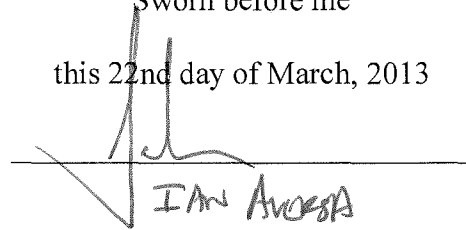


**TAB D**

Attached is Exhibit "D"

Referred to in the  
Affidavit of Alan Hutchens

Sworn before me  
this 22nd day of March, 2013



A handwritten signature in black ink, appearing to read "IAN AVOCSA", is written over a horizontal line. The signature is stylized and somewhat cursive.

Commissioner for taking Affidavits, etc

**Extreme Fitness, Inc.**  
**8-Week CCAA Cash Flow Forecast**  
**(Unaudited, in '000s CAD)**

Week Ending, Friday:	Notes	Week 7 3/22/2013	Week 8 3/29/2013	Week 9 4/5/2013	Week 10 4/12/2013	Week 11 4/19/2013	Week 12 4/26/2013	Week 13 5/3/2013	Week 14 5/10/2013	Total
<b>Receipts</b>										
Receipts	2	652.3	488.0	44.0	-	-	-	-	-	1,184.3
<b>Total Receipts</b>		<b>652.3</b>	<b>488.0</b>	<b>44.0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,184.3</b>
<b>Disbursements</b>										
Payroll and related amounts	3	410.0	355.0	535.0	450.0	45.0	1,100.0	-	65.0	2,960.0
Facility costs	4	-	-	180.0	-	180.0	-	-	-	359.9
Operating costs	5	217.2	219.8	505.0	84.5	75.0	10.0	275.0	16.0	1,402.5
Professional fees	6	90.0	85.3	226.0	115.3	85.0	85.3	125.0	75.2	887.0
Financing charges	7	-	-	75.3	-	-	-	-	-	75.3
<b>Total Disbursements</b>		<b>717.2</b>	<b>660.1</b>	<b>1,521.3</b>	<b>649.8</b>	<b>385.0</b>	<b>1,195.3</b>	<b>400.0</b>	<b>156.2</b>	<b>5,684.7</b>
<b>Net Cash Flow</b>		<b>(64.9)</b>	<b>(172.1)</b>	<b>(1,477.3)</b>	<b>(649.8)</b>	<b>(385.0)</b>	<b>(1,195.3)</b>	<b>(400.0)</b>	<b>(156.2)</b>	<b>(4,500.4)</b>
<b>Opening Cash Balance</b>	8	224.5	159.7	284.2	807.0	157.2	1,772.2	577.0	177.0	224.5
Net Cash Flow		(64.9)	(172.1)	(1,477.3)	(649.8)	(385.0)	(1,195.3)	(400.0)	(156.2)	(4,500.4)
Advances Under DIP Facility		-	296.7	-	-	-	-	-	-	296.7
Funds from Sale Proceeds		-	-	2,000.0	-	2,000.0	-	-	-	4,000.0
<b>Ending Cash Balance After New Advances</b>		<b>159.7</b>	<b>284.2</b>	<b>807.0</b>	<b>157.2</b>	<b>1,772.2</b>	<b>577.0</b>	<b>177.0</b>	<b>20.8</b>	<b>20.8</b>

**Notes:**

- 1) The purpose of this cash flow forecast is to determine the liquidity requirements of the Applicant during the forecast period.
- 2) Receipts from operations are forecast based on customer billing cycles, forecast sales and customer payment terms to the closing date.
- 3) Payroll and related payments includes salaries, wages, estimated sales commissions and bonuses, remittances, and other benefit amounts.
- 4) Facility costs include premise lease payments and associated operating costs.
- 5) Forecast operating costs are based on current payment terms and historical analysis.
- 6) Estimated professional fees are based on advisor-level estimates of fees that may be incurred during the forecast period.
- 7) Financing charges include interest and transaction fees associated with the DIP financing and interest payments on the Priority Credit Facility.
- 8) The opening cash balance includes advances under the DIP Facility of US \$1,000,000.

# TAB E

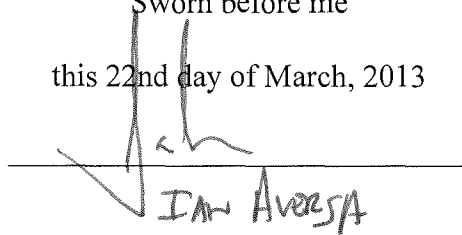
Attached is Exhibit "E"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 22nd day of March, 2013

A handwritten signature in black ink, appearing to read "JIM AVERSA", is written over a horizontal line. The signature is stylized and somewhat cursive.

Commissioner for taking Affidavits, etc

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 14.1;

(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,

licensee, concessionaire or franchisee or anyone else, or in respect of the use or occupancy of the Premises by the Tenant, its subtenants, licensees, concessionaires or franchisees, or anyone else (other than such taxes as income, profits or similar taxes assessed on the income of the Landlord); and

~~(b) all Realty Taxes in respect of tenant's fixtures, Leasehold Improvements, equipment or facilities on or about the Premises, and any Realty Taxes occurring as a result of any reason peculiar to the Tenant.~~

#### **5.4 Operating Costs**

~~[Intentionally deleted]~~

#### **5.5 Annual Readjustment of Additional Rent**

As soon as practicable after the expiration of each year, the Landlord shall make a final determination of Realty Taxes and other estimated Additional Rent based on the actual costs incurred therefor by the Landlord and shall notify the Tenant of such determination, providing reasonable details as to the breakdown and calculation thereof. If there has been a shortfall in the amounts payable by the Tenant for such period, the Tenant shall pay such shortfall within thirty (30) days after delivery of the Landlord's notice and reasonable substantiating documentation. Any overpayment shall be paid concurrently to the Tenant. Neither the Landlord nor the Tenant may claim any adjustment on account of Operating Costs or Realty Taxes for any fiscal period more than two (2) years after the date of delivery of the statement for such period.

#### **5.6 Calculation of Operating Costs**

~~[Intentionally deleted]~~

### **Article 6 — Utilities and Building Systems**

#### **6.1 Payment for Utilities**

The Tenant shall pay promptly when due all charges, costs, accounts and any other sums payable by reason of the supply of the utilities and services to the Premises. The Landlord shall prior to the Commencement Date at the Landlord's cost, install a separate meter to measure consumption of hydro, water and gas for the Premises and the Tenant shall contract with and pay the supplier directly.

#### **6.2 Above-normal Utilization**

~~[Intentionally deleted]~~

#### **6.3 Additional Utilities**

The Tenant shall make arrangements, at its own cost and expense, directly with the utility or service supplier in respect of any utilities and services not supplied by the Landlord. The Tenant, at its own cost and expense, shall procure each and every permit, licence or other authorization required, and shall comply with the provisions of Article 10 of this Lease pertaining to any work required in respect of such additional utilities and services.

#### **6.4 No Overloading**

The Tenant will not install any equipment which would exceed or overload the capacity of the utility facilities in the Premises or the electrical wiring and service in the Property, and agrees that if any equipment installed by the Tenant shall require additional utility facilities, such facilities shall be installed, if available, and subject to the Landlord's prior written approval thereof (which approval may not be unreasonably withheld), at the Tenant's sole cost and expense in accordance with plans and specifications to be approved in advance by the Landlord, in writing.

#### **6.5 No Liability**

In no event shall the Landlord be liable for any injury to the Tenant, its employees, agents or invitees, or to the Premises, or to any property of the Tenant or anyone else, for any

loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Premises, save where such injury or damage was occasioned by the act, omission and/or negligence of the Landlord and/or those in law for whom the Landlord is responsible or occasioned by a breach of the Landlord of any of its obligations contained in this Lease.

#### 6.6 Building Systems

- (a) The Tenant shall, throughout the Term, operate, maintain, repair, replace and regulate the Building Systems within and exclusively serving the Premises in such a manner as to maintain reasonable conditions of temperature and humidity within the Premises and so as to maintain the Building Systems in a good and working order. The Landlord warrants that the heating, ventilating and air-conditioning equipment and facilities installed in or servicing the Premises ("HVAC") shall be in good working order as of the date the Tenant takes possession of the Premises and for a period of three (3) years from the Commencement Date or the expiration of any applicable warranty period, whichever is the later the Landlord at its sole cost and expense shall maintain, repair and replace the HVAC, save and except for any damage resulting from the act, omission and/or negligence of the Tenant and/or those in law for whom the Tenant is responsible or occasioned by a breach of the Tenant of any of its obligations contained in this Lease.
- (b) In the event the HVAC or a major component thereof requires repair or replacement after the third year of the Lease or the expiration of any applicable warranty period, whichever is the later, then the Tenant shall undertake such repair provided:
- (i) the cost of such repair (the "Repair Cost") is not in excess of sixty percent (60%) of the cost to replace such major component of the HVAC; and
  - (ii) the repair was not occasioned by the wilful act, omission and/or negligence of the Landlord and/or those in law for whom the Landlord is responsible;
- (c) In the event the Repair Cost for such major component of the HVAC after the third year of the Lease or the expiration of any applicable warranty period, whichever is the later is in excess of sixty percent (60%) of the cost to replace such major component of the HVAC, then the Tenant shall undertake such repair or replacement provided:
- (i) the Tenant provides to the Landlord with a copy of the estimate for the Repair Cost and the Tenant is not then in default of any of its obligations as contained in the Lease;
  - (ii) the Tenant has assigned, (or will assign upon receipt of payment from the Landlord as provided below) to the benefit of the Landlord any warranty arising as a result of such repair;

then the Landlord agrees to reimburse the Tenant within thirty days after receiving a copy of the invoice substantiating the Repair Cost (which shall include a detailed description of the repair), an amount equal to the unamortized portion of the Repair Cost as of the last day of the term (it being agreed that if the renewal has been, or is subsequently exercised then it is the last day of the renewal term, and any amount overpaid by the Landlord shall be repaid by the Tenant within thirty days of demand by the Landlord and which amount shall be deemed as Rent), which unamortized portion shall be determined by amortizing such Repair Cost over a fifteen year period commencing on the date of the completion of such repair. If the Landlord fails to reimburse the Tenant within this thirty day period, then the Tenant may set off such amount against the next payment(s) of Rent. Notwithstanding the aforesaid provision of this Section 6.6(c), if the repair or replacement was occasioned by the wilful act, omission and/or negligence of the

Tenant and/or those in law for whom the Tenant is responsible, then the Tenant at be responsible for the entire Repair Cost without reimbursement from the Landlord.

## **Article 7 — Control and Operation by Landlord**

### **7.1 Property Operation and Repair**

The Landlord shall operate, maintain and repair the Property, any Building Systems serving the Premises that are not the Tenant's responsibility under Section 6.6 and any other service facilities not within or exclusively serving the Premises, to the extent required to keep the Property, equipment and facilities in a state of good repair and maintenance in accordance with normal property management standards for a similar building in the vicinity. For greater certainty:

- (a) the Landlord's obligations shall not extend to any matters that are the responsibility of the Tenant herein; and
- (b) the Landlord shall promptly make all repairs to the structural components of the Property including, without limitation, the roof (including the roof membrane); interior concrete slab floors and exterior walls.

If the Landlord has not completed any repair required to be performed by the Landlord and to that standard of condition as required by this Lease within fifteen days after receipt of written notice from the Tenant, or if such repair can not be completed within a fifteen day period, if the Landlord has not commenced or is not proceeding diligently to complete such repair within this fifteen day period, then the Tenant may, but is not obligated to, undertake such repair and the expense of the necessary repairs, plus an administration fee of ten percent thereon shall be borne by the Landlord and paid by the Landlord to the Tenant within thirty days of receipt of the Tenant's invoice and reasonable substantiating documentation, failing which such amount may be set off against the next instalment of Rent. Notwithstanding the aforesaid, if the requirement for the repair is an emergency [for example a roof leak or a flood], the Tenant may forthwith commence such repair and the expense thereof [but without an administration fee] shall be paid by the Landlord to the Tenant within thirty days of receipt of the Tenant's invoice and reasonable substantiating documentation.

### **7.2 Use of Common Areas**

The Tenant shall have the right of non-exclusive use, in common with others entitled thereto, for their proper and intended purposes, of those portions of the Common Areas intended for common use by tenants of the Property, provided that such use by the Tenant shall always be subject to such reasonable Rules and Regulations as the Landlord may from time to time determine. At times other than during Normal Business Hours, the Tenant and the employees of the Tenant and persons lawfully requiring communication with the Tenant shall have access to the Property only in accordance with the Rules and Regulations and other security requirements of the Landlord.

### **7.3 Control of Common Areas and Property**

(1) The Common Areas shall at all times be subject to the exclusive management and control of the Landlord. Without limitation, the Landlord may, in its operation of the Property, do any or all of the following: regulate, acting reasonably, all aspects of loading and unloading and delivery and shipping, and all aspects of garbage collection and disposal; designate employee parking areas or prohibit the Tenant and its employees from parking in or on the Property; and do and perform such other acts in and to the Property as, using good business judgment, the Landlord determines to be advisable for the proper operation of the Property.

(2) The Landlord reserves the right to lease parts of the Common Areas from time to time, to alter the layout or configuration of and/or reduce or enlarge the size of the Common Areas and/or the Rentable Area of the Property, to cease to treat as part of the Property any buildings or lands now forming part of the Property and/or to add additional lands or



buildings to the Property, and to make other changes to the Property as the Landlord shall from time to time reasonably determine. Despite anything else contained in this Lease but subject to the other provisions of this Lease, the Landlord has no liability for any diminution or alteration of the Common Areas that occurs as a result of the Landlord's exercise of its rights under this Section 7.3 or elsewhere in this Lease. The Tenant shall not be entitled to compensation or a reduction or abatement of Rent for such diminution or alteration, save as provided elsewhere in this Lease. Further, no such diminution or alteration of the Common Areas shall be deemed to be a constructive or actual eviction of the Tenant or a default by the Landlord of any obligation for quiet enjoyment contained in this Lease or provided at law.

#### **7.4 Relocation**

[Intentionally deleted]

#### **7.5 Rules and Regulations**

The Tenant and its employees and all persons visiting or doing business with it on the Premises shall be bound by and shall observe the Rules and Regulations attached to this Lease as Schedule "C", and any further and other reasonable Rules and Regulations made hereafter by the Landlord and acceptable to the Tenant, acting reasonably, of which notice in writing shall be given to the Tenant, which are of general application to all tenants of the Property. All such Rules and Regulations shall be deemed to be incorporated into and form part of this Lease.

### **Article 8 — Use of Premises**

#### **8.1 Use of the Premises**

The Tenant acknowledges that the Premises will be used solely for the purposes set out in Section 1.1(h), and for no other purpose.

#### **8.2 Conduct of Business**

The Tenant shall throughout the Term, conduct continuously and actively the business set out in Section 1.1 (h) in the Premises during Normal Business Hours and at no other time. Notwithstanding the foregoing, the Tenant shall not be required to carry on business when prohibited by a governmental law or by-law regulation the hours of business.

#### **8.3 Radius Restriction**

[Intentionally deleted]

#### **8.4 Observance of Law**

The Tenant shall, at its own expense, comply with all laws, by-laws, ordinances, regulations and directives of public authority having jurisdiction affecting the Premises, the use or occupation thereof including, without limitation, police, fire and health regulations. Without limiting the generality of the foregoing:

(a) where, during the Term, the Tenant has, through its use or occupancy of the Premises, caused or permitted a release of a contaminant at, from or to the Premises, the Tenant shall immediately clean up such contaminant from the Premises, and any affected areas, at the Tenant's expense; and

(b) on the termination of the Lease for any reason, the Tenant shall remove, at its expense, any contaminant or contamination which, through the Tenant's use or occupancy of the Premises, it has brought to or created at the Property.

#### **8.5 Waste, Nuisance, Overloading**

The Tenant shall not do or suffer any waste, damage, disfiguration or injury to the Premises, nor permit or suffer any overloading of the floors, roof deck, walls or any other part of the Property, and shall not use or permit to be used any part of the Premises for

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 recommence 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,

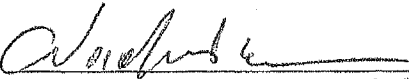
bankers, investors, purchasers, legal and financial advisors, any *bona fide* Transferee, and except as may be required by law.

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD

1079268 ONTARIO INC.

I/We have the authority  
to bind the Corporation

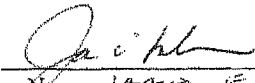
Per:   
Name: C. VOIDONI COLAS  
Title: PRESIDENT c/s

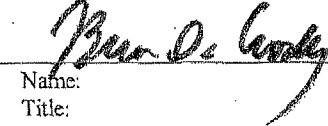
Per: \_\_\_\_\_  
Name:  
Title:

TENANT

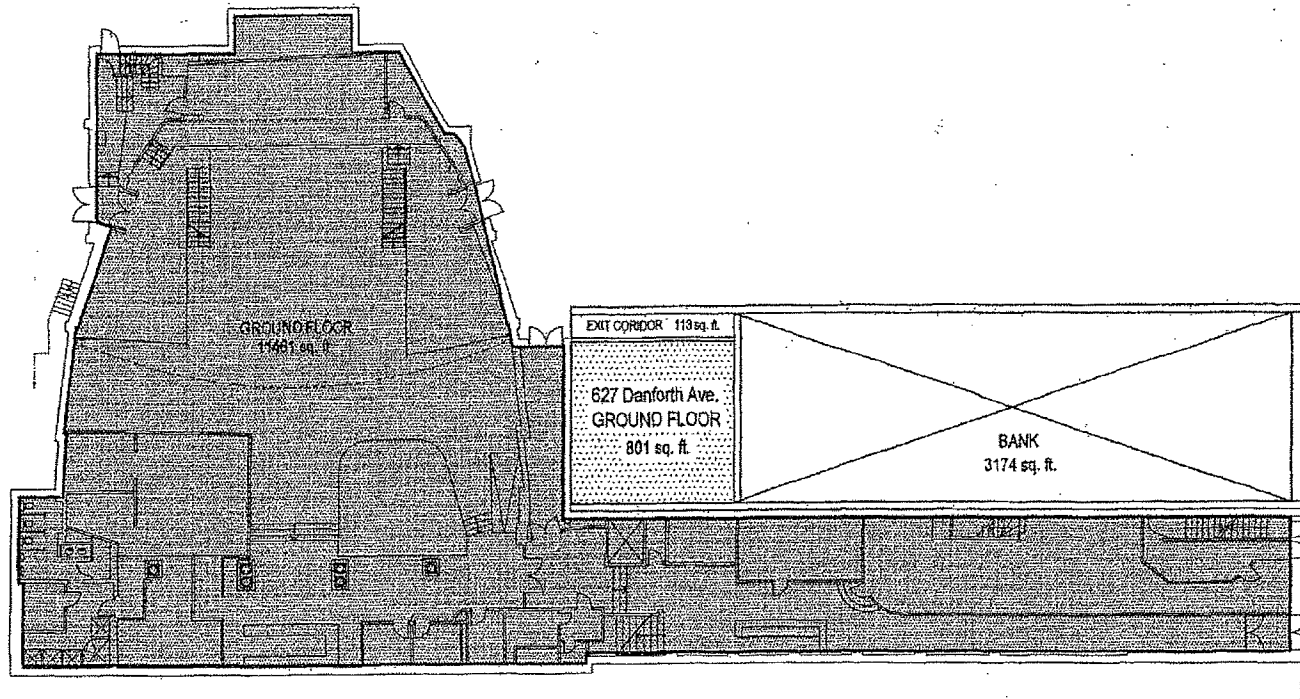
EXTREME FITNESS, INC.

