sales and rental.

**Fixturing Period:** The Tenant's Fixturing Period shall commence on the date ("Fixturing Period Commencement Date") which is five days after the date that the Landlord advises the Tenant in writing that the Landlord's Work is completed. The Tenant shall have a period ("Fixturing Period") of up to 150 days to complete the Tenant's Work to ready the Leased Premises for the Tenant's use. During the Fixturing Period, the Tenant shall not be obligated to pay any rent save that the Tenant shall be responsible for all utilities consumed in the Leased Premises during the Fixturing Period. Within 60 days of the completion of the Landlord's Work, the Landlord's architect, at the Landlord's sole cost, shall provide to the Tenant a certificate of the area of the Leased Premises, complete with dimensions, failing which the Tenant may have its own architect determine the area of the Leased Premises, which determination shall be binding on the Landlord.

**Landlord's Work:** The Landlord shall at its sole cost use its best efforts to obtain all requisite approvals and permits for the construction of up to 6,000 square feet but not less than 5,000 square feet with access to and from 635 Danforth Avenue, Toronto, no later than May 31, 2007 ("Permit Period") and, subject to obtaining such approvals and permits, the Landlord shall complete the construction of the shell of the Leased Premises and the installation of the HVAC, electrical and other utilities for the Leased Premises using new material and new equipment and all in operating condition, no later than October 31, 2007. The Tenant may, at its option, extend the Permit Period for an additional 5 months and if so, the date for completion of the construction of the Leased Premises shall be extended for an additional 5 months. The Tenant may, but is not obligated to, undertake such construction of the Leased Premises and installation of the HVAC, electrical and other utilities and all other Landlord's Work, if the Landlord does not complete its work by October 31, 2007, or the extended completion period, if any, and the cost thereof, plus an administration fee of 10% thereof thereon, will be paid by the Landlord to the Tenant within 30 days of receipt of the Tenant's invoice, failing which such amount may be set off against the next instalment of rent.

The Landlord's Work includes:


- floors, walls ceilings to be level with the Tenant's premises at 635 Danforth Avenue, Toronto, Ontario as if it was always a continuous space (subject to Tenant's Work relating to finishing such floors, walls and ceilings).
- sprinkler system and safety lights as required pursuant to applicable building code.

- 600 AMP electrical service.
- all structural changes to connect the Leased Premises to the Tenant's premise at 635 Danforth Avenue, Toronto, Ontario.
- Cooling system: High efficiency roof top type units for multiple zones with curs, structural supports and all electrical, gas and other hook ups and drains up to 20 tonnes as per Landlord's consulting architect/engineer design. Three year 24/7 parts and labour warranty.
- fire dampers, registers and diffusers and exhaust fans (6,000 CFM Total) relating to the HVAC system as per Landlord's consulting architect/engineer design.

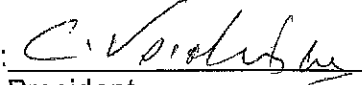
**Tenant's Work:** Tenant shall, at its sole cost and expense, finish the interior of the Leased Premises.

The lease agreement shall be substantially the same as the lease agreement between 1079268 Ontario Inc. and the Tenant with respect to the lands and premises known municipally as 635 Danforth Avenue, Toronto. The Landlord's lawyer shall prepare this lease and forward same to the Tenant's solicitor for his review and comment no later than 5:00 p. m. on Wednesday, November 1, 2006.

This letter agreement may be executed in counterpart, and counterparts may be exchanged by facsimile.

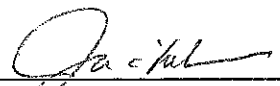
If the foregoing sets forth your understanding of the terms and conditions relating to the subject matter hereof, please execute and return a copy of this letter agreement to the undersigned. 

2010999 Ontario Inc.

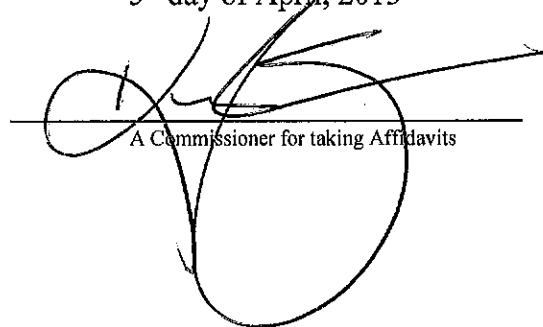
By:   
President

Acknowledged and agreed to this 30th day of October, 2006.

Extreme Fitness, Inc.

By:   
Authorized Signing Officer

This **Exhibit "D"** referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



A Commissioner for taking Affidavits



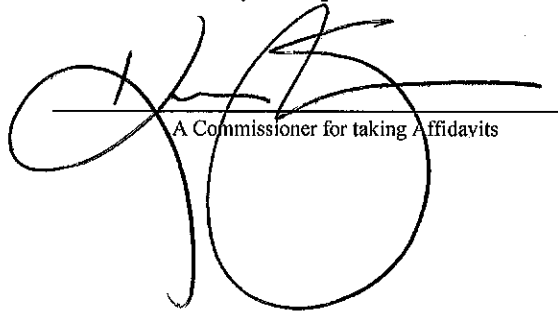
E TREME FITNESS

E TREME FITNESS

635

IN BANK brouillière

This **Exhibit "E"** referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



A Commissioner for taking Affidavits

MAY 03 2007



City Planning Division  
Ted Tyndorf, Chief Planner and Executive Director

Committee of Adjustment  
100 Queen Street West  
Toronto, ON M5H 2N2  
Tel: (416) 392-7555  
Fax: (416) 392-0580

C J TZEKAS  
WEIR AND FOULDS, LLP  
130 KING ST W SUITE 1600  
TORONTO ON

Friday, April 27, 2007

**NOTICE OF DECISION**  
**MINOR VARIANCE/PERMISSION**  
(Section 45 of the Planning Act)

File Number:	A0161/07TEY	Zoning	MCR T3..0 C2.5 R2.5 and R2 Z0.6 (PPR)
Owner(s):	1079268 ONTARIO INC	Ward:	Toronto-Danforth (30)
Agent:	GERALD SPRING		
Property Address:	635 DANFORTH AVE	Community:	
Legal Description:	PL 200 PT LTS 7 & 8 PL 306E PT LTS 24 TO 27		

Notice was given and a Public Hearing was held on Wednesday, April 25, 2007, as required by the Planning Act.