I/We have the authority  
to bind the Corporation

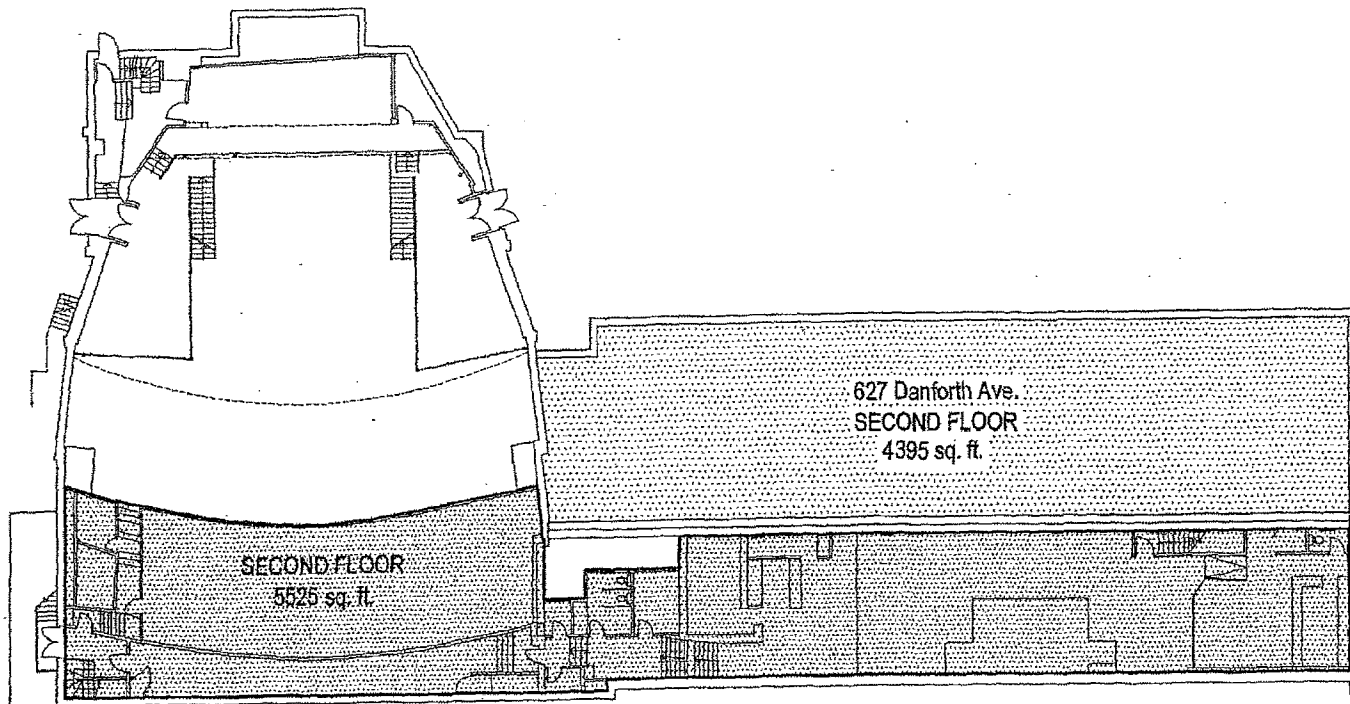
Per:   
Name: JAMES E. SOLOMAN  
Title: CEO

Per:   
Name:  
Title: c/s

Schedule "A"

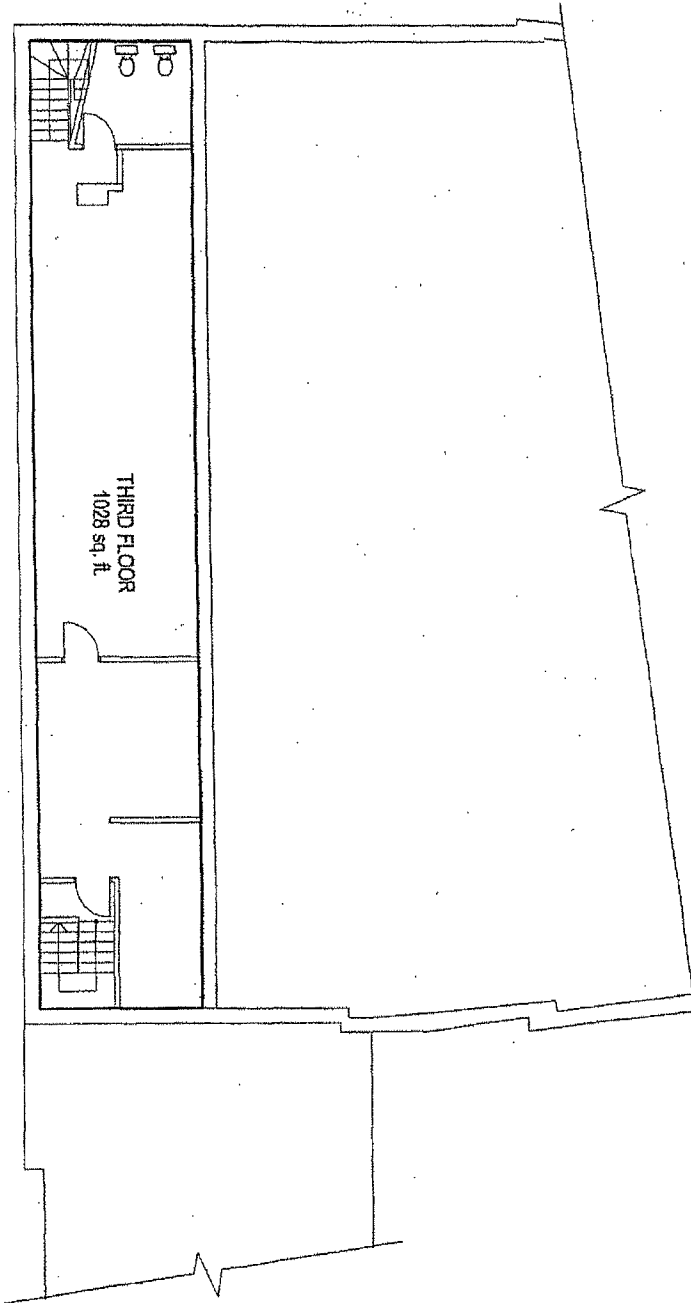


Schedule "A"

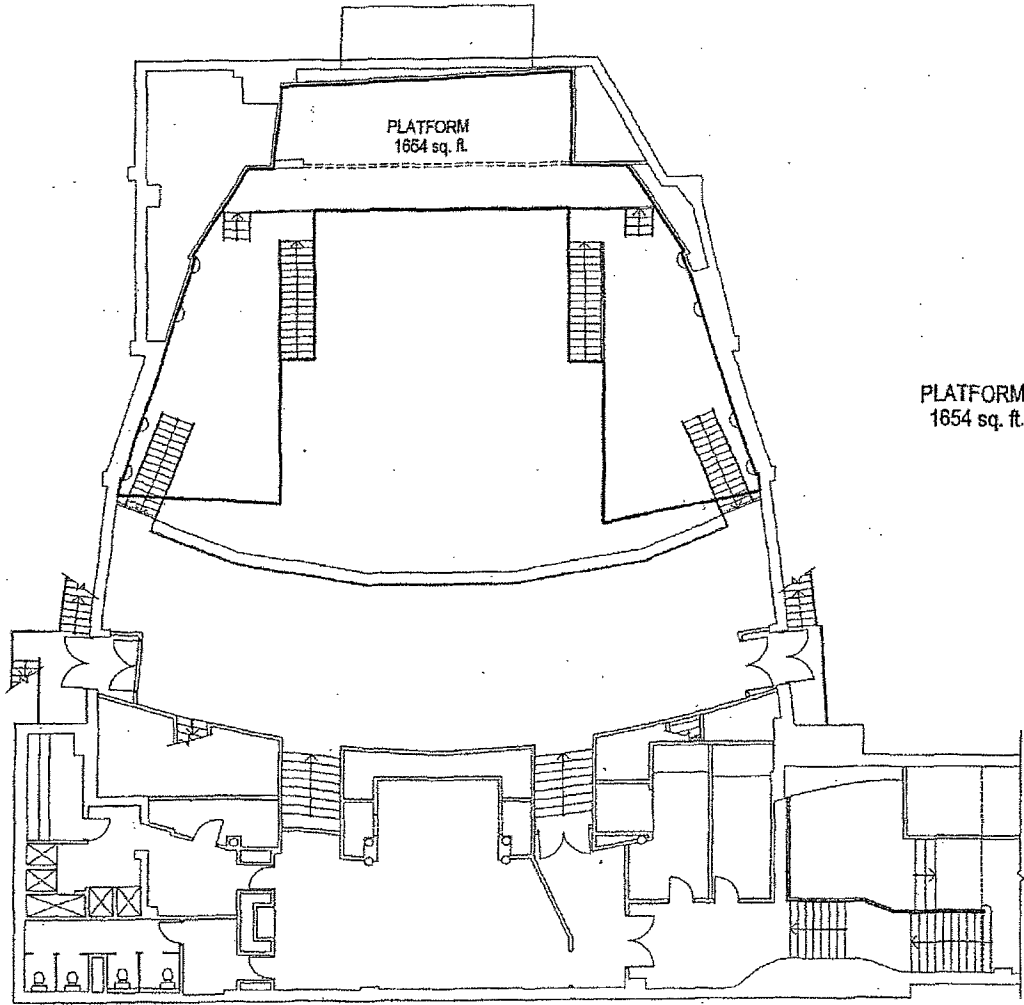




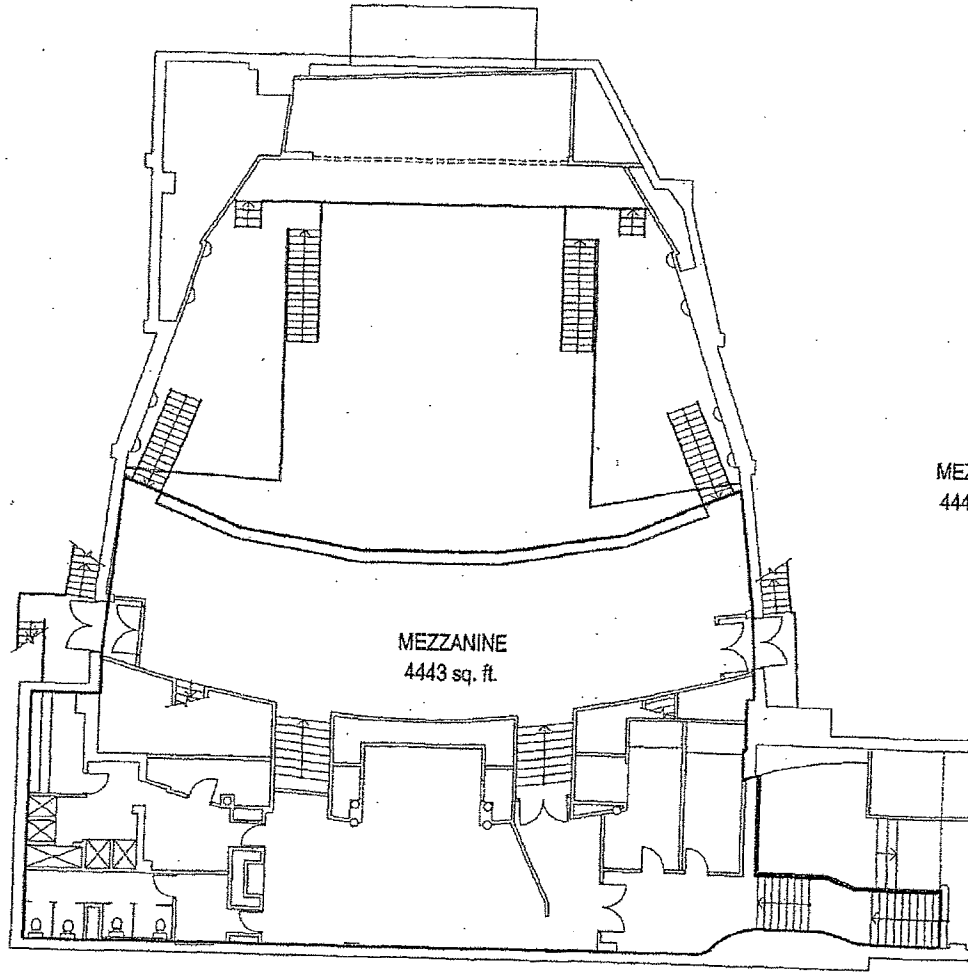
Schedule "A"



Schedule "A"



Schedule "A"



MEZZANINE  
4443 sq. ft.

MEZZANINE  
4443 sq. ft.



## 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]

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**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





VIA EMAIL

October 12, 2007

1079268 Ontario Inc.  
 c/o Michael S. Singer  
 Barrister and Solicitor  
 23 Lesmill Road, Suite 300  
 Toronto, ON M3B 3P6

Attention: Constantine Voidonicolas

Gentlemen:

Re: A lease (the "Lease") made the 30<sup>th</sup> day of October, 2006 between 1079268 Ontario Inc. (the "Landlord") and Extreme Fitness, Inc. (the "Tenant") for certain premises in that building municipally known as 635 Danforth Avenue, Toronto, Ontario

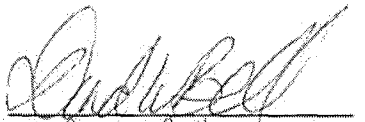
Please be advised that the Tenant hereby exercises its second right of renewal as provided in Section 7 of Schedule "F". Therefore, the Term shall now expire on October 31, 2016. \*

*1st & 2nd → 2016*  
*add - \* 10/31/16*

The Tenant has two (2) remaining rights of renewal, each of five (5) years, as provided in Section 7 of Schedule "F".

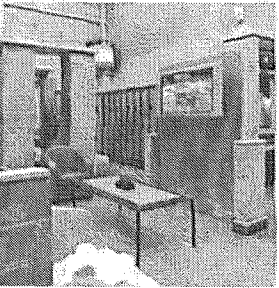
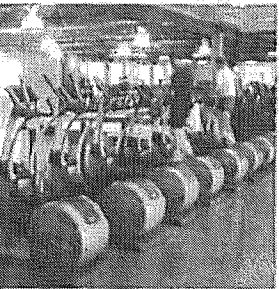
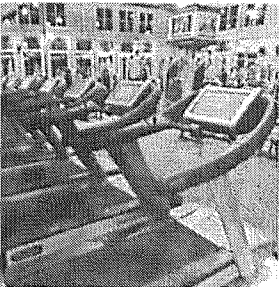
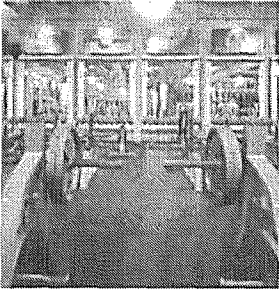
Yours truly,

Extreme Fitness, Inc.



per: *David W. Bell*  
 title: *Chief Financial Officer*

I have the authority to bind this company



**BLOOR STREET**  
 80 Bloor Street West  
 Toronto, ON M5S 2V1  
 Phone 416.960.2434

**CEDARBRAE**  
 3499 Lawrence Ave East  
 Scarborough, ON M1H 1B3  
 Phone 905.428.7628

**DANFORTH**  
 635 Danforth Avenue  
 Toronto, ON M4K 1R2  
 Phone 416.778.9046

**DELISLE**  
 1521 Yonge Street  
 Toronto, ON M4T 1Z2  
 Phone 416.922.9624

**DUNFIELD**  
 110 Eglinton Ave East  
 Toronto, ON M4P 2Y1  
 Phone 416.485.0200

**INTERCHANGE**  
 90 Interchange Way  
 Vaughan, ON L4K 5C3  
 Phone 905.850.4402

**NORTH YORK**  
 4950 Yonge Street  
 Toronto, ON M2N 6K1  
 Phone 416.222.6342

**PICKERING**  
 1755 Pickering Pkwy  
 Pickering, ON L1V 6K5  
 Phone 905.426.7628

**RICHMOND**  
 267 Richmond St. West  
 Toronto, ON M5V 3M6  
 Phone 416.591.1315

**THORNHILL**  
 8261 Yonge Street  
 Thornhill, ON L3T 2C7  
 Phone 905.709.9498

**WELLINGTON**  
 111 Wellington St. West  
 Toronto, ON M5J 2S6  
 Phone 416.362.2582

**WHITBY**  
 75 Consumers Drive  
 Whitby, ON L1N 9S2  
 Phone 905.655.9692

**HEAD OFFICE**  
 8261 Yonge Street  
 Thornhill, ON L3T 2C7  
 Phone 905.709.1248

# TAB F

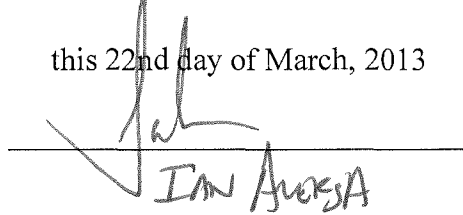
Attached is Exhibit "F"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 22nd day of March, 2013

A handwritten signature in black ink, appearing to read "Jim Anosca", is written over a horizontal line. The signature is stylized and cursive.

Commissioner for taking Affidavits, etc



DATED:

1, 2007

2125879 Ontario Inc.

TENANT:

Extreme Fitness, Inc.

PREMISES:

111 Wellington Street West  
Toronto, Ontario  
Rentable Area: 22,000 sq. ft.

---

COMMERCIAL LEASE

---

*Handwritten signature*

THIS LEASE, dated the 1<sup>ST</sup> day of June, 2007, is made

BETWEEN: **2125879 ONTARIO INC.**

a corporation incorporated under the laws of the Province of Ontario,  
(the "Landlord")

OF THE FIRST PART

AND:

**EXTREME FITNESS, INC.**

(the "Tenant")

OF THE SECOND PART

IN CONSIDERATION of the rents, covenants and agreements contained in this Lease, the parties covenant and agree as follows:

#### ARTICLE 1 - FUNDAMENTAL PROVISIONS

##### 1.1 Fundamental Provisions

In this Lease (and in addition to the other words and phrases defined in Schedule "C"):

(a) "Premises" or "Commercial Area" means those premises in the Development known municipally as 111 Wellington Avenue, Toronto, Ontario, comprising approximately 22,000 square feet of Rentable Area and legally described on Schedule "A" attached hereto.

(b) "Term" means the period of three (3) years, plus, if the first (1<sup>st</sup>) day of the Term is not the first (1<sup>st</sup>) day of a calendar month, that part of the month from the first (1<sup>st</sup>) day of the Term to the last day of the calendar month in which the first (1<sup>st</sup>) day of the Term occurs.

(c) "Possession Date" means the 1<sup>st</sup> day of June, 2007.

(c) "Commencement Date" means the 1<sup>st</sup> day of June, 2007.

(d) "Net Rent" means the amounts per annum set out below payable by the Tenant in the monthly installments and at the rates set out below, and in the manner provided in Section 3.3:

Period	Rate per Square Foot of Rentable Area of the Premises	Net Rent per Annum	Monthly Installments
Rental Years 1 to 3 Inclusive	\$23.00	\$506,000.00	\$42,166.67

(e) "Rental Deposit" means \$65,228.29, to be applied against Net Rent and Additional Rent accruing due in the first month of the Term.