**PURPOSE OF THE APPLICATION:**

To maintain and to legalize the use of the existing building as a fitness centre, which was established without proper authorization.

**REQUESTED VARIANCE(S) TO THE ZONING BY-LAW :**

1. Section 6(1)(A), By-law 438-86  
The use of the building as a club (fitness centre) is not permitted in a district zoned R2 Z0.6.
2. Section 4(4), By-law 438-86  
One parking space for every 10 persons that can be accommodated at one time is required.  
No vehicle parking spaces are provided.

**IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:**

**The Minor Variance Application is Approved on Condition**

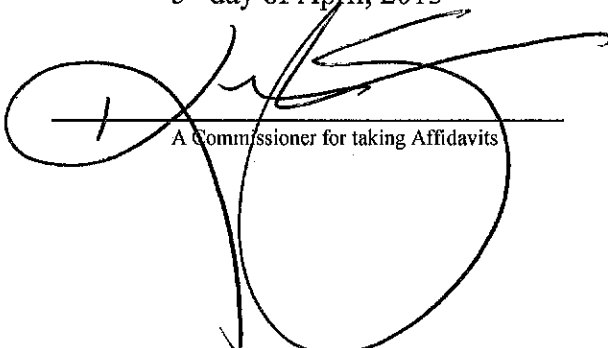
It is the decision of the Committee of Adjustment to approve this variance application for the following reasons:

- The general intent and purpose of the Official Plan is maintained.
- The general intent and purpose of the Zoning By-law is maintained.
- The variance(s) is considered desirable for the appropriate development of the land.
- In the opinion of the Committee, the variance(s) is minor.

This decision is subject to the following condition(s):  
Decision Notice - MV

The owner/applicant shall lease the appropriate number of parking spaces off-site (1 parking space for every 10 persons that can be accommodated at one time), within 300 m of the site and surplus to the requirements of the Zoning By-law for the donor site, to the satisfaction of the Development Co-ordinator, Traffic Planning, Transportation Services, Toronto & East York District.

This **Exhibit "F"** referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



A Commissioner for taking Affidavits



## Commercial Lease

This lease is made in duplicate between:

(1) Sophie Delakas (the "Landlord")  
(landlord name)

and

(2) 1079268 Ontario Inc. (the "Tenant")  
(tenant name)

The Landlord and the Tenant hereby agree as follows:

1. The Landlord hereby grants the Tenant a lease of the premises outlined in red on the floor plan attached as Schedule A located on the main 713 DANFORTH floor of 713 Danforth Avenue Toronto, Ontario M4J1L2 (number) (address) (the "Premises").

The parties agree that the Premises have a rented area of 1 Parking Spot square feet, excluding the exterior walls.

2. The term of this lease commences on November 1, 2006 and ends on November 1, 2011 with an additional option of 5 years (date) (date)

If the Tenant continues in occupation of the Premises with the consent of the Landlord after expiry of the term of this lease, the Tenant shall be deemed to be leasing the Premises on a month-to-month basis but otherwise on the same terms as set out in this lease.

3. The Tenant may use the Premises for parking ONE PARKING SPACE (business purpose) and for no other purpose.

4. (a) The Tenant shall pay the Landlord a "base rent" of six hundred dollars (\$300.00) per year in equal monthly instalments of fifty dollars (\$ 50.00) in advance on or before the first of each month commencing on November 1, 2006 (date) with the base rent for any broken portion of a calendar month in which this lease terminates being prorated.

(b) The Tenant is responsible for paying 0 % of the Landlord's reasonable cost of services and expenses as "additional rent." Additional rent is calculated as a prorated share of the following reasonable expenses incurred by the Landlord during the term of this lease:

1. \_\_\_\_\_ 4. \_\_\_\_\_

2. \_\_\_\_\_  
3. \_\_\_\_\_

5. \_\_\_\_\_  
6. \_\_\_\_\_

- (c) The Landlord shall invoice the Tenant monthly for additional rent incurred during the preceding calendar month. Each invoice is payable in full thirty days after delivery. The Tenant is deemed to have admitted the accuracy of the amount charged in any invoice for additional rent which he or she has not challenged in writing within the same thirty days.
- (d) The Tenant shall also pay the Landlord as "additional rent," on demand, 100% of the total costs reasonably incurred by the Landlord including, but not limited to legal fees for curing any default of the Tenant under this lease, enforcing payment of rent and regaining lawful possession of the Premises.
- e) The Tenant shall pay an amount equal to all Goods and Services Tax to the Landlord for rent and additional rent. The amount of the GST so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation. It shall be paid by the Tenant to the Landlord at the same time as the rent and additional rent or upon demand at such other times as the Landlord determines. GST shall be considered to be rent for the purpose of the Landlord's rights and remedies for the recovery of such amounts.
5. Time will be of the essence of this Lease.
6. The following services and expenses are the sole responsibility and expense of the Tenant:
7. The following services and expenses are the sole responsibility and expense of the Landlord:
8. The Landlord shall also be solely responsible for repairs or improvements to the structure and to the exterior of the building.