(f) "Security Deposit" means \$76,888.29 (subject to Section 3.12).

(g) "Permitted Use" means a health and fitness facility containing exercise equipment and group fitness studios in a minimum of 17,000 square feet of Rentable Area and including exercise rooms, change rooms, racket courts and related offices, together with uses in the balance of the Premises which are ancillary to the use as a health and fitness facility, subject to any restrictions or regulations contained in any municipal by-law, or other restrictions imposed by the Development Agreements or any government authority.

(h) "Tenant's Trade Name" means Extreme Fitness.

(i) "Tenant's Address for Notice" means c/o Falconhead Capital, LLC, 450 Park Avenue, 3<sup>rd</sup> Floor, New York, New York, 10022

(j) "Landlord's Address for Notice" means 1054 Centre Street, Unit 156, Thornhill, Ontario, L4J 8E5

#### ARTICLE 2 - GRANT AND TERM

##### 2.1 Grant and Term

The Landlord demises and leases the Premises to the Tenant for the Term, (unless terminated earlier pursuant to this Lease), commencing on the Commencement Date subject to the terms and conditions of this Lease. The Landlord grants to the Tenant a non-exclusive licence throughout the Term to the benefit or use (as may be appropriate) of those Commercial Common Areas which serve the Premises, in common with all others entitled to the benefit or use of them, subject to the terms and conditions of this Lease.

##### 2.2 Acceptance

The Tenant leases and accepts the Premises from the Landlord and covenants to pay the Rent and to observe and perform all the covenants and obligations to be observed and performed by the Tenant pursuant to this Lease. The Tenant agrees that, except as may be specifically set out in this Lease, there is no promise, representation or undertaking by or binding upon the Landlord with respect to any alteration, remodelling or decoration of the Premises or the installation of equipment or fixtures in or serving the Premises.

##### 2.3 Quiet Enjoyment

If the Tenant pays Rent, fully performs all of its obligations under this Lease and there has been no Event of Default, the Tenant is entitled to peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by the Landlord or

any Person claiming through the Landlord, subject to the rights of any Mortgagees under any Mortgages to which this Lease may be subordinate from time to time.

**2.4 Commercial Area**

The Tenant acknowledges that the Commercial Area is only a part of the Development and is presently a freehold interest owned separate and apart by the Landlord from the balance of the Development. The remaining portions of the Development include, but are not limited to, the Other Development Components and any Shared Common Facilities.

**ARTICLE 3 - RENT**

**3.1 Net Lease**

This Lease is a completely carefree fully net lease to the Landlord. Except as otherwise expressly set out in this Lease, the Landlord is not responsible for any charges, impositions, expenses or outlays of any nature arising from or relating to the Premises and any common areas serving the Premises or the use or occupancy of them or the contents in them or the business carried on from them and the Tenant shall pay all charges, impositions, expenses and outlays of every nature and kind relating to the Premises. Any amount and any obligation which is not expressly declared in this Lease to be the responsibility of the Landlord is the responsibility of the Tenant to be paid or performed by or at the Tenant's expense in accordance with the terms of this Lease, whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as otherwise expressly provided in this Lease.

**3.2 Covenant to Pay**

The Tenant shall pay Rent during the Term, in Canadian funds and without prior demand. If the Commencement Date does not occur on the first (1<sup>st</sup>) day of a calendar month, then all amounts payable by the Tenant for the partial first (1<sup>st</sup>) month of the Term shall be pro-rated on a per diem basis. The Tenant agrees that its covenant to pay Rent is an independent covenant and that all Rent is payable without counterclaim, set-off, deduction, abatement or reduction whatsoever, except as expressly provided in this Lease. At the Landlord's sole option, the Tenant shall:

(a) deliver to the Landlord post-dated cheques for Net Rent and estimated Additional Rent prior to those portions of the Term as the Landlord may designate from time to time; or

(b) execute and deliver to the Landlord within ten (10) business days of written notice from the Landlord, any documents, instruments, authorizations or certificates reasonably required by the Landlord to give effect to an automated debiting system or electronic funds transfer from the Tenant's bank account under which any or all payments by the Tenant under this Lease shall be debited from the Tenant's bank account. The Tenant is responsible for payment of all fees charged by the Tenant's bank as a result of the Landlord exercising its rights pursuant to this Section 3.2(b).

**3.3 Net Rent**

The Tenant shall pay to the Landlord as Net Rent during the Term the amounts per annum set out in Section 1.1(d) for the applicable Rental Year in equal consecutive monthly instalments in advance on the first (1<sup>st</sup>) day of each calendar month in the amounts indicated in Section 1.1(d).

**3.4 Additional Rent**

(a) Except as otherwise provided in this Lease, all Additional Rent is payable by the Tenant to the Landlord when due. All obligations of the Landlord and Tenant with respect to the payment of Additional Rent by the Tenant, or with respect to the adjustment of amounts paid on account of Additional Rent by the Tenant, survive the expiration or termination of this Lease until such amounts have been paid or properly adjusted in accordance with this Lease.

(b) Notwithstanding anything to the contrary in this Lease, each amount payable by the Tenant to the Landlord is payable and collectable as Additional Rent.

**3.5 Operating Costs**

The Tenant shall pay to the Landlord as Additional Rent, at the times and in the manner described in Section 3.8: the Tenant's Proportionate Share of all Operating Costs.

**3.6 Taxes**

(a) The Tenant shall promptly pay to the Landlord, as Additional Rent, the Tenant's Proportionate Share of Taxes, at the times and in the manner described in Section 3.8. At the Landlord's option, the Landlord may direct the Tenant to pay its Proportionate Share of Taxes direct to the relevant taxing authority, which the Tenant shall pay not later than the due date of the Taxes. Upon written request of the Landlord, the Tenant shall promptly deliver to the Landlord, on receipt, copies of assessment notices, tax bills and other documents received by the Tenant relating to Taxes and receipts for payment of Taxes and Business Tax payable by the Tenant. The Tenant will not contest any Taxes or Business Tax or appeal any assessments related to Taxes or Business Tax without the Landlord's prior written consent, which shall not be unreasonably withheld, provided that the Landlord is deemed to be acting reasonably in withholding its consent in the event that the Landlord is then engaged in an appeal of Taxes, Business Tax or assessments related to them. In the event that the Tenant contests or appeals any Taxes, Business Tax or assessments related to them (with or without the consent of the Landlord), the Tenant shall indemnify and hold harmless the Landlord from and against any fines, charges, fees or other costs associated with the contest or appeal and shall be solely responsible throughout the Term and any renewal or extension of it for the amount of any increase in Taxes or Business Tax arising as a result of any such contest or appeal to the complete exoneration of the Landlord and of all other tenants of the Commercial Area.

(b) The Landlord shall pay all Taxes to the taxing authorities, subject to the payments on account of or contributions towards Taxes required to be made by the Tenant pursuant to this Lease. The Landlord may contest any Taxes and appeal any assessments with respect to Taxes, withdraw any such contest or appeal and agree with the taxing authorities on any settlement or compromise with respect to Taxes. The Tenant will co-operate with the Landlord in respect of any contest or appeal and will provide the Landlord with all relevant information, documents and consents required by the Landlord in connection with any contest or appeal. The Landlord is entitled to fifteen percent (15%) of the amount of any Tax refund or reduction received from any such contest or appeal representing the Landlord's overhead and administrative costs.

(c) If the Landlord cannot obtain from the taxing authorities separate assessment of Taxes or tax assessments in order to determine the Tenant's Proportionate Share of Taxes, then that allocation shall be made by the Landlord, acting reasonably in the absence of demonstrable error.

(d) If charged, the Tenant shall pay when due all Business Tax. If the Tenant's Business Tax is payable by the Landlord to the relevant taxing authority, the Tenant shall pay the amount of it within thirty (30) days of invoicing by the Landlord to the Landlord as Additional Rent or as it directs. If the Landlord cannot obtain from the taxing authorities separate allocations of Business Tax or other tax assessments in order to determine the Tenant's Business Tax, then that allocation shall be made by the Landlord, acting reasonably, and is conclusive in the absence of demonstrable error.

**3.7 Utilities in Premises**

The Tenant is solely responsible for and shall promptly pay, as Additional Rent, to the Landlord at the times and in the manner described in Section 3.8 (or directly to the Utility supplier as the Landlord otherwise directs) charges with respect to the Premises (the "Charges") equal to the aggregate, without duplication, of: (i) all charges for Utilities used or consumed in the Premises or allocated to them by the Landlord, acting reasonably; (ii) the cost of all apparatus and other things leased or purchased in connection with Utilities for the Premises, and for all work performed by any Person in connection with them; (iii) any cost incurred by the Landlord in supply and installing meters or separate check meters to indicate the use and consumption of Utilities in the Premises; and (iv) all fees, expenses and other costs incurred by the Landlord in determining or allocating the Charge or determining the use or consumption of Utilities.

**3.8 Payment of Instalment Rent**

(a) The amount of Taxes, Operating Costs and the Charges payable to the Landlord pursuant to Sections 3.5, 3.8 and 3.7 may be reasonably estimated by the Landlord for such period as the Landlord determines from time to time, and the Tenant agrees to pay to the Landlord, without prior demand, the estimated amounts in equal instalments in advance on the first (1<sup>st</sup>) day of each month during that period. Notwithstanding the foregoing, when bills for all or any portion of the estimated amounts are received, the Landlord may bill the Tenant for the Tenant's share of them and the Tenant shall pay to the Landlord within thirty (30) days the amount billed after crediting against it any monthly payments on account of that amount previously made by the Tenant.

(b) Within ninety (90) days after the end of the period for which estimated payments have been made, the Landlord shall submit to the Tenant a written statement certified by a senior officer of the Landlord (the "Statement") setting forth the actual amounts payable by the Tenant pursuant to Sections 3.5, 3.6 and 3.7. If the amount the Tenant has paid is less than the amount due, the Tenant shall pay the difference within thirty (30) days after receiving the Landlord's Statement. If the amount paid by the Tenant is greater than the amount due, the amount of the excess shall be paid by the Landlord to the Tenant within thirty (30) days following delivery of the Statement. The Landlord may render amended or corrected Statements.

(c) If the Tenant disputes the accuracy of any Statement and the Landlord and the Tenant fail to settle the matter within a reasonable period, the matter shall be referred by the Landlord to the Landlord's accountants for prompt decision. The Tenant shall pay in accordance with the Statement until that decision is rendered. The Landlord's accountant's signed determination shall be final and binding on both the Landlord and the Tenant. Any adjustment required to any previous payment made by the Tenant or the Landlord by reason of any such determination shall be made within 14 days of the determination, and the party required to pay the adjustment shall bear all costs of the Landlord's accountant, except that if the amount to be paid is 20% or less of the amount in dispute, the Tenant shall pay all such costs.

**3.9 Rent Past Due**

If any Net Rent or Additional Rent is not paid to the Landlord or is paid by the Landlord on behalf of the Tenant, the Landlord has the right to recover: (i) those amounts as if they were Rent in arrears; (ii) interest on each such amount from the date on which it became due or was so paid by the Landlord until the date of payment by the Tenant at the the prime annual interest rate for commercial demand loans charged in Canadian funds by any Canadian chartered bank designated by the Landlord plus three percent (3%) per annum; and (iii) the reasonable costs incurred by the Landlord for the recovery of those amounts. The minimum cost for that recovery is two hundred and fifty (\$250.00) dollars.

**3.10 Adjustment of Areas**

The Landlord may from time to time re-measure or recalculate the Rentable Area of the Premises and/or Commercial Area by a licensed surveyor or architect, but Net Rent and/or the Tenant's Proportionate Share of Additional Rent shall not be adjusted accordingly. A copy of the surveyor's or architect's certificate shall be provided to the Tenant. The effective date of any such adjustment is: (i) in the case of a change to the Rentable Area of the Premises and/or Commercial Area, the date on which the change occurred; and (ii) in the case of an error in any measurement or a calculation error, the date as of which the error was introduced in the calculation of any Rent. For greater certainty, the Landlord and Tenant acknowledge and agree that notwithstanding the results of any re-measurement, the Tenant shall be responsible for Net Rent on a Rentable Area that is equal to twenty-two thousand (22,000) square feet.

**3.11 Rental Deposit**

The Rental Deposit shall be held by the Landlord without interest until applied in accordance with Section 1.1(e). Upon the occurrence of an Event of Default, the Rental Deposit shall forthwith become a Security Deposit subject to the provisions of Section 3.12 and Section 1.1(f) shall be deemed to be amended to increase the amount of the original Security Deposit to include the Rental Deposit as previously stated in Section 1.1(e).

**3.12 Landlord's Banking Costs**

In the event that: (i) any cheque tendered by the Tenant to the Landlord is not honoured in full by the financial institution on which it is drawn; or (ii) any attempted debit of the Tenant's bank account in accordance with the provisions of Section 3.2(b) is not fully credited to the Landlord's bank account; then in addition to all other rights and remedies of the Landlord, the Tenant shall pay forthwith to the Landlord, as Additional Rent, liquidated damages in the amount stipulated by the Landlord from time to time (which amount, as of the date of this Lease is TWO HUNDRED AND FIFTY dollars (\$250.00)) on account of the Landlord's costs in presenting that cheque or applying for that debit and having it rejected.

**3.13 Sales Tax**

The Rent shall include the Landlord's sales tax and the Tenant shall pay the sales tax on the Rent. The Landlord shall be deemed to have paid the sales tax on the Rent until the date of payment by the Tenant. For greater certainty, the Landlord and Tenant acknowledge and agree that the Landlord's sales tax on the Rent is two hundred and fifty (\$250.00) dollars.

In addition to the Rent payable under this Lease, the Tenant shall pay to the Landlord (acting as agent for the taxing authority, if applicable) or directly to the taxing authority (if required by applicable Laws) in the manner specified by the Landlord, the full amount of all goods and services taxes, sales taxes, value-added taxes, multi-stage taxes, business transfer taxes and any other taxes imposed in respect of the Rent payable by the Tenant under this Lease or in respect of the rental of space by the Tenant under this Lease (collectively and individually, "Sales Taxes"). Sales Taxes will: (i) be calculated by the Landlord in accordance with applicable laws; (ii) be paid by the Tenant at the same time as the amounts to which the Sales Taxes apply are payable to the Landlord under the terms of this Lease (or at such other time or times as the Sales Taxes may be payable in accordance with applicable laws); and (iii) notwithstanding anything else in this Lease, not be considered to be Rent, but the Landlord has all of the same remedies for and rights of recovery with respect to Sales Taxes as it has for non-payment of Rent under this Lease or at law.

**3.14 Security Deposit**

(a) Together with the execution and delivery of this Lease and prior to the commencement of any work or the granting of possession of the Premises to the Tenant, the Tenant shall deliver the Security Deposit to the Landlord. The Security Deposit shall be held by the Landlord as security for:

(i) the faithful performance by the Tenant of all terms, covenants and conditions of this Lease to be kept, observed and performed by the Tenant and irrespective of:

(A) the unenforceability of this Lease against the Tenant;

(B) the termination of any obligations of the Tenant under this Lease by operation of law or otherwise; or

(C) the bankruptcy, insolvency, dissolution or other liquidation of the Tenant, including, without limitation, any surrender or disclaimer of this Lease by a trustee-in-bankruptcy of the Tenant, any disclaimer of this Lease by the Tenant pursuant to a proposal made by the Tenant under the *Bankruptcy and Insolvency Act* (Canada) or any termination of this Lease under the *Companies' Creditors Arrangement Act* (Canada); and

(ii) the Landlord's damages for the loss of the benefit of this Lease in the event that this Lease is terminated, disclaimed or surrendered (other than a voluntary surrender pursuant to a written agreement between the Landlord and the Tenant) prior to the expiry of the Term (or the then current renewal or extension term, as applicable), including, without limitation, any termination of this Lease by the Landlord as a result of the default by the Tenant, any termination of this Lease by operation of law, any surrender or disclaimer of this Lease by a trustee-in-bankruptcy of the Tenant, any disclaimer of this Lease by the Tenant pursuant to a proposal made by the Tenant under the *Bankruptcy and Insolvency Act* (Canada) or any termination of this Lease under the *Companies' Creditors Arrangement Act* (Canada).

(b) In addition to its other rights and remedies under this Lease or at law, upon the occurrence of an Event of Default by the Tenant, the Landlord may draw upon the Security Deposit for such amounts as are recoverable by the Landlord under the terms of this Lease or at law to compensate the Landlord for loss or damage sustained or suffered by the Landlord as a result of the Event of Default. In addition, in the event that this Lease is terminated, disclaimed or surrendered (other than a voluntary surrender pursuant to a written agreement between the Landlord and the Tenant) prior to the expiry of the Term (or then current renewal or extension term, as applicable), including, without limitation, any termination of this Lease by the Landlord as a result of the default by the Tenant, any termination of this Lease by operation of law, any surrender or disclaimer of this Lease by a trustee-in-bankruptcy of the Tenant, any disclaimer of this Lease by the Tenant pursuant to a proposal made by the Tenant under the *Bankruptcy and Insolvency Act* (Canada) or any termination of this Lease under the *Companies' Creditors Arrangement Act* (Canada), then the Landlord may draw upon the Security Deposit for the amount of the loss or damage sustained or suffered by the Landlord as a result of the loss of the benefit of this Lease (including, without limitation, all amounts which the Tenant would be required to pay under this Lease if this Lease had not been so surrendered, terminated or disclaimed but had remained in full force and effect for the balance of the Term (or then current renewal or extension term, as applicable)).

(c) If all or any part of the amount available to the Landlord under the Security Deposit is paid to the Landlord at any time, then the Tenant shall immediately restore the Security Deposit to the amount set out in Section 1.1(f). In the event that the Tenant fails to restore the amount of the Security Deposit, the Landlord shall have the same rights and remedies for the payment of the deficiency in the amount of the Security Deposit as it has for the payment of Rent in arrears.

(d) The Security Deposit shall be held by the Landlord without liability for interest and without prejudice to any other rights or remedies which the Landlord may have under this Lease or at law.

(e) If the Landlord sells its interest in the Premises, it may deliver the Security Deposit to the purchaser and the Landlord will be released from any further liability with respect to the Security Deposit or its return to the Tenant.

(f) The Landlord will surrender the unapplied portion of the Security Deposit to the Tenant sixty (60) days after the expiry of the Term (or then current renewal or extension term, as applicable), provided that: (i) the Tenant is not in default under this Lease; and (ii) the Tenant either has (A) renewed or extended the Lease and the renewal or extension agreement does not require a Security Deposit, or (B) delivered vacant possession of the Premises in accordance with the terms of this Lease, including, without limitation, leaving the Premises in the state of repair required by this Lease.

**ARTICLE 4 - PERMITTED USE**

**4.1 Permitted Use and Conduct of Business**

(a) The Tenant shall use the Premises for no purpose other than the Permitted Use. The Tenant shall conduct its business in the whole of the Premises in a reputable and first class manner, and in no event shall the Premises be used for any purpose inconsistent with the image or quality of the Development.

(b) In its use of the Premises the Tenant shall not: (i) keep or display any merchandise, equipment or fixtures on or otherwise obstruct the Commercial Common Areas; (ii) conduct business on or from the Commercial Common Areas; (iii) affix any article or thing to the exterior or visible from the exterior of the Commercial Area or any other portion of the Development; or use, either in the Premises or outside of the Premises, any travelling or flashing lights or signs or any loudspeakers, television, phonographs, radio or other audio-visual or mechanical devices in a manner so that they can be heard or seen outside the Premises, in each case without the prior written consent of the Landlord. If consent is not obtained, the Landlord is entitled to remove the offending item without notice at any time at the Tenant's cost.

(c) Unless otherwise expressly provided in this Lease, the Tenant shall carry on the Permitted Use continuously throughout the Term and on a non-restrictive basis.

**4.2 Overloading**

(a) The Tenant shall not install, or permit the installation of, any equipment which will exceed or overload the capacity of any Utility, electrical or mechanical facilities in or serving the Premises and the Tenant will not bring into the Premises or install any Utility, electrical or mechanical facility or service which the Landlord has not first approved in writing.

(b) The Tenant shall not bring into the Premises anything which might damage the Premises by reason of its weight, size or use. If any damage is caused to the Premises by any such thing or by overloading the floors of the Premises or by any act or omission on the part of the Tenant or those for whom it is in law responsible, the Tenant will forthwith repair the damage at its cost. Where the Landlord has the reasonable belief that the Tenant has overloaded the floors of the Premises, the Tenant shall furnish to the Landlord a certificate signed by a professional engineer named by the Landlord to show that no damage, structural or otherwise, has occurred to the Development.

**4.3 Nuisance**

The Tenant shall not, by its act or omission, permit anything to occur in the Premises which is or results in a nuisance in the Landlord's opinion, acting reasonably. For the purposes of this Section 4.3, a "nuisance" includes, without limitation, any noise or vibration in a manner so that either can be seen or heard outside the Premises; or any noxious odour, or high electromagnetic wave emissions.

**4.4 Windows**

The Tenant shall keep display windows (if any) neatly dressed. Display windows and lighted signs (if any) shall be kept illuminated by the Tenant during Normal Business Hours. The Tenant shall not place, hang, display or affix goods and/or signage to the interior or exterior glazing without the Landlord's prior written consent.

**4.5 Cleanliness**

The Tenant shall keep the Premises, all signage, canopies and awnings and other areas adjacent to the Premises clean and free of refuse and other obstructions, and shall comply with any laws governing the condition or cleanliness of the Premises.

**4.6 Signage and Awnings**

(a) Except with the prior written consent of the Landlord (not to be unreasonably withheld), the Tenant shall not erect, install, display, inscribe, paint or affix any signs, lettering or advertising medium or canopies or awnings of any sort upon or above any exterior portion of the Premises, including the storefront and all interior and exterior glass surfaces. For greater certainty, at no time shall the Tenant display any hand written notices or signage without the Landlord's prior written approval.

(b) Upon expiration or earlier termination of this Lease, all signs and panels become the property of the Landlord, save for the sign fascia which remains as a Trade Fixture of the Tenant. The Landlord may remove all such signs and restore the original panels and the cost of that work shall be paid by the Tenant to the Landlord.

**4.7 Compliance with Laws**

(a) The Tenant shall, at its expense and at all times in compliance with the provisions of Sections 6.2 and 6.5, promptly:

(i) observe and comply with all requirements of all laws now or hereafter in force which pertain to or affect (A) the Premises; (B) the Tenant's use of the Premises or the conduct of any business in the Premises; or (C) the making of any Alterations to or for the Premises or any part of them;

(ii) observe and comply with, and pay all costs and expenses in connection with, the requirements or obligations imposed by or directives or orders issued by any governmental or other authorities having jurisdiction, including, without limitation, carrying out all Alterations to or for the Premises and changes to the Tenant's conduct of business in the Premises which are required by any such authorities.

(b) Without limiting the generality of Section 4.7(a), the Tenant covenants and agrees that it shall:

(i) comply at its own expense with all Environmental Laws and comply with all requirements of all governmental authorities having jurisdiction under Environmental Laws and not cause or permit to occur any violation of any Environmental Law;

(ii) give notice to the Landlord of the presence, at any time during the Term, of any Hazardous Materials on the Premises (or the Development if the Hazardous Materials are in the control of the Tenant) together with such information concerning the Hazardous Materials as the Landlord may reasonably require;

(iii) give notice to the Landlord of any occurrence which might give rise to a duty under any Environmental Law of either the Tenant or the Landlord with respect to the presence of any Hazardous Materials on the Premises or the Development;

(iv) comply with any remedial or precautionary measures respecting Hazardous Materials reasonably required by the Landlord, and the Tenant is fully and completely liable to the Landlord for any and all clean up costs or costs incurred to comply with any Environmental Law or any recommendation for remedial or precautionary measures requested by the Landlord; and

Witness my hand and seal of this Lease, all signs and panels

(v) indemnify, defend and save harmless the Landlord from all Claims of every kind and all costs associated with them (including legal and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Materials which arises from the Tenant's use or occupancy of the Premises or from the Tenant's failure to provide all information, make all submissions and take all steps required by this Section 4.7(b) or by applicable governmental authorities.

Notwithstanding Section 6.3, if the Tenant brings or creates upon the Premises or the Development any Hazardous Materials or if the conduct of the Tenant's business causes there to be any Hazardous Materials upon the Development or the Premises, then, notwithstanding any rule of law to the contrary, the Hazardous Materials are and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord irrespective of the degree of affixation of the Hazardous Materials or the goods containing the Hazardous Materials to the Premises or the Development and notwithstanding the expiry or earlier termination of this Lease. The Tenant agrees that the Landlord has the right at the Tenant's expense, payable within thirty (30) days of receipt of invoice, to conduct such environmental site reviews and investigations as it may deem necessary for the purposes of ensuring compliance with this Section 4.7(b), and where the environmental site review or investigation has been requested or required by any authority having jurisdiction. The Landlord shall pay such cost of inspection if Hazardous Material is not found in the Premises above that permitted by Environmental Laws. The Landlord represents that it is not aware of any Hazardous Material at the Premises as of the date of this Lease.

(c) The Tenant's right to use and occupy the Premises and the common elements shall be subject and subordinate in all respects to the provisions of The Condominium Act, 1998 R.O. 1998, as amended, the registered declaration and by-laws of the Metropolitan Toronto Condominium Corporation Plan 932 (the "Condominium Corporation"), and the rules and regulations as the Board of Directors of the Condominium Corporation may from time to time pass and enforce. The Tenant covenants and agrees to observe and comply with Condominium Corporation's declaration, description, by-laws and rules (collectively the "Condominium Instruments"). The Tenant acknowledges and agrees that failure on its part, its guests, visitors or any other person or persons to comply with The Condominium Act, the registered declaration and by-laws of the Condominium Corporation and the rules shall constitute a material breach of this Lease and shall entitle either or both the Landlord and the Condominium Corporation to apply for an order terminating the tenancy hereby created, provided the Tenant has received at least fifteen days written notice of such breach and the Tenant has not remedied such default within this fifteen day period, or where the default cannot be remedied within such fifteen day period, the Tenant has not commenced to remedy and thereafter diligently proceeded to complete such remedy. In the event of any assignment or subletting by the Tenant in accordance with the provisions of this Lease, with the written consent of the Landlord, the Tenant shall require any proposed assignee or subtenant to execute the form of Tenant's Acknowledgment in the Landlord's then standard form which the Tenant has, by executing the within Lease, agreed to execute and caused to be delivered to the Condominium Corporation. The Tenant shall indemnify and hold harmless the Landlord from and against any damages, direct or indirect, incurred by the Landlord as a result of the non-compliance by the Tenant and by any of the aforesaid persons with the provisions of The Condominium Act, the registered declaration and by-laws of the Condominium Corporation and the rules as hereinbefore described.

(d) Upon request of the Tenant, the Landlord will at the Tenant's sole cost and expense, use its commercially reasonable efforts to:

- (i) Cause the Condominium Corporation to comply with and to enforce the Condominium Instruments and to comply with its obligations with regard to the maintenance, repair and replacement of the Development and the common areas and facilities of the Development;
- (ii) To obtain any consent from the Condominium Corporation forthwith after receiving the Tenant's written request, where the consent of the Condominium Corporation is required, (by way of example only, upon certain Transfers);
- (iii) To obtain from the Condominium Corporation forthwith after receiving the Tenant's written request, such non confidential information that the Landlord as a condominium unit owner is entitled to receive from the Condominium Corporation.

Forthwith upon receipt of such consent or information, the Landlord shall provide such consent or information to the Tenant.

(e) The Landlord agrees that it will not vote for any change to the Condominium Instruments that would materially adversely affect either the Tenant's business from the Premises or the Tenant's rights pursuant to the Lease.

(g) In the event of the damage and destruction of the Development, the Landlord agrees that it will not vote for the termination of the Condominium Corporation if such damage can be repaired within one hundred and eighty (180) days from the date of damage and destruction, unless the Tenant has otherwise agreed in writing to such termination.

(h) If the Landlord fails to pay any amount to the Condominium Corporation and such failure to pay will have material adverse effect upon the operations of the Tenant, the Tenant may pay such amount to the Condominium Corporation and the amount thereof shall be paid by the Landlord within thirty (3) days following invoicing by the Tenant.

#### 4.8 Trade Names and Advertising

The Tenant's business in the Premises shall be carried on under the Tenant's Trade Name and under no other name and style without the Landlord's prior written approval, such approval not to be unreasonably withheld, provided however that at the same time the Tenant changes the Tenant's Trade Name to the same name in at least three (3) other of its other operations in the Province of Ontario.

#### 4.9 Continuous Occupancy

Subject to Section 13.8, the Tenant shall continuously, actively and diligently carry on the business specified in Section 4.1 from the whole of the Premises, fully stocked, fixtured and staffed during the Normal Business Hours throughout the Term (and any renewal or extension of it).

#### 4.10 Staff and Fixtures

The Tenant shall employ and maintain personnel sufficient at all times for proper service to customers. The Tenant shall install and maintain at all times in the Premises, modern and high quality fixtures, furnishings, fittings and equipment adequate, appropriate and properly laid out to sustain the Tenant's business operations.

**4.11 Special Restrictions**

(a) Notwithstanding any other provisions of this Lease, the Tenant shall not use the Premises nor permit them to be used for any of the following purposes:

- (i) for the sale by the Tenant, as its principal business purpose, of ends-of-run, bankruptcy stock, seconds or other similarly related merchandise;
- (ii) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock or merchandise damaged by or held out to be damaged by fire;
- (iii) as an auction or flea market, for a bankruptcy sale, going-out-of-business sale, liquidation sale or any similar sale, or primarily as an order office, mail order office or catalogue store; or
- (iv) any business which involves intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices.

(b) The Tenant shall discontinue the sale of any item, merchandise or commodity, the supply of any service, or the carrying on of any business, activity or practice, which does not, in the Landlord's opinion, fall within the Permitted Use or which is prohibited by this Lease.

**ARTICLE 5 - ACCESS AND ENTRY**

**5.1 Entry not Forfeiture**

(a) The Landlord or the Condominium Corporation, or its authorized agents are entitled to enter the Premises at all reasonable times, upon twenty-four (24) hours' written or verbal notice to an occupant of the Premises or to the Tenant's address for notice pursuant to Section 13.9 if there is no occupant to notify (and at any time without notice in the case of an emergency), to pursue any rights and obligations pursuant to this Lease and at law, including, without limitation, the Landlord's rights pursuant to Sections 5.2 (a), 5.3, 8.1(b) and 8.7. No entry into the Premises or anything done in them by the Landlord or the Condominium Corporation pursuant to a right granted by this Lease constitutes a breach of any covenant for quiet enjoyment nor (except where expressed by the Landlord in writing) a re-entry or forfeiture nor an actual or constructive eviction and the Tenant shall have no Claim suffered as a result of any such entry or thing.

(b) The property manager of the Other Development Components owners and the respective designated representatives of the property manager of the Other Development Components shall be entitled to enter the Premises at all reasonable times, upon twenty-four (24) hours' written or verbal notice to an occupant of the Premises or to the Tenant's address for notice pursuant to Section 13.9 if there is no occupant to notify (and at any time without notice in the case of an emergency), to pursue such Other Development Component's rights and obligations pursuant to this Lease and at law, including, without limitation, the rights pursuant to Sections 5.2 (b). No entry into the Premises or anything done in them by the Other Development Components owners and the respective designees of the Other Development Components pursuant to a right granted by this Lease constitutes a breach of any covenant for quiet enjoyment and the Tenant shall have no Claim suffered as a result of any such entry or thing.

**5.2 Right of Entry**

(a) Subject to Section 5.1(a), the Landlord may enter the Premises to examine them, to make such repairs, alterations or improvements to or for them as the Landlord considers necessary or desirable, to have access to underfloor ducts and access panels to mechanical shafts and to check, calibrate, adjust and balance controls and other parts of the heating, ventilating and air conditioning ("HVAC") systems. The Landlord reserves to itself to install, maintain, use and repair pipes, ducts, conduits, vents, wires and other installations leading in, through, over or under the Premises and, for this purpose, the Landlord may take all material into the Premises which is required. The Tenant shall not unduly obstruct any pipes, ducts, conduits, vents, wires or mechanical or other electrical equipment so as to prevent reasonable access to them. If any excavation is made on the Lands, the Person making the excavation may enter the Premises to do any work considered necessary to preserve and protect the walls of the Commercial Area and to support them by proper foundations. Rent will not abate or be reduced while repairs, alterations, or improvements are being made.

(b) Subject to Section 5.1(b), the property manager of the Other Development Components owners and the respective designees of the Other Development Components may enter the Premises to make such repairs, to have access to under floor ducts and access panels to mechanical shafts and to check, calibrate, adjust and balance controls and other parts of the heating, ventilating and air conditioning ("HVAC") systems or any other systems or components that affects such Other Development Components. The Tenant shall not unduly obstruct any pipes, ducts, conduits, vents, wires or mechanical or other electrical equipment so as to prevent reasonable access to them. Rent will not abate or be reduced while repairs, alterations, or improvements are being made.

**5.3 Right to Show Premises**

Subject to Section 5.1, the Landlord may enter the Premises to show them to prospective purchasers or mortgagees, and, within the last twelve (12) months before expiration of the Term, to prospective tenants.

**ARTICLE 6 - MAINTENANCE, REPAIRS AND ALTERATIONS**

**6.1 Landlord's Maintenance and Repairs**

(a) Subject to Article 8, the Landlord covenants to keep the following in first class repair as a prudent owner the structure of the Commercial Area.



(b) The Landlord has the right to stop, interrupt or reduce any services, systems or Utilities provided to or serving the Commercial Area or Premises to perform repairs, alterations or maintenance, to comply with laws or regulations or binding requirements of its insurers, for causes beyond the Landlord's reasonable control or as a result of the Landlord exercising its rights under Section 13.8. The Landlord is not in breach of its covenant for quiet enjoyment nor liable for any Claim, whether direct or indirect, incurred by the Tenant due to any of the foregoing, but the Landlord shall make reasonable best efforts to restore the services, Utilities or systems so stopped, interrupted or reduced.

**6.2 Tenant's Maintenance and Repairs**

(a) The Tenant shall notify the Landlord of any accident, defect, damage or deficiency in any part of the Premises or the Commercial Area which comes to the attention of the Tenant or its contractors, notwithstanding that the Landlord may have no obligation in respect of it.

(b) Subject to Article 8, the Tenant shall maintain in good order and condition and repair and replace as necessary, at its expense and in the same manner as a careful and prudent owner would, all to a standard consistent with a first class Commercial operation, the Premises, including, without limitation, all glass; storefronts; walls; ceilings; floors; interior windows and window frames; doors and door frames; interior signs; awnings; fixtures (including Trade Fixtures); improvements (including Leasehold Improvements); machinery, installations, equipment, systems, services and facilities located on, in, under, above or which serve the Premises (including, without limitation, wiring, piping, lighting and plumbing fixtures, and operating, heating, ventilating and air-conditioning equipment and distribution systems including base building mechanical and electrical systems but exclusive of and any repairs or replacements to be carried out by the Condominium Corporation as specifically required to be performed pursuant to the Development Agreements. The Tenant's maintenance obligations include the repair of all wear and tear to the extent that repair or replacement is necessary to maintain the improvements and equipment so that they function properly, having regard to their nature and the purposes for which they are intended to be used, and is necessary to keep the appearance of the Premises neat, clean and presentable.

(c) The Tenant shall heat, ventilate and air condition the Premises at its own expense so as to maintain comfortable conditions of temperature within the Premises. The Tenant shall comply with any reasonable conditions of temperature and humidity stipulated by the Landlord from time to time and with all reasonable regulations of the Landlord pertaining to the maintenance and operation of the heating, ventilating and air conditioning equipment. The Tenant shall operate and maintain and replace as necessary all heating, ventilating and air conditioning equipment serving the Premises (not including equipment which is part of a shared or central system controlled by the Condominium Corporation pursuant to any Development Agreement). Notwithstanding the provisions of Section 6.2(b), the Landlord may, at its sole option, elect to place and maintain (or alternatively require that the Tenant place and maintain) a comprehensive maintenance and/or monitoring program (utilizing those Persons as are acceptable to the Landlord, acting reasonably) for all heating, ventilating and air-conditioning equipment in the Premises, notwithstanding the fact that the Tenant has the obligation to repair that equipment. The Tenant shall participate in that maintenance program and shall pay, on demand and as Additional Rent or directly to the supplier of the service, all costs and expenses incurred or charged with respect to that program.

**6.3 Leasehold Improvements and Trade Fixtures**

All Leasehold Improvements (other than Trade Fixtures) shall immediately upon 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 during the Term. The Tenant may remove its Trade Fixtures during the Term in the usual course of its business, provided that the Tenant is not in default under this Lease and provided that those Trade Fixtures have become excess to the Tenant's needs or the Tenant is substituting new and similar Trade Fixtures for them. If the Tenant does not remove its Trade Fixtures at the expiry or earlier termination of the Term, then at the option of the Landlord the Trade Fixtures 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.

**6.4 Restoration of Premises**

(a) On the expiration or early termination of this Lease, the Tenant shall if required by the Landlord, at its sole expense:

- (i) surrender the Premises to the Landlord in the state of repair required by Section 6.2, reasonable wear and tear excepted;
- (ii) (if required by the Landlord) remove all of the Leasehold Improvements and Trade Fixtures in the Premises;

except to the extent otherwise notified by the Landlord. The Tenant shall submit detailed demolition drawings to the Landlord for its prior written approval, such approval not to be unreasonably withheld. The Tenant shall repair at its own expense any damage caused to the Development by that work.

(b) If the Tenant fails to complete any work referred to in Section 6.4(a) by the expiry or earlier termination of the Term and without prejudice to the Landlord's other rights and remedies under this Lease or at law, the Landlord may, without liability on the Landlord's part and without notice to the Tenant, enter the Premises and perform any or all of the work set forth in Section 6.4(a) at the Tenant's sole expense and any and all property and improvements removed from the Premises may be sold, destroyed, disposed of, used or stored by the Landlord in such manner as the Landlord determines, all at the Tenant's expense.

(c) If the Tenant has failed to fulfil its obligations under Sections 6.2 and 6.4 during or at the end of the Term, those obligations and the Landlord's rights in respect of them remain in full force and effect notwithstanding the expiration or earlier termination of the Term.