9. Any services and expenses relevant to the use by the Tenant of the Premises and not mentioned in this lease are the responsibility and expense of the Tenant.
10. The Landlord covenants with the Tenant that so long as the Tenant complies with the terms of this lease, the Tenant may occupy and enjoy the Premises without any interruption from the Landlord.
11. The Landlord is not liable for any damage to the Tenant's property or for any injury to any person in or coming to or from the Premises, however caused, and the Tenant agrees to indemnify the Landlord against the financial consequences of any such liability. In this regard, the Tenant shall purchase and maintain public liability insurance in the amount of no less than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) and shall provide proof of this insurance to the Landlord on request.
12. The Landlord may terminate this lease for any one of the following or any other cause permitted by law:
- (a) fifteen days' arrears of rent or additional rent;
  - (b) the bankruptcy or insolvency of the Tenant;
  - (c) a material change in the use of the Premises by the Tenant and, in particular (without limiting the generality of this provision), any change that affects the Landlord's building insurance or that constitutes a nuisance.
  - (d) any unauthorized assignment or subletting of this lease by the Tenant;
  - (e) substantial damage to or destruction of the Premises;
  - (f) any sale or material change in use of the building in which the Premises are located by the Landlord;
  - (g) any significant wilful or negligent damage to the Premises caused by the Tenant or by persons permitted on the Premises by the Tenant.
13. On the Landlord becoming entitled to re-enter and to take possession of the Premises for any of the grounds for termination set out in this Lease or for any other cause permitted by law, the Landlord, in addition to all other rights, will have the right to enter the Premises either by force or otherwise and with an accompanying right to change the door locks for the Premises and to re-let the Premises and to receive the rent therefore, and to take possession of any furniture or other property on the Premises and to sell the same at private or public sale without notice and to apply the proceeds of such sale and any rent derived from re-letting the Premises upon account of the Basic Rent and Additional Rent payable under this Lease, and the Tenant will be liable to the Landlord for the deficiency, if any.
14. The Tenant may not assign or sublet the Premises, in whole or in part, or allow the Premises to be used by any other person without the written consent of the Landlord, which consent may not be unreasonably withheld.

15. The Tenant shall keep the Premises in a reasonable state of repair and cleanliness and shall not make improvements or alterations to the Premises without the written consent of the Landlord, which consent shall not be unreasonably withheld.

16. At the end of the lease, the Tenant shall deliver vacant possession to the Landlord of the Premises in the same condition as at the commencement of the lease, reasonable wear and tear excepted and except that the Landlord may, in the Landlord's sole discretion, elect to keep any of the Tenant's improvements, alterations, or fixtures.

17. Any written notice required or permitted to be given by this lease is sufficiently given if sent in proper form by ordinary mail to the last known address of the party for whom the notice is intended. Any written notice sent by ordinary mail in accordance with this paragraph is deemed, for the purposes of this lease, received by the addressee on the seventh day after mailing unless actually received before. Nothing in this paragraph prevents giving written notice in any other manner recognized by law.

18. In this lease, words importing the singular include the plural, and vice versa, and importing the masculine gender include the feminine, and importing an individual include a corporation and vice versa. This lease binds and benefits the parties and their respective heirs, successors, and permitted assigns.

19. If not in default under this lease, the Tenant has the right to renew this lease for a further term of \_\_\_\_\_ years exercisable by giving written notice of renewal to the Landlord in the six-month period immediately before the expiry of the original fixed term of this lease. The renewed lease is granted on the same terms as set out in this lease except as to base rent and without any further right of renewal. The base rent payable by the Tenant in the renewed term may be agreed between the Landlord and Tenant but, failing such agreement before commencement of the renewed term of the lease, the amount of the base rent shall be referred to and settled by a single arbitrator agreed upon by the parties or, in default of such agreement, to a single arbitrator appointed pursuant to the legislation governing submissions to arbitration in the jurisdiction whose laws govern this agreement. The decision of the arbitrator is final and binding on the parties with no right of appeal.

20. This Lease will be governed by the laws of the PROVINCE of Ontario

Executed under seal on November 1, 2006  
(date)

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_ )  
for the Landlord

\_\_\_\_\_ )  
for the Tenant

Sophie Dalakas

*Sophie Dalakas*

The Landlord

*C. Volden*  
The Tenant

## Commercial Lease

This lease is made in duplicate between:

(1) Tony Krotiris (the "Landlord")  
(landlord name)

and

(2) 1079268 Ontario Inc. (the "Tenant")  
(tenant name)

The Landlord and the Tenant hereby agree as follows:

1. The Landlord hereby grants the Tenant a lease of the premises outlined in red on the floor plan attached as Schedule A located on the main floor of  
(number)  
707 Danforth Avenue Toronto, Ontario M4J1L2  
(address)  
\_\_\_\_\_ (the "Premises").

The parties agree that the Premises have a rented area of 2 Parking Spot square feet, excluding the exterior walls.

2. The term of this lease commences on November 1, 2006 and ends on November 1, 2011 with an additional option of 5 years  
(date) (date)

If the Tenant continues in occupation of the Premises with the consent of the Landlord after expiry of the term of this lease, the Tenant shall be deemed to be leasing the Premises on a month-to-month basis but otherwise on the same terms as set out in this lease.

3. The Tenant may use the Premises for parking TWO CAR PARKING  
(business purpose)  
and for no other purpose.

4. (a) The Tenant shall pay the Landlord a "base rent" of six hundred dollars (\$ 600.00 ) per year in equal monthly instalments of fifty dollars (\$ 50.00 ) in advance on or before the first of each month commencing on November 1, 2006 with the base rent for any broken portion of a  
(date)  
calendar month in which this lease terminates being prorated.

(b) The Tenant is responsible for paying 0 % of the Landlord's reasonable cost of services and expenses as "additional rent." Additional rent is calculated as a prorated share of the following reasonable expenses incurred by the Landlord during the term of this lease:

1. \_\_\_\_\_ 4. \_\_\_\_\_

2. \_\_\_\_\_  
3. \_\_\_\_\_

5. \_\_\_\_\_  
6. \_\_\_\_\_

- (c) The Landlord shall invoice the Tenant monthly for additional rent incurred during the preceding calendar month. Each invoice is payable in full thirty days after delivery. The Tenant is deemed to have admitted the accuracy of the amount charged in any invoice for additional rent which he or she has not challenged in writing within the same thirty days.
  - (d) The Tenant shall also pay the Landlord as "additional rent," on demand, 100% of the total costs reasonably incurred by the Landlord including, but not limited to legal fees for curing any default of the Tenant under this lease, enforcing payment of rent and regaining lawful possession of the Premises.
  - e) The Tenant shall pay an amount equal to all Goods and Services Tax to the Landlord for rent and additional rent. The amount of the GST so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation. It shall be paid by the Tenant to the Landlord at the same time as the rent and additional rent or upon demand at such other times as the Landlord determines. GST shall be considered to be rent for the purpose of the Landlord's rights and remedies for the recovery of such amounts.
5. Time will be of the essence of this Lease.
6. The following services and expenses are the sole responsibility and expense of the Tenant:
7. The following services and expenses are the sole responsibility and expense of the Landlord:
8. The Landlord shall also be solely responsible for repairs or improvements to the structure and to the exterior of the building.