**6.5 Approval of Tenant's Alterations**

Whether prior to the Commencement Date or during the Term of this Lease or any renewal or extension of it, the Tenant shall not make any Alteration in any part of the Premises, any Alteration which affects the bearing floors, signage, ceilings or columns nor any Alteration to the Leasehold Improvements, in each case without first obtaining the Landlord's and Condominium Corporation's written approval, (which is not to be unreasonably withheld, unless same impacts or affects the structure or any structural component of the Premises, the roof, or ceiling or base building service or system), and in connection therewith the Tenant shall, prior to commencing any such work, submit to the Landlord:

- (i) for its prior approval details of the proposed work, including drawings and specifications prepared by qualified architects or engineers acceptable to the Landlord and its architects or engineers and conforming to good engineering practice;
  - (ii) such indemnification against liens, costs, damages and expenses (including the Landlord's costs and expenses incurred, or which may be incurred, in reviewing the proposed work and supervising its completion) and such insurance coverage as the Landlord requires; and
  - (iii) evidence satisfactory to the Landlord that the Tenant has obtained, at the Tenant's expense, all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction.
- (a) Save for cosmetic alterations to the Premises which may be undertaken by the Tenant without the Landlord's consent, all Alterations made or installed by the Tenant or on behalf of the Tenant in the Premises shall be performed:
- (i) with first class materials owned by the Tenant at the sole cost of the Tenant;
  - (ii) by competent workers whose labour union affiliations are compatible with others employed by the Landlord and its contractors;
  - (iii) in a good and workmanlike manner such that it will not interfere or conflict with any activities of the Landlord or any other tenant or with the operation of the Development;
  - (iv) in accordance with the drawings and specifications approved by the Landlord and its architects or engineers; and
  - (v) subject to the reasonable regulations, supervision, controls and inspection of the Landlord.

(b) All Utilities used during such work and garbage removal associated with such work shall be the responsibility of the Tenant.

If any Alterations would affect the structure of the Development, or any of the electrical, mechanical or other base building systems or their warranties, that work shall, at the option of the Landlord, be performed by the Landlord at the Tenant's expense. If it would affect warranties, the Landlord may reasonably refuse to allow the work to be done. Upon completion of the work, the Tenant shall pay to the Landlord as Additional Rent the cost of the work, and thereafter the cost of any on-going maintenance, repair or replacement to the work.

(c) Within thirty (30) days of being invoiced therefor, the Tenant shall pay to the Landlord, as Additional Rent, an amount equal to the reasonable costs and fees of the Landlord for its services in connection with the review and approval of plans and specifications by the Landlord's in-house staff (collectively, the "Included Costs"). Thereafter, the Tenant shall pay to the Landlord, as Additional Rent, an amount equal to the reasonable costs and fees of the Landlord or Condominium Corporation for its services in monitoring the Tenant's Alterations throughout the Term (which costs and fees include the Included Costs). Following completion of any Alteration (save and except for any minor, cosmetic or decorative Alteration to the interior of the Premises, the Tenant shall provide the Landlord with a duly licensed and qualified architect's or engineer's stamped drawing certifying that the Alteration has been completed in accordance with the drawings and specifications presented to the Landlord in accordance with subsection 6.5(i) above.

**6.6 Liens**

The Tenant shall promptly pay for all materials supplied and work done in respect of the Premises so as to ensure that no lien is registered against any portion of the Lands, the Development or Commercial Area or against the Landlord's or Tenant's interest in them. If a lien is registered or filed, the Tenant shall remove it at its expense within five (5) business days after notice from the Landlord (or sooner if such lien or claim is delaying a financing or sale of all or any part of the Commercial Area), failing which the Landlord, at its option, may have it removed by paying the amount claimed to be due into court and the amount so paid and all expenses incurred by the Landlord, including, without limitation, legal fees on a solicitor and his client basis and all interest, penalties and other damages resulting from delays or the termination of any transactions of any nature caused by the presence of any such lien, shall be paid by the Tenant to the Landlord as Additional Rent within five (5) business days after demand.

**6.7 Landlord's Maintenance and Repair on Tenant's Behalf**

(a) Subject to Section 5.1, the Landlord may enter the Premises to view the state of repair. If the Tenant fails to carry out any maintenance, repairs, legal compliance, restoration, clean up or any other action required to be carried out by it under this Lease to the reasonable satisfaction of the Landlord, the Landlord may: (i) commence that work without notice if the Landlord determines that the Tenant's failure has created an emergency; (ii) notify the Tenant in writing that unless the Tenant commences that work within seventy-two (72) hours, the Landlord intends to carry out the work if the Landlord, acting reasonably, determines that the Tenant's failure to repair or maintain has created a threat to the value of the Landlord's interest in the Development or to the peaceable enjoyment of tenants or other occupants of the Development; or (iii) in all other cases, notify the Tenant in writing that unless the Tenant commences that work within five (5) business days, the Landlord intends to carry out the work. In the event the Landlord is required to perform any work under this Section 6.7(a), all costs of the work shall be paid by the Tenant to the Landlord as Additional Rent.

(b) If the Landlord, acting reasonably, determines that any repairs, replacements or improvements to any part of the Development, including, without limitation, to any of the systems of the Development, are required as a result of the use of the Premises by the Tenant, then the cost (including the cost of review and approval of plans and specifications by the Landlord's in-house staff and consultants, the cost to the Landlord of monitoring the Tenant's construction and all associated costs) of those repairs, replacements or improvements shall be borne by the Tenant and are payable by the Tenant within thirty (30) days of invoicing by the Landlord as Additional Rent. Notwithstanding the foregoing, in the event that the repairs, replacements or improvements would not be required if the Tenant altered its use of the Premises, the Landlord shall provide five (5) business days' written notice to the Tenant setting forth the required change to the Tenant's use of the Premises and permitting the Tenant to make that change prior to the Landlord exercising its rights under this Section 6.7(b). For the purposes of this Section 6.7(b), it is reasonable for the Landlord to determine that repairs, replacements or improvements are the result of the Tenant's use of the Premises if the repairs, replacements or improvements are effected to rectify any nuisance or discomfort (including, without limitation, as a result of noise, vibration, noxious odour or high electro-magnetic wave emissions) caused to

The Tenant shall be responsible for the cost of any such repairs, replacements or improvements. The Tenant shall be responsible for the cost of any such repairs, replacements or improvements. The Tenant shall be responsible for the cost of any such repairs, replacements or improvements.

others as a result of the Tenant's use of the Premises.

**ARTICLE 7 - INSURANCE AND INDEMNITY**

**7.1 Tenant's Insurance**

The Tenant shall maintain the following insurance throughout the Term at its sole cost:

(i) "All Risks" (including fire, extended coverage, flood, sewer backup and earthquakes) property insurance and, where applicable, insurance against breakdown of energy systems, pressure objects, communications, computing and data processing equipment, naming the Tenant as insured parties and the Landlord and Owner as additional insureds. Such insurance shall: (A) contain a waiver of subrogation rights which the Tenant's insurers may have against the Landlord, Owners, the Other Development Components, any Insurance Trustee, each Mortgagee the owners of each of the individual units in the Other Development Components and against those for whom each of them is in law responsible, including, without limitation, its directors, officers and employees; (B) only with respect to Leasehold Improvements, incorporate the Mortgagee's standard mortgage clause; (C) contain disputed loss provisions (D) insure property of every kind owned by the Tenant or for which the Tenant is legally liable located on or in the Commercial Area including, without limitation, excluding plate glass, and Leasehold Improvements, in an amount not less than their full replacement cost (new) if replaced in accordance with applicable by-laws and ordinances, with the cost to be adjusted no less than annually and without coinsurance penalties; and (F) include twelve (12) months' indemnity for direct or indirect loss of earnings attributed to all perils referred to in this Section 7.1(e)(i) or resulting from prevention of access to the Premises or Commercial Area. Each such policy shall provide that, with respect to Leasehold Improvements only, loss is adjusted and payable to the Landlord, with the proceeds to be held in trust to be used for repair and replacement of the property insured;

(ii) Commercial General Liability insurance not more restrictive than IBC Form 2100, with inclusive limits of not less than \$5,000,000.00 naming the Landlord and Owners as an additional insured;

(iii) Broad Form tenant's legal liability insurance for the actual cash value of the Premises, including loss of use of them; and

(iv) any other form of insurance which the Tenant or the Landlord, acting reasonably, or the Mortgagee requires from time to time, in form, in amounts and for risks against which a prudent tenant would insure.

(b) All policies referred to in this Section 7.1 shall: (i) be with insurers licensed in Ontario, having a Best's rating of at least A+ and be reasonably acceptable to the Landlord; (ii) be in a form reasonably satisfactory to the Landlord; (iii) be non-contributing with, and shall apply only as primary and not as excess to, any other insurance available to the Landlord; (iv) not be invalidated as to the interests of the Landlord, Owners, the Other Development Components or the Mortgagee by reason of any breach of or violation of any warranty, representation, declaration or condition of the policies and/or of this Lease; and (v) contain an undertaking by the insurers to notify the Landlord by registered mail not less than thirty (30) days prior to any change that reduces or restricts coverage, cancellation or termination. Certificates of insurance on the Landlord's standard form or, if required by the Landlord, certified copies of insurance policies shall be delivered to the Landlord forthwith upon request. If the Tenant fails to take out or to keep in force any insurance referred to in this Section 7.1 or should any such insurance not be approved by either the Landlord or the Mortgagee and should the Tenant not rectify the situation within forty-eight (48) hours after written notice by the Landlord to the Tenant (stating reasons, if the Landlord or the Mortgagee does not approve of the insurance), then the Landlord has the right, without assuming any obligation as a result, to effect the insurance at the sole expense of the Tenant and all costs incurred by the Landlord shall be paid by the Tenant to the Landlord within thirty (30) days following invoicing by the Landlord as Additional Rent without prejudice to any other rights or remedies of the Landlord under this Lease.

(c) Notwithstanding the Commencement Date, the Tenant understands and agrees that all provisions of this Article 7 apply to and are binding upon the Tenant and the Landlord with respect to the Premises and the Development on the earlier of: (i) the Commencement Date; (ii) the Tenant's receipt from any Person of keys or electronic access passes to the Premises or any part of them; or (iii) the Landlord granting access to the Premises or any part of them to the Tenant, the Tenant's contractors or any other agent or representative of the Tenant for any purpose whatsoever. Prior to the Tenant, the Tenant's contractors or any other agent or representative of the Tenant being given access to the Premises or any part of them, the Tenant covenants and agrees to provide the Landlord with proof of the Tenant's insurance in accordance with the provisions of Section 7.1(b).

**7.2 Increase in Insurance Premiums**

The Tenant shall not keep or use in the Premises any article which may be prohibited by any insurance policy in force from time to time covering the Premises or any part of the Development. If: (i) the occupancy or use of the Premises (even though permitted under this Lease); (ii) the conduct of business in the Premises; (iii) any acts or omissions of the Tenant in the Development or any part of it; or (iv) any breach by the Tenant of any of the provisions of this Lease, causes or results in any increase in premiums for or results in an increase in the amount of the insurance carried from time to time by the Landlord with respect to the Development or any part of it, then in each case the Tenant shall pay any increase in premiums as Additional Rent. In determining whether increased premiums are caused by or result from any of the foregoing, a schedule issued by the organisation computing the insurance rate on the Development or the applicable part of it showing the various components of the rate is conclusive evidence of the several items and charges which make up that rate.

**7.3 Cancellation of Insurance**

The Tenant will not do or permit anything to be done that results in the actual or threatened cancellation or reduction of coverage under any insurance policy on the Development or any part of it. Any breach of the foregoing is an Event of Default and entitles the Landlord to rely on the remedies contained in Article 10.

**7.4 Loss or Damage**

The provisions of this Section 7.4 govern notwithstanding any other provision of this Lease.

(a) Neither the Landlord, the Owners nor the Other Development Components is liable for any Claim arising out of or from any (i) death or injury whatsoever in, upon, at, or relating to the Premises or Development, or any part thereof, or (ii) loss of or damage to property of the Tenant or of others located on the Premises or elsewhere in the Development from any cause whatsoever, whether or not the property is entrusted to the care or control of the Landlord, the Owners or the Other Development Components or any of the Landlord's, Owners' or Other Development Components Other Development Components' employees, or any such death, injury, loss or damage to property caused in whole or in part by the Landlord, Owners or the Other Development Components or those for whom the Landlord or the Other Development Components is in law responsible save and except where such Claim arises from the negligent act or omission of the Landlord or those in law for whom the Landlord is responsible.

(b) Without limiting the generality of the foregoing, neither the Landlord, the Owners nor the Other Development Components is liable or responsible in any way for any Claim arising from any death, injury (including, without limitation, personal discomfort or illness), loss or damage of or to Persons or property resulting from or caused by, directly or indirectly, any of the following: (i) fire, explosion, theft, breakage, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, ice, snow, or leaks into, in or from any part of the Premises or Development or from any pipes, sprinklers, appliances, drainage or plumbing works, roof, windows, or exterior walls or subsurface or any floor or ceiling of the Premises or Development or from the street or any other source or place whatsoever or dampness, or the existence, discharge, spillage or leakage of Hazardous Materials, or any other cause whatsoever; (ii) any suspension, non-operation, failure, reduction, interruption or failure to supply or perform, for any reason or for any period of time, of or in any of the services (including, without limitation, telecommunications services), equipment, facilities, systems (such as, without limitation, the HVAC System) or Utilities serving the Premises or the Development or any other part thereof; (iii) delays in the performance of any repairs, replacements, maintenance or restoration for which the Landlord is responsible under this Lease; (iv) the Landlord or any of the Landlord's employees entering upon the Premises to undertake any examination of them or any work or cleaning or performance of other services in them; (v) the supply or performance of any cleaning, janitorial, pest extermination or fire protection or security obligations or services in any part of the Premises or Development; or (vi) other tenants, occupants or Persons on or in the Development or any part of it or any occupants of any adjacent property or the public or construction or any private, public or quasi-public work.

(c) Save and except where such Claim arises from the negligent act or omission of the Landlord or those in law for whom the Landlord is responsible, all property of the Tenant or of any of the Tenant's employees kept or stored on the Premises (including, without limitation, all Leasehold Improvements) shall be kept or stored at the sole risk of the Tenant, and the Tenant releases and agrees to indemnify the Landlord, the Owners and the Other Development Components and save each of them harmless from and against any Claims arising out of any loss or damage to the property, including, without limitation, any subrogation Claims by the Tenant's or any other insurers, and the Tenant shall make all claims for loss, damage or destruction of or to any such property against the policies of insurance required to be maintained by the Tenant under this Lease.

**7.5 Landlord's Insurance**

The Landlord shall carry throughout the Term the insurance contemplated under the Development Agreements including: (i) All Risk Insurance on the Commercial Area and the machinery, boilers and equipment in or serving the Commercial Area including the Lands (excluding any property which the Tenant and other tenants are obliged to insure under Section 7.1 or similar sections of their respective leases); (ii) public liability and property damage insurance with respect to the Landlord's operations in the Development; and (iii) such other forms of insurance as the Landlord or the Mortgagee reasonably considers advisable. The insurance shall be in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a reasonably similar Commercial Area, having regard to size, age and location, and in accordance with any Development Agreements or any Insurance Trust Agreement. Notwithstanding the Landlord's covenant contained in this Section 7.5 and notwithstanding any contribution by the Tenant to the cost of insurance premiums, the Tenant acknowledges and agrees that: (A) the Tenant is not relieved of any liability arising from or contributed to by its negligence or its wilful acts or omissions; (B) no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord; and (C) the Tenant has no right to receive any proceeds of any insurance carried by the Landlord. The Tenant further acknowledges that the Landlord is not responsible for obtaining any insurance for the Other Development Components.

**7.6 Indemnification of Landlord**

(a) Notwithstanding any other provision of this Lease, the Tenant shall defend and indemnify the Landlord, the Owners and the Other Development Components and shall hold each of them harmless from and against any and all Claims (including, without limitation, indirect damages that may be suffered or sustained by the Landlord or the Owners and loss of all Rent and other amounts payable by the Tenant under this Lease) whatsoever, other than that caused by the negligent act or omission of the Landlord or those for whom the Landlord is in law responsible:

(i) arising from or out of this Lease, or any Alterations to or for the Premises, or any occurrence in, upon or at the Premises, or the occupancy or use by the Tenant of the Premises or any part of them, or occasioned wholly or in part by any fault, default (including, without limitation, any default under this Lease or any of the Development Agreements or Insurance Trust Agreement), negligence, act or omission of the Tenant or any Person for whom the Tenant is in law responsible;

(ii) arising from, relating to or occurring in, upon or at any part of the Development (other than the Premises) occasioned in whole or in part by any fault, default, negligence, act or omission by the Tenant or any other Person for whom the Tenant is in law responsible.

If the Landlord or the Owners, without fault on its part, is made a party to litigation commenced by or against the Tenant, the Tenant shall defend and indemnify and hold harmless each of them from and against all legal and other costs. Each of the Landlord, the Owners and the Other Development Components, at its option, may participate in, or assume carriage of, any litigation or settlement discussions relating to the foregoing or any other matter for which the Tenant is required to indemnify it under this Lease. Alternatively, each of the Landlord, the Owners and the Other Development Components may require the Tenant to assume carriage of and responsibility for all or any part of that litigation or those discussions. For greater certainty, the Tenant's obligations and Landlord's, the Owners' and Other Development Components' rights contained in this Section 7.6 survive the expiration or earlier termination of this Lease.

(b) Without limiting the generality of Section 7.6(a), if the Development is damaged or destroyed or requires repair, replacement or alteration as a result of any fault, default, negligence, act or omission of the Tenant or any other Person for whom the Tenant is in law responsible, the cost of the resulting repairs, replacements or alterations shall be paid by the Tenant to the Landlord as Additional Rent.

**7.7 Benefit of Releases**

Every indemnity, hold harmless provision, release and exclusion of liability contained in this Lease for the benefit of the Landlord and every waiver of subrogation for the benefit of the Landlord contained in any insurance policy maintained by the Tenant shall survive the expiration or earlier termination of the Term and shall extend to and benefit all of the Landlord, the Owners, the Other Development Components, the manager(s) of the Commercial Area and all of their respective agents, beneficiaries, shareholders, directors, officers, employees and those for whom any of the Landlord, such Owners, the Other Development Components, such manager(s) and such agents, respectively, is in law responsible. Solely for such purpose, and to the extent that the Landlord expressly chooses to enforce the benefits of this Section for any or all of such Persons, it is agreed that the Landlord is the agent or trustee for such Persons. No such indemnity, hold harmless provision, release or exclusion of liability or waiver of subrogation for the benefit of the Landlord shall be deemed to impose or imply any obligation, responsibility or liability whatsoever on the Landlord, including, without limitation, any obligation to perform or do any act or thing, except to the extent any such obligation, responsibility or liability of the Landlord is expressly provided for under this Lease.

**ARTICLE 8 - DAMAGE AND DESTRUCTION AND EXPROPRIATION**

**8.1 No Abatement**

If the Premises or the Development are damaged or destroyed in whole or part by fire or any other occurrence, this Lease continues in full force and effect and there is no abatement of Rent except as provided in this Article 8.

**8.2 Damage to Premises**

Subject to Section 8.3, if the Premises are at any time destroyed or damaged as a result of fire or any other casualty against which the Landlord is required to be insured or is otherwise insured, then the following provisions apply:

(a) the Landlord shall commence diligently to repair or reconstruct the Premises, but: (i) only to the extent of its obligations under Section 6.1; (ii) only to the extent of proceeds of insurance actually received by the Landlord from its insurers or would have been received if the Landlord had taken out that insurance which it is obligated to take out pursuant to this Lease; (iii) only to the extent that the Landlord is required or entitled to repair or reconstruct under the provisions of any of the Development Agreements or Insurance Trust Agreement, and (iv) nothing in this Section 8.2 requires the Landlord to rebuild the Premises to the condition which existed before any such damage or destruction, so long as the Premises as rebuilt have reasonably similar facilities to those in the Premises prior to the damage or destruction, having regard to the age of the Commercial Area at the time.

(b) upon being notified by the Landlord that the Landlord's repairs have been substantially completed and subject to Section 6.5, the Tenant shall diligently perform all repairs to the Premises which are the Tenant's responsibility under Section 6.2 and all other work required to fully restore the Premises for use in the Tenant's business, in every case at the Tenant's cost and without any contribution to that cost by the Landlord, whether or not the Landlord has at any time made any contribution to the cost of supply, installation or construction of Leasehold Improvements in the Premises.

**8.3 Right of Termination**

Notwithstanding Section 8.2, if the Premises cannot be rebuilt or made fit for the purposes of the Tenant within one hundred and eighty (180) days of the happening of the damage or destruction to them, and such damage and destruction occurs during the last two years of the Third Extended Term, either the Tenant or the Landlord, at its option, may terminate this Lease on notice to the other given within thirty (30) days after the damage or destruction, without indemnity or penalty payable by either party. The Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this Lease and Rent shall be adjusted as of the date of termination.

**8.4 Destruction of Commercial Area**

If at any time the Condominium Corporation has elected not to rebuild the Development:

(a) then the Landlord or Tenant may terminate this Lease by notice to the other given within thirty (30) days of the damage or destruction without indemnity or penalty. In that event, neither the Landlord nor the Tenant is bound to repair and the Tenant shall surrender the Premises to the Landlord within thirty (30) days after delivery of the Landlord's notice of termination. Rent shall be apportioned and paid to the date on which the Tenant delivers vacant possession of the Premises.

(b) Notwithstanding anything in this Lease to the contrary, and without limiting the Landlord's right or remedies under it: (i) if damage or destruction occurs to the Commercial Area or any part of it by reason of any cause in respect of which there are no proceeds of insurance available to the Landlord or (ii) if the proceeds of insurance are insufficient to pay the costs of rebuilding or making fit the Commercial Area or any part of it (including the Premises); or (iii) if any Mortgagee or other Person entitled to proceeds of the insurance does not consent to the payment to the Landlord of sufficient proceeds for the purpose of rebuilding or repair, then in any such case the Landlord may, without indemnity or penalty payable by the Landlord to the Tenant or any other recourse by the Tenant against the Landlord, terminate this Lease on thirty (30) days' written notice to the Tenant. In that event, neither the Landlord nor the Tenant shall be bound to repair and the Tenant shall surrender the Premises to the Landlord on the termination date. All Rent shall be apportioned and paid to the termination date.

(c) If the Landlord has not terminated this Lease, but within one (1) year from the date of damage and destruction has failed to substantially rebuild the Premises such that the Tenant is able to recommence its restoration of its work in order to thereafter commence business from the Premises, then the Tenant may terminate this Lease upon thirty (30) days written notice to the Landlord.

(d) 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 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 the Premises damaged by such peril, or (iii) the consent of the Mortgagee has not been obtained; then the Tenant may terminate this Lease upon thirty (30) days prior written notice to the Landlord. The Landlord will reasonable best efforts advise the Tenant within ninety (90) 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; and/or (B) to the extent known by the Landlord whether or not the Mortgagee has consented to the Landlord performing its repair obligations.

#### 8.5 Expropriation

In the event of expropriation of all or part of the Premises, neither the Landlord nor the Tenant will have a Claim against the other for the shortening of the Term nor the reduction or alteration of the Premises, and the Landlord and Tenant shall each look only to the expropriating authority for compensation, provided that the Landlord and the Tenant agree to co-operate with each other to receive the maximum compensation available.

#### 8.6 Architect's Certificate

The certificate of the Architect binds the parties as to: (i) the percentage of the Rentable Area of the Commercial Area damaged or destroyed; (ii) the date upon which the Landlord's work of reconstruction or repair is completed or substantially completed; (iii) the percentage of the Lands or of the Rentable Area of the Commercial Area expropriated or acquired; (iv) whether the portions of the Commercial Area or Lands that are damaged or destroyed affect access or services essential to them; and (v) the time that will be required to rebuild or repair after any damage or destruction.

### ARTICLE 9 - ASSIGNMENT AND SUBLETTING; TRANSFERS

#### 9.1 Assignments and Subletting; Transfers

The Tenant shall not enter into, consent to or permit any Transfer without the prior written consent of the Landlord in each instance, which consent shall not be unreasonably withheld but which is subject to the Landlord's rights under Section 9.2. Notwithstanding any statutory provision or principle of law to the contrary, it is not unreasonable for the Landlord to take into account the following factors in deciding whether to grant or withhold its consent:

- (a) whether, in the Landlord's opinion, the financial background, business history, experience and capability of the proposed Transferee is satisfactory;
- (b) whether the Transferee proposes to carry on any business within the Premises other than that specified in this Lease as the Permitted Use; and
- (c) whether John Cardillo has any direct or indirect interest in the Transferee, in which case the Landlord may unreasonably withhold its consent.

Consent by the Landlord to any Transfer shall not constitute a waiver of the necessity for consent to any subsequent Transfer. This prohibition against Transfer includes a prohibition against any Transfer by operation of law.

#### 9.2 Landlord's Option

If the Tenant intends to effect a Transfer, the Tenant shall give prior notice of its intent to the Landlord signed by the Tenant. This notice shall be accompanied by the fees described in Section 9.3(g) and all information required by the Landlord pursuant to this Article 9 including, without limitation: (i) the full legal name(s) of the proposed Transferee; (ii) an executed credit application(s) on the Landlord's standard form; (iii) information as to the business background of the Transferee, including a description of the experience of the Transferee in the Permitted Use; (iv) where the Transferee is a corporation, full financial statements (audited, if available) of the Transferee for the last three (3) years (or such shorter period if the Transferee has not been incorporated for 3 years), including balance sheets, income statements and changes to cash position; (v) names and telephone numbers of banking and insurance contacts of the Transferee; (vi) the date that the proposed Transfer would be effective, along with the reasons for the Transfer (e.g., sale of business, franchise arrangement, etc.); (vii) reasonable details as to the type of Transfer contemplated (e.g., sublet, assignment, etc.); and (viii) copies of any documents which record the particulars of the proposed Transfer. Within fifteen (15) days after having received that notice and all requested information, the Landlord shall notify the Tenant that it consents or does not consent to the Transfer in accordance with the provisions of this Article 9 and if the Landlord does not consent the written reasons therefor; provided that no Transfer is deemed to have been approved by the Landlord by reason of its failure to deliver a notice to the Tenant within that fifteen (15) day period.

#### 9.3 Conditions of Transfer

(a) If there is a Transfer, the Landlord may collect Rent from the Transferee and apply the net amount collected to the Rent payable under this Lease, but no acceptance by the Landlord of any payments from a Transferee is deemed a waiver or release of the Tenant's covenants nor an acceptance of the Transferee as Tenant nor a release of the Tenant from the further performance of its obligations under this Lease. Any consent to a Transfer by the Landlord is subject to the Tenant and Transferee executing an agreement with the Landlord agreeing:

- (i) that the Transferee will be bound by all of the terms of this Lease as if the Transferee had originally executed this Lease as Tenant; and
- (ii) to amend this Lease so as to incorporate such terms, covenants and conditions as are necessary to incorporate conditions imposed by the Landlord in its consent or required by the provisions of this Section 9.3.

*Handwritten signature*

*Handwritten signature*

(b) If the Transfer is an assignment of this Lease and in the event that this Lease is repudiated, disclaimed or terminated by the Transferee or a trustee in bankruptcy of the Transferee or if the Landlord terminates this Lease as a result of the bankruptcy, insolvency, act or default of the Transferee, then the Tenant and the Landlord will enter into a new lease of the Premises on the same terms as this Lease (subject to such amendments as may have been agreed prior to the disclaimer or termination), except that: (A) the term shall commence on the day after the date on which this Lease was repudiated, disclaimed or terminated and shall expire on the date on which the Term (or the then current renewal or extension of it) would have expired but for the repudiation, disclaimer or termination; and (B) there shall be no rent free periods, fixturing or other pre-term occupancy periods, allowances, credits or other inducements provided to the Tenant and no Landlord's work, and the Tenant shall accept the Premises in an "as is" condition.

(c) If the Transfer is a sublease, the Transferee will agree to waive any statutory right to retain the unexpired portion of the term of the sublease or the Term (or then current renewal or extension term) of this Lease or to enter into a lease directly with the Landlord, in the event that this Lease is surrendered, disclaimed or otherwise terminated.

(d) Notwithstanding any Transfer permitted or consented to by the Landlord, the Tenant and the Indemnifiers (if any) remain liable under this Lease and are not released from performing any of the terms of this Lease. If this Lease is thereafter amended by agreement between the Landlord and any Transferee or subsequent Transferee, then the Tenant and the Indemnifiers remain liable for performance of all obligations of the Tenant as contained in this Lease prior to amendment, unless the Tenant and the Indemnifiers consent to the amendment, in which case the Tenant and the Indemnifiers are liable for performance of all obligations under this Lease as so amended. Without limiting the generality of the foregoing, the Tenant covenants and agrees that should the Transferee cease continuous occupancy pursuant to Section 4.9, the Tenant will immediately re-enter the Premises and re-commence continuous occupancy for the remainder of the Term.

(e) The Landlord's consent to any Transfer is subject to the condition that if the Net Rent and Additional Rent to be paid by the Transferee pursuant to the Transfer exceeds the Net Rent and Additional Rent payable under this Lease, the amount of the excess shall be paid to the Landlord. If, pursuant to a permitted Transfer, the Tenant receives from the Transferee, either directly or indirectly, any consideration other than Net Rent for the Transfer, whether in the form of cash, goods or services (other than the proceeds of any financing as the result of a Transfer involving a mortgage, charge or similar security interest in this Lease) (excluding therefrom any franchise, license, legal or administrative fee or any amount payable pursuant to a franchise or licensing agreement or bona fide consideration for the value of Leasehold Improvements, chattels and goodwill), the Tenant shall forthwith pay to the Landlord an amount equivalent to that consideration. The Landlord has the right to retain an independent practising qualified accountant to examine the records of the Tenant and the Transferee at the Tenant's expense, in order to verify compliance with the provisions of this Section 9.3(e).

(f) Notwithstanding the effective date of any permitted Transfer as between the Tenant and the Transferee, all Net Rent and Additional Rent for the month in which that effective date occurs shall be paid by the Tenant so that the Landlord will not be required to accept partial payments of Net Rent and Additional Rent for that month from either the Tenant or Transferee.

(g) Any document or consent evidencing any Transfer permitted by the Landlord or setting out any terms applicable to the Transfer or the rights and obligations of the Tenant or Transferee thereunder shall be prepared by the Landlord or its solicitors. The Tenant shall pay to the Landlord as Additional Rent the amount of: (i) all legal costs, credit agency fees and other costs estimated to be incurred by the Landlord with respect to the Transfer and that documentation; and (ii) seven hundred and fifty dollars (\$750.00), each of which shall be payable by the Tenant prior to the Landlord delivering its notice under Section 9.2 and whether or not the Transfer is completed. In the event that the actual costs incurred by the Landlord for the items described in Section 9.3(g)(i) exceeds the costs estimated by the Landlord, the Tenant shall pay the difference forthwith upon demand as Additional Rent.

(h) If at any time during the Term the Landlord wishes to sell the Premises to any compellor of the Tenant, then, the Landlord shall give the Tenant notice in writing of its intention in this regard together with a bona fide Agreement of Purchase and Sale prepared by the Landlord and presented to the Tenant containing the terms and conditions upon which it would be prepared to sell the Premises to the Tenant. Within fifteen (15) days following the date of the notice and the Agreement of Purchase and Sale, the Tenant shall have the first option to purchase the Premises based upon the terms and conditions of the Agreement of Purchase and Sale. If the Tenant elects within such period to purchase the Premises in accordance with the terms of the Agreement of Purchase and Sale, it shall execute and return the Agreement within the prescribed time period to the Landlord and the transaction shall proceed in accordance with the terms of the Agreement of Purchase and Sale. Nothing herein contained shall oblige the Tenant to accept the terms of the Agreement of Purchase and Sale, nor oblige the Landlord to accept any terms that vary from the terms and conditions of the Agreement of Purchase and Sale set out in the original Agreement provided with the notice. If the Tenant does not so elect within the time and upon the terms as aforesaid to purchase the Premises, the Landlord shall be free to sell the Premises to any third party on terms not more favourable to the Landlord than those presented to the Tenant in the Agreement of Purchase and Sale.

Notwithstanding Sections 9.1, 9.2, 9.3 or 9.4, the Tenant may assign this Lease and/or sublet the Premises without the consent of the Landlord but upon at least fifteen (15) days prior written notice to: (a) an affiliated, associated or subsidiary company of the Tenant or (b) any corporation formed or resulting from a public offering of the securities of the Tenant in accordance with the Securities Act, Ontario. The Tenant obtain an agreement upon the Landlord's standard form whereby such assignee covenants and agrees to observe and perform the terms and conditions of this Lease and notwithstanding any permitted Transfer, the Tenant shall remain liable under this Lease and is not released from performing any of the terms of this Lease.

#### 9.4 Change of Control

If the Tenant is at any time a corporation or partnership, any actual or proposed Change of Control of the corporation or partnership is deemed to be a Transfer and subject to all of the provisions of this Article 9. Upon the Landlord's request, the Tenant shall: (a) deliver a statutory declaration by one of its senior officers setting forth the details of its corporate and capital structure; and (b) make available to the Landlord or its representatives all of its corporate or partnership records, as the case may be, for inspection at all reasonable times, in order to ascertain whether any Change of Control has occurred.

#### 9.5 No Advertising

The Tenant shall not erect, post or display on the Premises any sign, notice or advertisement of any kind indicating that the Premises are available for rent or for sublet or that occupancy of the Premises is available pursuant to any other arrangement.

The Tenant shall not advertise the whole or any part of the Premises for the purposes of a Transfer and shall not permit any broker or other person to do so unless the complete text and format of any such advertisement is first approved in writing by the Landlord. No advertisement shall contain any reference to the rental rate of the Premises.

#### 9.6 Assignment by the Landlord

The Landlord is liable for the performance of its covenants and obligations pursuant to this Lease only during the period of its ownership of, or interest in, the Commercial Area or any part of it, and in the event of any sale, lease or other disposition of the Commercial Area or any part of it, or the assignment of this Lease or any interest of the Landlord under it, the Landlord is thereupon and without further agreement relieved of all liability with respect of those covenants and obligations, and the Tenant shall thereafter look solely to the Landlord's successor-in-interest in and to this Lease. The Landlord has the unrestricted right to sell, lease, convey or otherwise dispose of all or any part of the Commercial Area or Lands and this Lease or any interest of the Landlord in this Lease.

### ARTICLE 10 - DEFAULT

#### 10.1 Default and Remedies

If and whenever an Event of Default occurs, the Tenant is deemed to be in default under this Lease and, without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord has the following rights and remedies, which are cumulative and not alternative and which may be exercised immediately:

(a) to terminate this Lease by written notice to the Tenant;

(b) to enter the Premises as agent of the Tenant and to relet the Premises for whatever period and on those terms as the Landlord in its discretion may determine and to receive the Rent for them; as agent of the Tenant to take possession of any property of the Tenant on the Premises, to store that property at the expense and risk of the Tenant or to sell or otherwise dispose of that property in such manner as the Landlord may see fit without notice to the Tenant; to make alterations to the Premises to facilitate their reletting; and to apply the proceeds of any sale or reletting: first, to the payment of any expenses incurred by the Landlord with respect to the reletting 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 in payment of future Rent as it becomes due and payable. The Tenant remains liable for any deficiency to the Landlord. No such entering, taking possession, storing, selling, disposing, alterations or reletting constitutes a termination of this Lease unless written notice is given by the Landlord to that effect;

(c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter upon the Premises for that purpose. No notice of the Landlord's intention to remedy a default need be given to the Tenant unless expressly required by this Lease. The Landlord is not liable to the Tenant for any Claim for any loss, injury or damage caused by acts of the Landlord in remedying or attempting to remedy a default nor shall entry, remedying or attempting to remedy constitute: (i) a termination of this Lease (unless written notice is given to that effect); (ii) a breach of any covenant for quiet enjoyment or other Landlord's covenant; or (iii) a constructive or actual eviction or other infringement of any other of the Tenant's rights, and the Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection with remedying or attempting to remedy the default;

(d) to recover from the Tenant all damages and expenses incurred by the Landlord as a result of any Event of Default, including, without limitation, the worth at the time of any termination of this Lease as a result of the Event of Default of the excess, if any, of the amount of Rent and other charges required to be paid pursuant to this Lease for the remainder of the Term over the then reasonable rental value of the Premises for the remainder of the Term, all of which amounts are immediately due and payable by the Tenant to the Landlord;

(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 accrues on a day-to-day basis and shall immediately become due and payable as accelerated Rent;

In addition, if and whenever an Event of Default occurs, the Tenant shall no longer be entitled to the benefit of or to receive any Landlord's work, Tenant allowance or other Tenant Inducement of any kind arising or accruing from and after the occurrence of the Event of Default or which has not yet been performed or paid as of the date of the occurrence of the Event of Default and the Tenant shall immediately pay to the Landlord as Additional Rent the value (as determined by the Landlord) of any Landlord's work, Tenant allowance or other Tenant Inducement of any kind arising or accruing prior to the date of the occurrence of the Event of Default;

#### 10.2 Distress

Notwithstanding any provision of this Lease or any provision of applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during the Term are 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 distress.

#### 10.3 Costs

The Tenant shall pay to the Landlord as Additional Rent on demand all damages and costs (including, without limitation, all legal fees on a solicitor and his own client basis) 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 insure or to indemnify the Landlord. In addition to and notwithstanding any claim made by the Landlord for payment of those damages and costs, the Tenant shall pay the sum of FIVE HUNDRED DOLLARS (\$500.00) to the Landlord as Additional Rent on demand upon any default by the Tenant under the terms of this Lease or any breach of its obligations under it in order solely to reimburse the Landlord for its administrative costs incurred as a result of the default or breach, and the Tenant agrees that charge is reasonable and appropriate.