9. Any services and expenses relevant to the use by the Tenant of the Premises and not mentioned in this lease are the responsibility and expense of the Tenant.

10. The Landlord covenants with the Tenant that so long as the Tenant complies with the terms of this lease, the Tenant may occupy and enjoy the Premises without any interruption from the Landlord.

11. The Landlord is not liable for any damage to the Tenant's property or for any injury to any person in or coming to or from the Premises, however caused, and the Tenant agrees to indemnify the Landlord against the financial consequences of any such liability. In this regard, the Tenant shall purchase and maintain public liability insurance in the amount of no less than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) and shall provide proof of this insurance to the Landlord on request.

12. The Landlord may terminate this lease for any one of the following or any other cause permitted by law:

- (a) fifteen days' arrears of rent or additional rent;
- (b) the bankruptcy or insolvency of the Tenant;
- (c) a material change in the use of the Premises by the Tenant and, in particular (without limiting the generality of this provision), any change that affects the Landlord's building insurance or that constitutes a nuisance.
- (d) any unauthorized assignment or subletting of this lease by the Tenant;
- (e) substantial damage to or destruction of the Premises;
- (f) any sale or material change in use of the building in which the Premises are located by the Landlord;
- (g) any significant wilful or negligent damage to the Premises caused by the Tenant or by persons permitted on the Premises by the Tenant.

13. On the Landlord becoming entitled to re-enter and to take possession of the Premises for any of the grounds for termination set out in this Lease or for any other cause permitted by law, the Landlord, in addition to all other rights, will have the right to enter the Premises either by force or otherwise and with an accompanying right to change the door locks for the Premises and to re-let the Premises and to receive the rent therefore, and to take possession of any furniture or other property on the Premises and to sell the same at private or public sale without notice and to apply the proceeds of such sale and any rent derived from re-letting the Premises upon account of the Basic Rent and Additional Rent payable under this Lease, and the Tenant will be liable to the Landlord for the deficiency, if any.

14. The Tenant may not assign or sublet the Premises, in whole or in part, or allow the Premises to be used by any other person without the written consent of the Landlord, which consent may not be unreasonably withheld.

15. The Tenant shall keep the Premises in a reasonable state of repair and cleanliness and shall not make improvements or alterations to the Premises without the written consent of the Landlord, which consent shall not be unreasonably withheld.

16. At the end of the lease, the Tenant shall deliver vacant possession to the Landlord of the Premises in the same condition as at the commencement of the lease, reasonable wear and tear excepted and except that the Landlord may, in the Landlord's sole discretion, elect to keep any of the Tenant's improvements, alterations, or fixtures.

17. Any written notice required or permitted to be given by this lease is sufficiently given if sent in proper form by ordinary mail to the last known address of the party for whom the notice is intended. Any written notice sent by ordinary mail in accordance with this paragraph is deemed, for the purposes of this lease, received by the addressee on the seventh day after mailing unless actually received before. Nothing in this paragraph prevents giving written notice in any other manner recognized by law.

18. In this lease, words importing the singular include the plural, and vice versa, and importing the masculine gender include the feminine, and importing an individual include a corporation and vice versa. This lease binds and benefits the parties and their respective heirs, successors, and permitted assigns.

19. If not in default under this lease, the Tenant has the right to renew this lease for a further term of \_\_\_\_\_ years exercisable by giving written notice of renewal to the Landlord in the six-month period immediately before the expiry of the original fixed term of this lease. The renewed lease is granted on the same terms as set out in this lease except as to base rent and without any further right of renewal. The base rent payable by the Tenant in the renewed term may be agreed between the Landlord and Tenant but, failing such agreement before commencement of the renewed term of the lease, the amount of the base rent shall be referred to and settled by a single arbitrator agreed upon by the parties or, in default of such agreement, to a single arbitrator appointed pursuant to the legislation governing submissions to arbitration in the jurisdiction whose laws govern this agreement. The decision of the arbitrator is final and binding on the parties with no right of appeal.

20. This Lease will be governed by the laws of the PROVINCE of Ontario


Executed under seal on November 1, 2006  
(date)

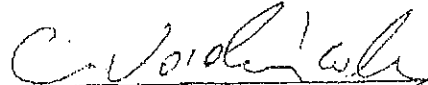
*Amended for 2 parking spaces*  
*(416) 461-0401*

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_ }  
for the Landlord

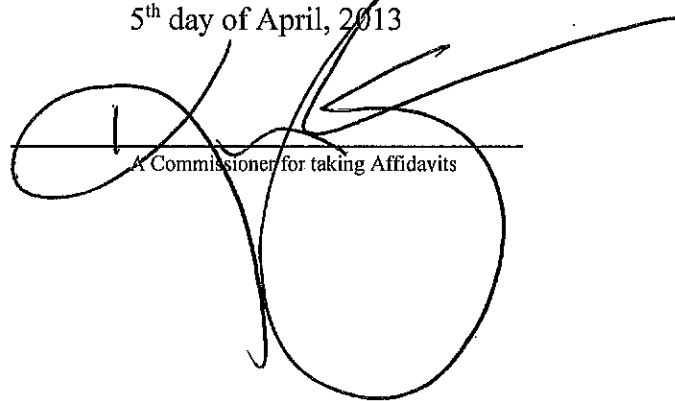
\_\_\_\_\_ }  
for the Tenant

  
\_\_\_\_\_  
The Landlord

  
\_\_\_\_\_  
The Tenant



This **Exhibit "G"** referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



A Commissioner for taking Affidavits

**MICHAEL S. SINGER**, B.A., J.D., Solicitor

Suite 300, 23 Lesmill Road, Toronto, Ontario M3B 3P6

Tel: (416) 224-8383 Fax: (416) 224-2408  
Email: michael.s.singer@gmail.com

March 25, 2013

ORIGINAL BY FACSIMILE

Extreme Fitness, Inc.  
8281 Yonge Street  
Thornhill, ON L3T 2C7

Facsimile: 905-709-3651

Golub Capital Incorporated  
666 Fifth Avenue, 18<sup>th</sup> floor  
New York, N.Y. 10103