#### 10.4 Set-Off and Accord and Satisfaction

The Tenant waives the benefit of any statutory or other rights in respect of abatement, reduction, set-off, counterclaim, demand, deduction or compensation in its favour at the present time and at any future time. No endorsement or statement on

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 accrues on a day-to-day basis and shall immediately become due and payable as accelerated Rent;

In addition, if and whenever an Event of Default occurs, the Tenant shall no longer be entitled to the benefit of or to receive any Landlord's work, Tenant allowance or other Tenant Inducement of any kind arising or accruing from and after the occurrence of the Event of Default or which has not yet been performed or paid as of the date of the occurrence of the Event of Default and the Tenant shall immediately pay to the Landlord as Additional Rent the value (as determined by the Landlord) of any Landlord's work, Tenant allowance or other Tenant Inducement of any kind arising or accruing prior to the date of the occurrence of the Event of Default;

Notwithstanding any provision of this Lease or any provision of applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during the Term are 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 distress.



any cheque or any letter accompanying any cheque or payment of Rent is deemed an acknowledgement by the Landlord of full payment or an accord and satisfaction, and the Landlord may accept and cash any such cheque or payment without prejudice to the Landlord's right to recover any balance of unpaid Rent or pursue any other right or remedy provided in this Lease or at law, in equity or by statute. The Landlord may apply, allocate or reallocate any sums received from or due to the Tenant against any amounts due and payable under this Lease in such manner as the Landlord sees fit.

#### 10.5 Waiver and Remedies Cumulative

(a) The waiver by the Landlord or Tenant of any breach of any provision of this Lease is not deemed to be a waiver of that provision or of any subsequent breach of it or of any other provision in this Lease. The subsequent acceptance of any Rent or other amount by the Landlord is not deemed to be a waiver of any provision of this Lease or of any preceding breach by the Tenant of any provision of this Lease, even if the Landlord had knowledge of the preceding breach. No provision in this Lease nor any breach of any provision (whether or not continuing or recurring) is deemed to have been waived by the Landlord or Tenant unless that waiver is expressly set out in writing and signed by the Landlord or Tenant, as applicable.

(b) Whenever the Tenant seeks a remedy to enforce the observance or performance of any provision of this Lease on the Landlord's part to be observed or performed, the Tenant's only remedy is for direct damages (but not indirect or consequential damages) that the Tenant is able to prove in a court of competent jurisdiction that it has suffered as a direct result of a breach by the Landlord in the observance or performance of any such provision. The right of the Tenant to seek a remedy is, however, expressly subject to the provisions of this Lease.

### ARTICLE 11 - STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

#### 11.1 Status Statement

Within ten (10) days after written request by the Landlord or Tenant, the requesting party shall deliver to the other a statement or estoppel certificate in a form supplied by the requesting party and addressed to the requesting party or to any assignee, Mortgagee, purchaser or any other Person designated by the requesting party as to the status of this Lease stating that: (i) this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements); (ii) the amount of Net Rent and Additional Rent then being paid and the dates to which they have been paid; (iii) there is no existing or alleged default by either party with respect to which a notice of default has been served (or if there is any such default, specifying the nature and extent of it); (iv) the Commencement Date and the Term; and (v) all information regarding deposits and letters of credit (if any) associated with this Lease.

#### 11.2 Subordination

This Lease is subordinate to each Mortgage and any Development Agreements and Insurance Trust Agreement and the Tenant shall execute promptly at the request of the Landlord those documents as may be required to postpone and subordinate its rights accordingly. The Tenant agrees that, whenever reasonably required by the Landlord, it will consent and become a party to any document relating to this Lease which may be required by a purchaser, Mortgagee, Other Development Components, Insurance Trustee or financial institution in connection with the Premises. Upon request from time to time, the Landlord shall provide to the Tenant at the Tenant's cost a Landlord's consent to security in form reasonably acceptable to the Landlord and use commercially reasonable efforts at the Tenant's cost to provide to the Tenant a Landlord's consent to security in form reasonably acceptable to the Landlord and obtain from any Mortgagee a non-disturbance agreement and consent to security entitling the Tenant to remain in possession of the Premises in the event of default under the Mortgage by the Landlord and further agreeing to enable the Tenant to place security upon its assets in the Premises.

#### 11.3 Attornment

Subject to the Tenant having received a non-disturbance agreement, the Tenant shall attorn promptly on request to any Mortgagee or to the Owners or the lessee under any ground, operating, overriding, underlying or similar lease of all or substantially all of the Commercial Area or otherwise affecting the Commercial Area and Lands or the purchaser on any foreclosure or sale proceedings taken under any Mortgage, and shall recognise the Mortgagee, Owner, lessee or purchaser as the Landlord under this Lease.

#### 11.4 Execution of Documents

In the event that the Tenant fails to execute and return to the Landlord or to such Person as the Landlord directs any status statement, attornment, postponement or subordination required under this Article 11 within ten (10) days after written request by the Landlord, the Tenant irrevocably constitutes the Landlord as the agent and attorney of the Tenant for the purpose of executing those documents and the Tenant is responsible for any and all damages, delays and other costs incurred by the Landlord which shall be payable as Additional Rent.

#### 11.5 Registration of Lease

Neither the Tenant nor anyone claiming under the Tenant shall register this Lease or any Transfer or any interest of the Tenant in this Lease or the Premises against the Lands or any part of the Development without the prior written consent of the Landlord, acting reasonably. If the Tenant or any permitted Transferee wishes to register a document for the purposes of giving notice of this Lease or a Transfer, then the Landlord shall, at the request and sole expense of the Tenant, execute a notice, caveat or short form of lease for the purpose of registration in such form as may be approved by the Landlord and without disclosure of any terms which the Landlord does not desire to have disclosed. The Landlord agrees that there will be no charge for the first registration of a notice of lease by the Tenant. If the Lands comprise more than one parcel of land, the Landlord may direct the Tenant or Transferee as to the parcel or parcels against which registration may be effected, and in no event shall the Tenant effect any registration against any lands or premises comprising the Other Development Components, as determined by the Landlord in its sole discretion. Prior to the Landlord granting consent to any registration or other memorandum pursuant to this Section 11.5, the Tenant or any permitted Transferee shall give the Landlord a notice of withdrawal of any such notice of lease or other memorandum, which the Landlord shall hold and only use upon the expiration or earlier termination of this Lease.

### ARTICLE 12 - CONTROL OF DEVELOPMENT AND COMMERCIAL AREA

#### 12.1 Use and Maintenance of Commercial Common Areas

The Tenant and those doing business with it have a non-exclusive licence to the use of the Commercial Common Areas for their intended purposes during Normal Business Hours in common with others entitled to the use of them and subject to the

Rules and Regulations.

12.2 **Controls by Landlord**

The Tenant acknowledges that the Commercial Area forms an integral part of the Development and that all times throughout the Term: (a) the Landlord may do such things on or in the Lands or Development as are required to comply with any laws, by-laws, regulations, orders or directives, agreements (including, without limitation, any Development Agreements or Insurance Trust Agreement), licences, privileges, easements or rights-of-way affecting the Lands or any part of the Development; (iv) to enter into, grant, modify, amend or terminate, on such terms and conditions as the Landlord, in its sole discretion, may determine, any easements, rights-of-way, privileges, licences or agreements with respect to any use or occupancy of, or any maintenance, repair, replacement, restoration or reconstruction of, or supply of any services to, or any operation of, the Lands or Development or any part thereof; and (b) the Landlord may do such other things on or in the Lands or Development as the Landlord, in any use of good business judgement, determines to be advisable (including, without limitation, entering into, amending or terminating any Development Agreements or Insurance Trust Agreement), provided that notwithstanding anything contained in this Section 12.2, access to the Premises is available at all times and the business of the Tenant is not materially adversely affected thereby. The Landlord is not in breach of its covenant for quiet enjoyment due to any of the foregoing or liable for any loss, costs or damages, whether direct or indirect, incurred by the Tenant due to any of the foregoing.

**ARTICLE 13 - GENERAL PROVISIONS**

13.1 **Rules and Regulations**

The Tenant shall comply with the Rules and Regulations (and failure to do so constitutes an Event of Default), so long as the Rules and Regulations are not inconsistent with and do not contradict this Lease. Subject to the foregoing, the Landlord has the right from time to time to amend, supplement, suspend or cancel any or all of the Rules and Regulations applicable to the Premises or the Development. The Landlord has no obligation to enforce any of the Rules and Regulations or the provisions of any other lease against any other tenant, and the Landlord has no liability to the Tenant with respect thereto.

13.2 **Captions and Section Numbers**

The captions, section numbers, article numbers and the table of contents appearing in this Lease are inserted only as a matter of convenience and in no way affect the substance or interpretation of this Lease. The expressions "Article" and "Section" mean the applicable article or section of this Lease.

13.3 **Extended Meanings**

The words "hereof", "hereto" and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which those expressions appear. This Lease shall be read with all changes in number and gender as may be appropriate or required by the context. Any reference to the Tenant includes, where the context allows, the employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant might reasonably be expected to exercise control or for whom it is responsible at law. Any reference to a statute means that statute as amended or replaced from time to time.

13.4 **Partial Invalidity**

All of the provisions of this Lease are to be construed as covenants. If any provision is held or rendered invalid, illegal or unenforceable, it shall: (i) be considered separate and severable from this Lease and the remaining provisions of this Lease remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease; and (ii) continue to be applicable and enforceable to the fullest extent permitted by law against any Person and in any circumstance other than those to which it has been held or rendered invalid, illegal or unenforceable.

13.5 **Entire Agreement**

This Lease and its schedules and riders, if any, set forth the entire agreement between the Landlord and Tenant with respect to the Premises and there are no representations, agreements or understandings between them other than as set out in this Lease. This Lease supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease, lease proposals, brochures, representations and information conveyed, whether orally or in writing, between the parties to this Lease or their respective representatives or any other Person purporting to represent the Landlord or the Tenant. This Lease and its schedules and riders may not be modified except by agreement in writing executed by the Landlord and Tenant.

13.6 **Governing Law**

This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario.

13.7 **Time of the Essence**

Time is of the essence of this Lease.

13.8 **Force Majeure**

Except as expressly provided in this Lease, whenever a party is delayed in the performance of an act or compliance with a covenant or obligation of this Lease (other than the payment of Rent or the surrender of the Premises on termination) by reason of fire, strike, lockout, inability to procure material, utility interruption, restrictive laws or governmental regulations or other cause of any kind beyond the reasonable control of the party obliged to perform or comply, then the time for performance or compliance is extended during the period in which the circumstances operate to delay performance or compliance. Notwithstanding this Section 13.8, a lack of funds or other financial difficulties of the Tenant shall not constitute grounds for delay by the Tenant in the performance of an act or compliance with any covenant or obligation of this Lease.

If the Landlord fails to deliver the Premises for occupancy by the Tenant on the Commencement Date because:

- (a) a prior overholding occupant has, without right, refused to leave the Premises; or
- (b) of circumstances to which the provisions of this Section 13.8 are applicable;

the Landlord will not be liable for any Claim resulting from that failure and the Term will begin on the date that the Landlord delivers occupancy of the Premises to the Tenant (and, for this purpose, the definition of "Commencement Date" is deemed to be amended accordingly). In any such case, the Landlord will deliver occupancy to the Tenant as soon as reasonably possible in the circumstances.

**13.9. Notices**

Notices required or permitted to be given by this Lease are considered to have been given if personally delivered, sent by facsimile transmission or if mailed by prepaid registered mail to the parties at the addresses outlined in Section 1.1 or to such other addresses as may be designated from time to time by the parties in writing. If at any time during the Term there is more than one Tenant or more than one Person constituting the Tenant or the Indemnifier, any notice given to any one of those Persons shall be deemed to have been given to them all. Any notice given by prepaid registered mail shall be considered to have been received on the fourth (4th) day (excluding Saturdays, Sunday, statutory and civic holidays) following the date of mailing of the notice, any notice given by personal delivery shall be considered to have been received on the date of personal delivery and any notice sent by facsimile transmission shall be considered to have been received on the date the facsimile was sent or, if sent on a non-business day, the next date which is a business day. In the case of strikes, lock outs or other stoppages in the Canadian postal system, any notices or other communications required or permitted to be given by this Lease shall be delivered personally or sent by facsimile transmission. Notice shall not be permitted by electronic mail (e-mail) unless specifically provided for in Section 15 of this Lease.

**13.10. Successors**

This Lease is binding upon and enures to the benefit of the Landlord, its successors and assigns and of the Tenant and its heirs, estate trustees, legal representatives, successors and assigns, but only if the consent of the Landlord has been obtained to a Transfer of the Premises by the Tenant in the manner provided in Article 9.

**13.11. Joint and Several Liability**

If at any time there is more than one Tenant or more than one Person constituting the Tenant, their covenants shall be considered to be joint and several and apply to each and every one of them. If the Tenant is or becomes a partnership, each Person who is a member or becomes a member of the partnership or its successors is and continues to be jointly and severally liable for the performance of all covenants of the Tenant pursuant to this Lease, whether or not that Person ceases to be a member of the partnership or its successor.

**13.12. No Partnership**

Nothing in this Lease creates any relationship between the parties other than that of landlord and tenant and nothing in this Lease constitutes the Landlord a partner of the Tenant or a joint venturer or member of a common enterprise with the Tenant.

**13.13. Exercise of Rights**

All rights and powers reserved to the Landlord by this Lease may be exercised by either the Landlord or its agents or other representatives.

**13.14. Overholding**

Despite any statutory provision or legal presumption to the contrary, if the Tenant remains in possession of all or any part of the Premises after the expiry of the Term or any renewal or written extension of it:

- (a) with the consent of the Landlord and without any further written agreement, then it is deemed to be a monthly tenant at will, or
- (b) without the consent of the Landlord, then it is deemed to be a tenant at will and the Landlord is entitled to recover possession of the Premises immediately at any time without notice to the Tenant and in such peaceable or forceful manner as the Landlord deems fit.

In either case, there is no tacit renewal or extension of this Lease and the Tenant shall be deemed conclusively to be occupying the Premises on the same terms and conditions as set forth in this Lease (including the payment of Additional Rent) so far as those terms would be applicable to a monthly tenancy or a tenancy at will (as the case may be), except that the monthly Net Rent shall be twice the average of the monthly amount of Net Rent payable by the Tenant during the last twelve (12) consecutive months of the Term or any renewal or written extension of it. The Tenant shall promptly indemnify and hold harmless the Landlord from and against any and all Claims incurred by the Landlord as a result of the Tenant remaining in possession of all or any part of the Premises after the expiry of the Term or any renewal or written extension of it without the express prior written consent of the Landlord.

**13.15. Compliance With Planning Legislation**

(a) If any planning, zoning or subdivision control legislation restricts the length of the term of leases and the Term (including any renewals or extensions of it contemplated by this Lease) would extend beyond the permitted period, then unless and until any necessary consent to or approval of this Lease is obtained under that legislation by the Tenant at its expense, the Term (including any renewals or extensions of it contemplated by this Lease) and the Tenant's rights under this Lease shall extend only for the permitted period, less one (1) day, from the Commencement Date.

(b) If any such legislation restricts the use of the Premises, then unless and until any necessary consent to or approval of this Lease is obtained under that legislation by the Tenant at its expense, the use of the Premises is limited to that allowable by law and the Tenant has no right of termination or other recourse against the Landlord. The Tenant is wholly responsible for ensuring that the Premises may be used for the Permitted Use without contravening any zoning, building, health, environmental, or other relevant laws, by-laws or rules.

(c) The Tenant agrees that it will not object to any rezoning proposed by the Landlord for the balance of the Development, provided such rezoning will not interfere with the rights of the Tenant pursuant to this Lease.

**13.16. Irrevocable Appointment**

The Tenant irrevocably consents to the Landlord obtaining any tax clearance certificates from any governmental authority which in any way, directly or indirectly, relate to the conduct of the Tenant's business in the Premises, and irrevocably authorizes the Landlord to obtain such certificates and any related information at any time and from time to time as the Landlord, in its sole discretion, deems necessary or desirable.

**13.17. PIPEDA**

In accordance with the Personal Information Protection and Electronic Documents Act (PIPEDA), the Tenant acknowledges

that the conditions set forth in this Lease (including the payment of Additional Rent) so far as those terms would be applicable to a monthly tenancy or a tenancy at will (as the case may be), except that the monthly Net Rent shall be twice the average of the monthly amount of Net Rent payable by the Tenant during the last twelve (12) consecutive months of the Term or any renewal or written extension of it. The Tenant shall promptly indemnify and hold harmless the Landlord from and against any and all Claims incurred by the Landlord as a result of the Tenant remaining in possession of all or any part of the Premises after the expiry of the Term or any renewal or written extension of it without the express prior written consent of the Landlord.

that providing personal information to the Landlord is considered consent to the collection, use and disclosure for the stated purposes, and may be shared with related companies and third party providers. If the tenant wishes to withdraw consent for one or more purposes, the tenant must notify the Landlord in writing.

**ARTICLE 14 - SPECIAL PROVISIONS**

**14.1 Option to Renew**

Provided that the Tenant is not then in default and the Tenant gives the Landlord Notice of the exercise of any of these options, then the Tenant shall have the option to extend the Lease in respect of the whole of the Premises for four additional terms, the first extension period being for a two (2) year term (the "First Extension Term") and the second three additional extension periods being for a five (5) year term each (the "Second Extension Term", "Third Extension Term" and "Fourth Extension Term" respectively and together with the First Extension Term are sometimes referred to as the ("Extension Terms")) on the same terms and conditions as set out in the Lease except (a) the Net Rent during the Extension Terms shall be as follows:

Period	Rate per Square Foot of Rentable Area of the Premises	Net Rent per Annum	Monthly Instalments
June 1, 2010 to May 31, 2013, inclusive	\$25.00	\$550,000.00	\$45,833.33
June 1, 2013 to May 31, 2016, inclusive	\$27.00	\$594,000.00	\$49,500.00
June 1, 2016 to May 31, 2019, inclusive	\$28.00	\$618,000.00	\$51,333.33
June 1, 2019 to May 31, 2022, inclusive	\$29.00	\$636,000.00	\$53,166.67

For the Fourth Extension Term, Net Rent shall be equal to the fair market rental value of the Premises provided that in no event shall the extension rate for the Fourth Extension Term be less than the rate of Net Rent payable in the immediately preceding year. If the Landlord and the Tenant do not agree on the extension rate for the Fourth Extension Term at least 90 days prior to the start of the Fourth Extension Term (the "Agreement Date"), the extension rate for the Fourth Extension Term shall be determined by arbitration in accordance with the Arbitrations Act, Ontario, as amended. In no event shall Net Rent during the Fourth Extension Term be less than Net Rent last paid under this Lease and the arbitrator shall be irrevocably bound to adhere to the foregoing limitation in rendering its decision. Notwithstanding anything herein contained, in respect of the Fourth Extension Term, the Tenant shall be entitled to exercise its option to extend the Lease for the Fourth Extension Term by giving the Landlord not less than 6 months' and not more than 18 months' Notice prior to the expiration of the Initial Third Extension Term of the exercise of this option;

- (b) the Tenant shall accept the Premises on an "as-is" basis with no landlord's work, fixturing period, allowance, rent free period or other inducements of any nature;
- (c) there shall be no further right to extend the Term beyond the Third Extension Term; and
- (d) at the option of the Landlord, the parties shall either enter into an extension agreement in the Landlord's standard form or shall enter into a new lease on the Landlord's then standard form of lease for the Premises, amended to reflect the material changes of a non-financial nature negotiated to the Lease.

If the Tenant fails to give the appropriate notice within the time limit required for extending the Term, then the options to extend shall be null and void and of no further force or effect.