Facsimile: 212-750-3756

Dear Sirs:

**Re: Lease made the 30<sup>th</sup> day of October, 2006 ("Lease") between  
1079268 Ontario Inc. ("Landlord") and Extreme Fitness, Inc. ("Tenant")  
635 Danforth Avenue, Toronto, Ontario**

I act on behalf of the Landlord with respect to the above-noted Lease.

On behalf of the Landlord you are hereby notified that the Tenant is in default of payment of Additional Rent pursuant to the provisions of the Lease in the aggregate amount of \$113,541.80 plus applicable GST/HST, which sum is calculated as set forth in the attached schedule.

Yours truly

  
**MICHAEL S. SINGER**  
MSS:mk

C:\Data\documents\void\extreme fitness\extreme fitness\extreme fitness rent arrears ltr 2013 03 25.wpd

**Additional Rent Arrears**

**Lease made the 30<sup>th</sup> day of October, 2006 ("Lease") between  
1079268 Ontario Inc. ("Landlord") and Extreme Fitness, Inc. ("Tenant")  
635 Danforth Avenue, Toronto, Ontario**

**Excess Realty Taxes**

*Base Year as per attached copy of 2006 Final Property Tax Bill - \$92,927.30*

2007 Excess Realty Taxes	\$98,689.64 less \$92,927.30 = \$5,762.34	
2008 Excess Realty Taxes	97,907.44 less 92,927.30 = 4,980.14	
2009 Excess Realty Taxes	98,017.98 less 92,927.30 = 5,090.68	
2010 Excess Realty Taxes	97,859.39 less 92,927.30 = 4,932.09	
2011 Excess Realty Taxes	95,985.28 less 92,927.30 = 3,057.98	
2012 Excess Realty Taxes	96,245.87 less 92,927.30 = <u>3,318.57</u>	\$27,141.80

**Parking at \$1,200 per month**

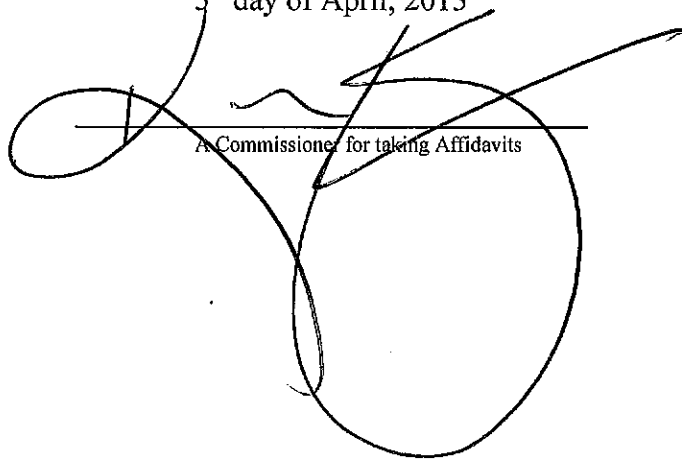
March 2007 to February 2013 72 months x \$1,200.00 86,400.00

**Total Arrears:** **\$113,541.80\***

\*Plus applicable GST/HST

Note: See attached copy of 2007 to and including 2012 final property tax bill.

This **Exhibit "H"** referred to  
in the Affidavit of Constantine Voidonicolas  
sworn before me this  
5<sup>th</sup> day of April, 2013



A Commission~~er~~ for taking Affidavits

## Marc Gertner

---

**From:** Kevin Sherkin  
**Sent:** March-26-13 3:13 PM  
**To:** Ian Aversa; 'Grant Moffat'; amitchell@millerthomson.com; sross@goodlifefitness.com; 'FLYNN, MARC'; 'Descours, Caroline'; Wagner, Melaney (mwagner@goodmans.ca); 'Winters, Diane'; Jaipargas, Roger (RJaipargas@blg.com); ian.binnie@blakes.com; Alex Lev-Farrell (alev@berkowcohen.com); 'scrocco@berkowcohen.com'  
**Cc:** Steve Graff; James Desjardins; Hutchens, Al (ahutchens@alvarezandmarsal.com); Karpel, Greg; Christie McNeill; Susy Moniz; Marc Gertner  
**Subject:** RE: Extreme - Draft Orders  
**Attachments:** Tax Bills - 635 Danforth.pdf

Ian,

We have now had the opportunity to review your e-mail from 10:52AM this morning.

Attached to this e-mail you will find the tax bills for the Property from 2006 – 2012. This will show the difference between the amount paid by your client and the actual amount owing, thus evidencing the Arrears of Additional Rent related to the property taxes.

As you stated in your e-mail, “the Tenant need not pay any increase in Excess Realty Taxes for the current calendar year or any subsequent calendar year until all of this documentation has been received by the Tenant.” The tax bills attached in this email are said documentation. The Landlord had not made any previous demands relating to the taxes on the property. As such, the Landlord Consent Agreements referred to in your e-mail are irrelevant. The *Real Property Limitations Act* allows our client six years to make a claim on these arrears.

Contrary to your advice, as part of your client’s original ability to renovate the premises, parking was required by the Committee of Adjustments as seen in their decision in August 2007. Twelve spaces were obtained by my client and leased separately. Your client only commenced paying the required sums in March 2012, not March 2011 as set out in your e-mail. Your client, despite many request by both counsel and the Landlord, has not paid the outstanding amount for parking. Should your client not make payment, our client will not provide their Consent.

Finally, our client has learned that your client renovated the basement of the premises and is using approximately 6,500 sq/ft of the basement for floor space for the club. That space is not rentable space under the terms of the lease and our client takes the position that back rent is now due for at least the last 5 years at \$23 per square foot and any party assuming such lease will be responsible for that amount going forward. Your record attaches a copy of the lease and shows the rentable space and the basement is not included.

I look forward to hearing from you shortly.

Please deal with Mr. Gertner of our office moving forward

*Kevin D. Sherkin*  
Levine Sherkin Boussidan  
A Professional Corporation of Barristers





City of Toronto  
5100 Yonge Street  
North York, ON, M2N 5V7

1079268 ONTARIO INC  
635 DANFORTH AVE  
TORONTO ON M4K 1R2

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**Assessment Roll Number**

1904-08-4-350-01800 0000

**Site Address:** 635 DANFORTH AVE

**Legal Description:** PLAN 200 PT LOTS 7 & 8  
PLAN 306E PT LOTS 24 TO 27

**Account Remarks:**

**Year to Date Receipt Statement for Taxes Paid in 2006**

This statement cannot be used for refund purposes.

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<b>Tax Year</b>	<b>Description</b>	<b>Date</b>	<b>Payment</b>	<b>Taxes Paid*</b>
2006	Real Estate 2006	MAY 09, 2006	27,468.40	26,300.85
2006	Real Estate 2006	JUN 02, 2006	20,000.00	19,750.00
2006	Real Estate 2006	NOV 02, 2006	55,329.00	52,681.78
		<b>Total:</b>	102,797.40	98,732.63

# Toronto Tax Bill

Final 2007  
May 7, 2007

*[Handwritten scribbles]*

18-04-08-4-350-01800-0000-0 0

LEGAL DESCRIPTION > PLAN 200 PT LOTS 7 & 8 PLAN  
306E PT LOTS 24 TO 27

PROPERTY LOCATION > 685 DANFORTH AVE

ASSESSED OWNER > 1079268 ONTARIO INC

1079268 202/4 (21P)  
1079268 ONTARIO INC  
685 DANFORTH AVE  
TORONTO, ON M4J 1L2

Assessment		Municipal			Education	
TAX CLASS	VALUE	CITY LEVY	TAX RATE (%)	AMOUNT	TAX RATE (%)	AMOUNT
Commercial Full Rate	\$2,131,000	City	2.117456500	\$45,123.00	1.978621000	\$42,104.75
				Municipal Levy		\$45,123.00
					Education Levy	\$42,104.75
Special Charges/Credits		CVA Adjustments			Summary	
Gracktown on the Danforth BIA 0.2838426%	\$6,044.42				Tax Levy Sub-Total (Municipal+Education)	\$ 87,227.75
					Special Charges/Credits	\$ 6,044.42
					2007 Tax Cap Adjustment	\$ 5,417.47
					Final 2007 Taxes	\$ 98,689.64
					Less Interim Billing	(\$ 46,463.65)
<b>Total</b>					<b>Total Amount Due</b>	<b>\$ 52,225.99</b>
1st Instalment Amount	Due Date	2nd Instalment Amount	Due Date	3rd Instalment Amount	Due Date	
\$17,408.99	Jul 3, 2007	\$17,408.00	Aug 1, 2007	\$17,408.00	Sep 4, 2007	

## Explanation of Property Tax Calculations 2007 Taxation Year

Total 2007 CVA Taxes: \$92,227.75  
2007 Adjusted Taxes: \$92,227.75

### Calculation for Final Taxes

	Commercial
*2006 Annualized Taxes	\$87,227.75
2007 Tax Cap Amount	(\$1,027.32)
2007 Provincial Education Levy Change	\$0.00
2007 Local Municipal Levy Change	\$745.24
**2007 Adjusted Taxes	\$92,945.22

\* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax treatment or assessment value.  
\*\* Adjusted Tax amount applies only to the property or portion(s) of property referred to in this notice and may not include some special charges and credit amounts or taxes that are not part of the regular calculation.



# TORONTO Tax Bill

Final 2008  
May 8, 2008

ASSESSMENT ROLL NO. 19-04-08-4-350-01800-0000-0 0

200137 210/5 42(D)  
1079268 ONTARIO INC  
689 DANFORTH AVE  
TORONTO, ON M4J 1L2

LEGAL DESCRIPTION ► PLAN 200 PT LOTS 7 & 8 PLAN  
306E PT LOTS 24 TO 27  
PROPERTY LOCATION ► 635 DANFORTH AVE  
ASSESSED OWNER ► 1079268 ONTARIO INC

TAX CLASS	VALUE	LEVIES	TAX RATE (%)	AMOUNT	TAX RATE (%)	AMOUNT
Residual Commercial Full Rate-Band 1	\$1,000,000	City	2.092626500	\$20,926.26	1.968305000	\$19,683.05
Residual Commercial Full Rate-Band 2	\$1,131,000	City	2.161438100	\$24,332.76	1.968305000	\$22,281.53

Sub Total:		Municipal Levy	\$46,259.02	Education Levy	\$41,944.61
<b>Special Charges/Credits</b>					
Greentown on the Danforth BIA 0.2762705%	\$5,929.84			Tax Levy Sub-Total (Municipal+Education)	\$ 87,203.60
				Special Charges/Credits	\$ 5,929.84
				2008 Tax Cap Adjustment	\$ 4,773.90
				Final 2008 Taxes	\$ 97,907.44
				Less Interim Billing	(\$ 46,322.61)
<b>Total</b>	<b>\$5,929.84</b>			<b>Total Amount Due</b>	<b>\$ 51,584.83</b>
<b>1st Installment Amount</b>	<b>Due Date</b>	<b>2nd Installment Amount</b>	<b>Due Date</b>	<b>3rd Installment Amount</b>	<b>Due Date</b>
\$17,195.00	Jul 2, 2008	\$17,195.00	Aug 1, 2008	\$17,194.83	Sep 2, 2008

## Explanation of Property Tax Calculations 2008 Taxation Year

Total 2008 CVA Taxes
2008 Adjusted Taxes

### Calculation for Final Taxes

	Commercial
2007 Annualized Taxes	\$92,645.21
2008 Tax Cap Amount	(\$792.77)
2008 Provincial Education Levy Change	(\$160.17)
2008 Local Municipal Levy Change	\$285.23
2008 Adjusted Taxes	\$91,977.50

\* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax treatment or assessment values.  
 \*\* Adjusted Tax amount applies only to the property or portion(s) of property referred to in this notice and may not include some special charges and credit amounts or levies that are not part of the capping calculation.



# Tax Bill

Final 2009

May 7, 2009

ASSESSMENT ROLL NO.

18-04-08-4-350-01800-0000-0 0

388948 1127 6(E)  
 1070208 ONTARIO INC  
 1 EATON AVE  
 TORONTO, ON M4J 2Z4

LEGAL DESCRIPTION: > PLAN 200 FT LOTS 7 & 8 PLAN  
 306E FT LOTS 24 TO 27  
 PROPERTY LOCATION: > 635 DANFORTH AVE  
 ASSESSED OWNER: > 1079268 ONTARIO INC

TAX CLASS	Assessment		Municipal		Education	
	VALUE	LEVY	TAX RATE (%)	AMOUNT	TAX RATE (%)	AMOUNT
Residual Commercial Full Rate-Band 1	\$1,000,000	City	1.877915100	\$18,779.16	1.803060000	\$18,030.60
Residual Commercial Full Rate-Band 2	\$1,294,500	City	2.043176100	\$26,448.91	1.803060000	\$23,340.81

Special Charges/Credits		CVA Adjustments		Summary	
Growth on the Danforth BIA 0.2698845%	\$3,863.05			Tax Levy Sub Total (Municipal-Education)	\$ 87,698.27
				Special Charges/Credits	\$ 5,863.05
				2009 Tax Cap Adjustment	\$ 4,458.66
				Final 2009 Taxes	\$ 98,017.98
				Less Interim Billing	(\$ 45,990.75)
<b>Total</b>	<b>\$5,863.05</b>			<b>Total Amount Due</b>	<b>\$ 52,028.23</b>
<b>1st Instalment Amount</b>	<b>Due Date</b>	<b>2nd Instalment Amount</b>	<b>Due Date</b>	<b>3rd Instalment Amount</b>	<b>Due Date</b>
\$17,343.23	Jul 2, 2009	\$17,343.00	Aug 4, 2009	\$17,343.00	Sep 1, 2009

## Explanation of Property Tax Calculations 2009 Taxation Year

Total 2009 CVA Taxes: \$92,054.93  
 2009 Adjusted Taxes: \$92,054.93

### Calculation for Adjusted Taxes

	Commercial
*2008 Annualized Taxes	\$91,977.50
2008 Tax Cap Amount	(\$504.43)
2009 Provincial Education Levy Change	(\$246.45)
2009 Local Municipal Levy Change	\$328.31
**2009 Adjusted Taxes	\$92,054.93

\* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax treatment or assessment value  
 \*\* Adjusted Tax amount applies only to the property or portion(s) of property referred to in this notice and may not include other taxes

# TORONTO Tax Bill

Final 2010

May 8, 2010

ASSESSMENT ROLL NO. 19-04-08-4-350-01600-0000-0 0

397373 112/7 6(N)  
1079208 ONTARIO INC  
1 EATON AVE  
TORONTO, ON M4J 2Z4

LEGAL DESCRIPTION ► PLAN 200 PT LOTS 7 & 8 PLAN  
306E PT LOTS 24 TO 27  
PROPERTY LOCATION ► 635 DANFORTH AVE  
ASSESSED OWNER ► 1079208 ONTARIO INC

TAX CLASS	Assessment		Municipal		Education	
	VALUE	LEVIES	TAX RATE (%)	AMOUNT	TAX RATE (%)	AMOUNT
Residual Commercial Full Rate-Band 1	\$1,000,000	City	1.842346900	\$18,423.46	1.661559000	\$16,615.56
Residual Commercial Full Rate-Band 2	\$1,458,000	City	1.936748200	\$28,237.79	1.661559000	\$24,226.49

Special Charges/Credits		CVA Adjustments		Summary	
Breakdown on the Danforth BIA 0.2439008%	\$6,995.08			Tax Levy Sub-Total (Municipal-Education)	\$ 35,267.31
				Special Charges/Credits	\$ 6,995.08
				2010 Tax Cap Adjustment	\$ 4,362.01
				Final 2010 Taxes	\$ 46,624.40
				Less Interim Billing	(\$ 48,027.47)
<b>Total</b>	<b>\$6,995.08</b>			<b>Total Amount Due</b>	<b>\$ 51,631.92</b>
<b>1st Instalment Amount</b>	<b>Due Date</b>	<b>2nd Instalment Amount</b>	<b>Due Date</b>	<b>3rd Instalment Amount</b>	<b>Due Date</b>
\$17,277.92	Jul 2, 2010	\$17,277.00	Aug 3, 2010	\$17,277.00	Sep 1, 2010

## Explanation of Property Tax Calculations 2010 Taxation Year

Total 2010 CVA Taxes	2010 Adjusted Taxes
\$91,884.31	\$91,884.31

### Calculation for Adjusted Taxes

	Commercial
**2009 Annualized Taxes	\$92,054.94
2010 Tax Cap Amount	(\$771.06)
2010 Provincial Education Levy Change	(\$112.77)
2010 Local Municipal Levy Change	\$694.10
**2010 Adjusted Taxes	\$91,884.31

\* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax treatment or assessment value.

\*\* Adjusted Tax amount applies only to the property or portion(s) of property referred to in this notice and may not include some special charges and credit amounts or other items that are not part of the assessed value.

# TORONTO Tax Bill

Final 2011  
May 8, 2011

ASSESSMENT ROLL NO. 19-04-08-4-350-01800-0000-0 0

402556 110/7 6(V)  
1079268 ONTARIO INC  
1 EATON AVE  
TORONTO, ON M4J 2Z4

LEGAL DESCRIPTION ► PLAN 200 PT LOTS 7 & 8 PLAN  
308E PT LOTS 24 TO 27  
PROPERTY LOCATION ► 808 DANFORTH AVE  
ASSESSED OWNER ► 1079268 ONTARIO INC

TAX CLASS	Assessment VALUE	Municipal LEVIES	Municipal		Education	
			TAX RATE (%)	AMOUNT	TAX RATE (%)	AMOUNT
Residual Commercial Full Rate-Band 1	\$1,000,000	City	1.703605800	\$17,036.06	1.540408000	\$15,404.00
Residual Commercial Full Rate-Band 2	\$1,621,500	City	1.826736000	\$29,604.31	1.540408000	\$24,977.72

Special Charges/Credits		CVA Adjustments		Summary	
Greektown on the Danforth BIA 0.2236737%	\$6,020.80			Tax Levy Sub-Total (Municipal+Education)	\$ 87,022.17
				Special Charges/Credits	\$ 6,020.90
				2011 Tax Cap Adjustment	\$ 3,942.21
				Final 2011 Taxes	\$ 96,985.28
				Less Interim Billing	(\$ 45,932.15)
<b>Total</b>	<b>\$6,020.80</b>			<b>Total Amount Due</b>	<b>\$ 51,053.12</b>
<b>1st Instalment Amount</b>	<b>Due Date</b>	<b>2nd Instalment Amount</b>	<b>Due Date</b>	<b>3rd Instalment Amount</b>	<b>Due Date</b>
\$17,017.12	Jul 4, 2011	\$17,017.00	Aug 2, 2011	\$17,017.00	Sep 1, 2011

## Explanation of Property Tax Calculations 2011 Taxation Year

Total 2010 CVA Taxes	2011 Adjusted Taxes
\$91,022.17	\$80,864.38
<b>Calculation of Adjusted Taxes</b>	
	Commercial
*2010 Annualized Taxes	\$91,022.17
2011 Tax Cap Amount	\$91,024.31
2011 Provincial Education Levy Change	(\$970.61)
2011 Local Municipal Levy Change	(\$110.05)
**2011 Adjusted Taxes	\$180.73
	\$80,864.38

\* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax (rates) or assessment value.  
 \*\* Adjusted Tax amount applies only to the property or portion(s) of property referred to in this notice and may not include some special charges and credit amounts or levies that are not part of the credits calculation.

# TORONTO Tax Bill

Final 2012  
May 5, 2012

ASSESSMENT ROLL NO. 19-04-08-4-350-01800-0000-0-0

414967 11777 6(U)  
1079268 ONTARIO INC  
1 EATON AVE  
TORONTO, ON M4J 2Z4

LEGAL DESCRIPTION > PLAN 200 PT LOTS 7 & 8 PLAN  
306E PT LOTS 24 TO 27  
PROPERTY LOCATION > 636 DANFORTH AVE  
ASSESSED OWNER > 1079268 ONTARIO INC

TAX CLASS	VALUE	LEVIES	TAX RATE (%)	AMOUNT	TAX RATE (%)	AMOUNT
Residual Commercial Full Rate-Band 1	\$1,000,000	City	1.576348800	\$15,763.49	1.436097000	\$14,360.87
Residual Commercial Full Rate-Band 2	\$1,785,000	City	1.745528500	\$31,157.83	1.436097000	\$25,634.33

Sub Totals	Municipal Levy	Amount	Sub Totals	Amount
		\$46,921.12		\$39,995.30
<b>Special Charges/Credits</b>		<b>CVA Adjustments</b>		
Breakdown on the Danforth	\$9,044.76	Tax Levy Sub-Total (Municipal+Education)	\$	\$6,916.42
BIA 0.2170489%		Special Charges/Credits	\$	6,044.76
		2012 Tax Cap Adjustment	\$	3,284.69
		Final 2012 Taxes	\$	96,245.87
		Less Interim Billing	(\$	45,482.19)

Total	Amount	Total	Amount
	\$9,044.76		\$ 50,763.00
<b>1st Instalment Amount</b>	<b>Due Date</b>	<b>2nd Instalment Amount</b>	<b>Due Date</b>
\$16,921.66	Jul 3, 2012	\$16,921.00	Aug 1, 2012
		\$16,921.00	Sep 4, 2012

## Explanation of Property Tax Calculations 2012 Taxation Year

Total 2012 CVA Taxes	2012 Adjusted Taxes
\$59,916.42	\$90,201.11

### Calculation for Adjusted Taxes

	Commercial
2011 Annualized Taxes	\$90,964.37
2012 Tax Cap Amount	(\$1,230.22)
2012 Provincial Education Levy Change	(\$100.09)
2012 Local Municipal Levy Change	\$675.05
**2012 Adjusted Taxes	\$90,201.11

\* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax treatment or assessment value.  
 \*\* Adjusted Tax amount applies only to the property or portion(s) of property referred to in this notice and may not include other special charges and credits.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXTREME FITNESS, INC.-

Court File No.: CV-13-100000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF CONSTANTINE  
VOIDONICOLAS**

**LEVINE, SHERKIN, BOUSSIDAN**

A Corporation of Barristers  
23 Lesmill Road, Suite 300  
Toronto, ON M3B 3P6

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Tel: 416-224-2400

Fax: 416- 224-2408

Email: kevin@lsblaw.com

**Marc H. Gertner**

Tel: 416-224-2400

Fax: 416-224-2408

Email: marc@lsblaw.com

Lawyers for the Moving Party, 1079268 Ontario Inc.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXTREME FITNESS, INC.-

Court File No.: CV-13-100000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE MOVING PARTY,  
1079268 ONTARIO INC.  
(motion returnable May 28, 2013)**

**LEVINE, SHERKIN, BOUSSIDAN**  
A Corporation of Barristers  
23 Lesmill Road, Suite 300  
Toronto, ON M3B 3P6

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Fax: 416- 224-2408  
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**Marc H. Gertner**  
Tel: 416-224-2400  
Fax: 416-224-2408  
Email: marc@lsblaw.com

Lawyers for the Moving Party, 1079268 Ontario Inc.