**14.2 Acceptance of Premises**

The Tenant acknowledges that the Landlord is not making any representations or warranties whatsoever with respect to the Premises or Commercial Area (including all fixtures, chattels, equipment, installations and easements related thereto) and confirms that it is leasing the Premises on an "as-is, where-is" basis without any express or implied representations or warranties whatsoever. The Tenant acknowledges that it has relied entirely upon its own inspections and investigations with respect to title, description, condition, merchantability, fitness for purpose, quantity, quality and value of the Premises (including all fixtures, chattels, equipment, installations and easements related thereto) and will satisfy itself as to the results of its own inspections and investigations prior to the Commencement Date without reliance on any express or implied representation or warranties by or on behalf of the Landlord. The Tenant shall accept the Premises in the same condition in all material respects as existing on the date of this Agreement and the Landlord shall have no liability or obligation to the Tenant with respect to the state or condition of the Premises or Commercial Area, any deficiencies therein or repairs or replacements required thereto, whether or not within the knowledge of the Landlord or its agents, officers, or contractors. Without limiting the generality of the foregoing, the Tenant acknowledges and agrees that there is no representation or warranty, expressed or implied, as to title, description, condition, cost, size, quantity or quality of the Premises or Commercial Area (including all fixtures, chattels, equipment, installations related thereto).


**14.3 Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument. Signature and acknowledgement pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature and acknowledgement pages are physically attached to the same instrument.

Schedules "A" to "C" Inclusive, form part of and are included in this Lease.

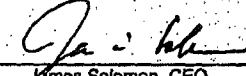
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**2125879 ONTARIO INC.**

Per:   
Stephen daCosta, President

I/We have the authority to bind the Corporation

**EXTREME FITNESS, INC.**

Per:   
James Solomon, CEO

I/We have the authority to bind the Corporation



**SCHEDULE "A"  
LEGAL DESCRIPTION**

Legal Description	PIN	Percentage Interest
Parcel 1-2, Section A-86 being Part Lot 3, Plan 699E; Part Lots 1 and 2, south side of Wellington Street, Plan 88; Part Lots 4, 5 and 6, west side of York Street, Plan 88; Part Back Road, Plan 88; Toronto	21409-0001(LT)	100%
Unit 4, Level 1, Metropolitan Toronto Condominium Plan 932 ("MTCP 932")	11932-0004 (LT)	7%
Unit 5, Level 1, MTCP 932	11932-0005 (LT)	7%
Unit 6, Level 1, MTCP 932	11932-0006 (LT)	7%
Unit 7, Level 2, MTCP 932	11932-0013 (LT)	7%
Unit 8, Level 2, MTCP 932	11932-0014 (LT)	90%
Unit 1, Level 29, MTCP 932	11932-0233 (LT)	5%
Unit 1, Level A, MTCP 932	11932-0234 (LT)	7%
Unit 2, Level A, MTCP 932	11932-0235 (LT)	7%
Unit 49, Level A, MTCP 932	11932-0282 (LT)	7%
Unit 50, Level A, MTCP 932	11932-0283 (LT)	7%
Unit 38, Level F, MTCP 932	11932-0494 (LT)	100%
Unit 39, Level F, MTCP 932	11932-0495 (LT)	100%

and municipally known as 111 Wellington Street West, Toronto, Ontario

SCHEDULE "A"

LEGAL DESCRIPTION

of the  
Wellington  
Street, Plan 88;  
Part Back Road,  
Toronto  
11932-0004 (LT)  
11932-0005 (LT)  
11932-0006 (LT)  
11932-0013 (LT)  
11932-0014 (LT)  
11932-0233 (LT)  
11932-0234 (LT)  
11932-0235 (LT)  
11932-0282 (LT)  
11932-0283 (LT)  
11932-0494 (LT)  
11932-0495 (LT)

111 Wellington Street West, Toronto, Ontario

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**SCHEDULE "B"**

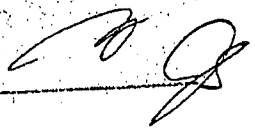
**Not Applicable**

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**SCHEDULE "B"**

**Not Applicable**

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**SCHEDULE "C"**  
**DEFINITIONS**

- (a) **"Additional Rent"** means all sums of money required to be paid by the Tenant under this Lease (except Net Rent and Sales Tax), whether or not designated as "Additional Rent" and whether payable to the Landlord or to a third party.
- (b) **"Alterations"** means all repairs, adjustments, changes, restorations, renovations, relocations, subtractions, reductions, deletions, expansions, replacements, improvements or other alterations of any kind to the Premises by the Tenant.
- (c) **"Architect"** means the arm's length professional architect license to practice architecture in Ontario by the applicable governing body from time to time named by the Landlord.
- (d) **"Business Tax"** means all taxes, levies, rates, duties, fees, charges and assessments (whether imposed on the Landlord or the Tenant) attributable to the personal property, trade fixtures, Leasehold Improvements, equipment, business, income, occupancy or sales of the Tenant or to the use of the Development by the Tenant.
- (e) **"Capital Tax"** means an amount imputed by the Landlord to the Commercial Area in respect of any taxes, rates, duties, levies, fees, charges and assessments levied, rated, charged, assessed or imposed from time to time by any governmental authority on or against the Landlord or payable by the Landlord (or by any corporation acting on behalf of the Landlord) based upon or computed by reference to the taxable capital of the Landlord, the taxable capital employed in Canada by the Landlord, or other similar criteria as determined for the purposes of those taxes, rates, duties, levies, fees, charges and assessments, or any similar taxes, rates, duties, levies, fees, charges and assessments levied, rated, charged, assessed or imposed in the future in lieu of them or in addition to them by any governmental authority, including, without limiting the generality of the foregoing, capital tax payable under the Ontario *Corporations Tax Act* and large corporations tax payable under the *Income Tax Act* (Canada). Capital Tax shall be imputed by the Landlord to the Commercial Area on the basis of the amount of costs, capital, deductions and credits attributable to or allocated to the Commercial Area, the Landlord and related corporations, all as determined by the Landlord in its sole discretion, acting reasonably, but for greater certainty, in imputing Ontario capital tax to the Commercial Area, the Landlord shall use the capital tax rate actually payable by it and its related corporations and in imputing large corporations tax, the Landlord shall allocate that part of any capital deduction available to it and its related corporations that is pro rata to that part of its capital and the capital of its related corporations which it allocates to the Commercial Area. If any portion of Capital Tax is not deductible for the income tax purposes of the Landlord, then Capital Tax shall include a grossed up amount, determined by the Landlord in its sole discretion, acting reasonably, to satisfy the after tax cost to the Landlord of the Capital Tax included in Operating Costs.
- (f) **"Change of Control"** means the transfer or issue by sale, assignment, subscription, transmission on death, mortgage, charge, security interest, operation of law or otherwise, of any shares, voting rights or interest in a corporation or partnership or any associate or affiliate (as those terms are used in the Ontario *Business Corporations Act*) of a corporation or partnership which would result in any change in the effective control of the corporation or partnership, unless that change occurs as a result of trading in the shares of a corporation listed on a recognised stock exchange in Canada or the United States.
- (g) **"Charge"** has the meaning ascribed to it in section 3.7.
- (h) **"Claim"** means any claim, loss, action, suit, proceeding, cause of action, demand, damages, judgement, execution, liability, responsibility, cost, charge, fine, payment and expense (including, without limitation, any professional, consultant and legal fees (on a solicitor and his own client basis) and any associated disbursements).
- (i) **"Commercial Common Areas"** means those areas, facilities, Utilities, Improvements, lands, signs, equipment and installations which serve or are for the benefit of more than one tenant in the Commercial Area and which are not designated or intended by the Landlord to be leased and which are provided or designated from time to time by the Landlord for the benefit or use of the Tenant in common with others entitled to the use or benefit of them. Those areas and facilities may include, without limitation, elevators, elevator lobbies, mechanical or similar rooms, sidewalks, patios, corridors, janitorial rooms, service units and garbage rooms, all as determined by the Landlord. The parties acknowledge that as of the date of the Lease, there are no Commercial Common Areas, save and except to the extent contemplated by the Condominium Instruments.
- (j) **"CPI"** means the Consumer Price Index (all items for regional cities, base year 1992 equals 100) for the City of Toronto, published by Statistics Canada (or by a successor or other governmental agency, including a provincial agency) or, if the Consumer Price Index is no longer published, an index published in substitution for the Consumer Price Index or any replacement index designated by the Landlord. If a substitution is required, the Landlord will make the necessary conversions. If the base year for the Consumer Price Index (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other governmental agency), the Landlord will make the necessary conversion.
- (k) **"Development"** means the Lands and all of the buildings, structures, improvements, machinery, installations, equipment, signs, systems, Utilities, services and facilities which are from time to time located on, in, under, above, or which service the Lands, including, without limitation, the Commercial Area, the Other Development Components, the Shared Common Facilities and any future structures on, in, under or above the Lands.
- (l) **"Development Agreements"** means any agreement or agreements (as amended from time to time) which are entered into from time to time by the Landlord, the Other Development Components and any other Persons or entity (including their predecessors in interest as identified by the Landlord) respecting any or all of (i) the sharing of or contribution towards costs and expenses respecting the Development or any part of it, (ii) the maintenance, repair, replacement, alteration, demolition or restoration of the Development or any part of it, (iii) the shared use of certain parts of the Development and the granting of easements, rights or way, privileges or other rights respecting the Development or any part of it, (iv) insurance for the Development or any part of it, and (v) the operation of the Development or any part of it, and include the Condominium Instruments in Section 4.7(c).



(m) "Environmental Law" means any law, bylaw, order, ordinance, ruling, regulation, certificate, approval, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any Court of competent jurisdiction, relating to environmental matters and/or regulating the import, storage, distribution, labelling, sale, use, handling, transport or disposal of any Hazardous Materials which may be in force from time to time.

(n) An "Event of Default" occurs whenever: (i) any Net Rent or any monthly instalment of Operating Costs, Taxes or the Charge is in arrears for a period of five (5) days after written notice from the Landlord; (ii) any other Additional Rent is in arrears for more than five (5) days following written notice from the Landlord; (iii) the Tenant has breached any of its obligations in this Lease (other than the payment of Rent) and (A) fails to remedy the breach within fifteen (15) days (or such shorter period as may be provided in this Lease) or (B) if the breach cannot reasonably be remedied within fifteen (15) days or such shorter period, the Tenant fails to commence to remedy the breach within fifteen (15) days or such shorter period or thereafter fails to continue diligently to remedy the breach, in either case after notice in writing from the Landlord; (iv) the Tenant or any Indemnifier becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any Person for the dissolution, winding-up or other termination of the Tenant's or an Indemnifier's existence or the liquidation of its assets; (v) a trustee, receiver, receiver/manager or similar Person is appointed with respect to the business or assets of the Tenant or any Indemnifier; (vi) the Tenant makes a sale in bulk of all or a substantial portion of its assets in the Premises other than in conjunction with a Transfer approved by the Landlord; (vii) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not set aside within twenty (20) days; (viii) the Tenant purports to make a Transfer other than in compliance with the provisions of this Lease; (ix) the Tenant abandons the Premises or disposes of its goods so that after that disposal there would not be sufficient goods of the Tenant on the Premises subject to distress to satisfy at least three (3) months' Rent or the Premises become vacant and unoccupied for a period of ten (10) consecutive days or more without the consent of the Landlord; (x) any insurance policies covering any part of the Development or any occupant of it are actually or threatened to be cancelled or adversely changed as a result of any use or occupancy of the Premises and not remedied within seventy-two (72) hours after such threat or cancellation; (xi) the Tenant or any agent of the Tenant falsifies any report required to be furnished to the Landlord pursuant to this Lease; (xii) any distress is levied upon any of the Tenant's goods, chattels, fixtures or other property in the Premises; (xiii) re-entry is permitted under any other terms of this Lease; or (xiv) this Lease otherwise provides that an Event of Default has occurred.

(o) "Hazardous Materials" includes, without limitation:

(i) any substance which is hazardous to persons or property and includes, without limitation; (A) radioactive materials; (B) explosives; and (C) any substances that, if added to any water, would be detrimental to the water's use by man or by any animal, fish or plant;

(ii) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that: (A) endangers the health, safety or welfare of persons or the health of animal life; (B) interferes with normal enjoyment of life or property; or (C) causes damage to plant life or to property;

(iii) toxic substances; and

(iv) substances declared to be hazardous or toxic under any Environmental Law.

(p) "Included Costs" has the meaning ascribed to it in Section 6.5(d).

(q) "Indemnifier" means the Person who has executed or agreed to execute the Indemnity Agreement (if any) attached as a Schedule or a copy of which is attached as an Appendix to this Lease or who otherwise guarantees the Tenant's obligations under this Lease.

(r) "Insurance Trust Agreement" means any agreements (as amended from time to time) which are entered into from time to time by the Landlord, the Other Development Components, an Insurance Trustee and any other Persons (or their predecessors in interest as identified by the Landlord) relating to obtaining or maintaining of policies of insurance and the distribution of proceeds of insurance for the Development or any part of it.

(s) "Insurance Trustee" means any Person appointed from time to time as a trustee under any Insurance Trust Agreement.

(t) "Landlord" means the party of the First Part.

(u) "Lands" means the lands more particularly described in Schedule "A" of which the Commercial Area, which forms an integral part of the Development, is or will be constructed, as those lands may be expanded or reduced from time to time.

(v) "Lease" means this agreement and all Schedules to this agreement.

(w) "Leasehold Improvements" means leasehold improvements in the Premises determined according to common law and includes, without limitation, all of the following made, erected or installed in the Premises by or on behalf of the Tenant or any previous occupant of the Premises: (i) all fixtures (other than Trade Fixtures), improvements, installations, alterations and additions from time to time; (ii) signs (excluding the sign fascia) and lettering, partitions, doors and hardware however affixed and whether or not movable; (iii) all mechanical, electrical and Utility installations; (iv) all carpeting and drapes and other floor, wall, ceiling and window coverings; (v) light fixtures (excluding track lighting); (vi) ceilings and ceiling panels; (vii) coolers, freezers, refrigerators and other kitchen equipment affixed to the Premises; and (viii) counters, cabinets, shelves and built-in furniture and furnishings.

(x) "Mortgage" means any and all mortgages, charges, debentures, security agreements, trust deeds, hypothecs or similar instruments resulting from any financing, refinancing or collateral financing (including renewals or extensions of them) made or arranged by the Landlord or the Other Development Components of any interest in any part of the Development.

(y) "Mortgagee" means a holder of, or secured party under, any Mortgage and includes any trustee for bondholders.

(z) "Normal Business Hours" means the minimum hours identified by the Landlord from time to time, unless any such day is

a holiday.

(aa) "Operating Costs" means (without duplication) any amounts paid or payable, whether by the Landlord or by others on behalf of the Landlord, for maintaining, operating, servicing, cleaning, insuring, lighting, policing, supervising, managing, repairing, replacing and administering the Commercial Area or Development or allocated by the Landlord acting reasonably and equitably to the Commercial Area, calculated as if the Commercial Area were 100% occupied by tenants during the Term, including without limitation:

(i) the cost of insurance which the Landlord is obligated or permitted to obtain under this Lease and/or the Development Agreements any deductible amount applicable to any claim made by the Landlord under that insurance;

(ii) the cost of telephone, security, janitorial, landscaping, window cleaning, garbage removal and snow removal services;

(iii) the cost of heating, ventilating and air-conditioning;

(iv) the cost of all Utilities used in the maintenance, operation or administration of the Commercial Area, including charges and imposts related to Utilities;

(v) salaries, wages and other amounts paid or payable for all personnel involved in the repair, care, maintenance, management, operation, security, supervision or cleaning of the Commercial Area, including fringe benefits, employment and workers' compensation insurance premiums, pension plan contributions and other employment costs, and the cost of engaging contractors for the repair, care, maintenance, management, operation, security, supervision or cleaning of the Commercial Area;

(vi) auditing and accounting costs incurred in determining the Tenant's share of Additional Rents and in the preparation of certificates of Operating Costs and other costs, together with legal and consulting fees and disbursements;

(vii) the cost of repairing, operating, and maintaining the Commercial Area and the equipment serving the Commercial Area and the cost of all replacements, additions and modifications to that equipment;

(viii) the cost of the leasing or rental of any equipment and signs and the cost of supplies used by the Landlord in maintaining or operating the Commercial Area;

(ix) all costs incurred by the Landlord in installing energy conservation equipment or systems and life safety systems and any equipment and systems designed to control Operating Costs;

(x) the cost of all replacements, additions and modifications to the Commercial Area required to maintain the Commercial Area at the standard existing as of the Commencement Date, except where those costs are attributable to inherent structural defects in the Commercial Area;

(xi) depreciation or amortisation of the costs referred to in Section (ff)(vii), (ix) and (x) of this Schedule, unless charged fully in the period in which they are incurred, all as determined by the Landlord;

(xii) interest calculated at 2 percentage points above the average daily prime bank commercial lending rate charged during the period for which Operating Costs are estimated pursuant to Section 3.8(a) by any Canadian chartered bank designated from time to time by the Landlord upon the undepreciated or unamortised balance of the costs referred to in Section (ff)(xi) of this Schedule;

(xiii) all Business Tax and other Taxes, if any, from time to time payable by the Landlord with respect to the Commercial Common Area; all costs incurred by or on behalf of the Landlord in contesting, appealing or resisting Taxes (including legal, appraisal and other professional fees, administration and overhead costs) or Business Tax or related assessments on all or any part of the Commercial Area;

(xiv) the fair market rental value (as determined by the Landlord, acting reasonably and having regard to rent being charged for similar space including additional rent for operating costs and real property taxes) of space used by the Landlord in the Development in connection with the maintenance, repair, operation, administration and management of the Commercial Area or any part of it;

(xv) all costs required to be paid by the Landlord under any Development Agreements or Insurance Trust Agreement affecting the Commercial Area or any part of it; and

(xvi) an administrative and supervisory fee equal to 15% percent of the Operating Costs, save and except that such administrative and supervisory fee shall not be applied to Utilities paid directly by the Tenant to the Utility supplier, Taxes paid directly to the local authority, shared facility costs charged by the Condominium Corporation and interest calculated under subparagraph (xii) above.

Operating Costs shall not include any the following, unless charged or required by the Condominium Instruments:

(i) all amounts which otherwise would be included in Operating Costs which are recovered by the Landlord from tenants except under provisions equivalent to Section 3.5;

(ii) those Operating Costs which are recovered from insurance proceeds;

(iii) interest on debt and capital retirement of debt;

(iv) the original cost of construction of the Commercial Area;

(v) leasing commissions and tenant inducement costs incurred in leasing space in the Commercial Area.

- (vi) any refund or credit to the Landlord of any sales tax, goods and services tax, or similar tax that would otherwise be included in Operating Costs
- (vii) any ground rent, mortgage or other finance charge payable by the Landlord or Owner;
- (viii) interest on debt or the capital retirement of debt;
- (viii) any cost incurred by the Owner or any other tenant/occupant of the Development as a result of a breach by the Owner or any tenant of its respective obligations contained in its lease/license;
- (v) any amount for which proceeds of insurance are received by the Landlord;
- (vi) any amounts received pursuant to a warranty or indemnity;
- (vii) any tax on the Income of the Landlord, or the large corporations tax or the minimum corporate tax of Ontario if any, or any Capital Tax; and
- (viii) any administrative wage and/or salary of head office personnel of the Landlord not related to the operations or administration of the Building.

The Tenant acknowledges that the Commercial Area forms an integral part of the Development and the Landlord may from time to time attribute to Operating Costs expenses incurred as a result of various other components of the Development, provided those expenses are similar in nature to the expenses described in this Section (f) of this Schedule.

(bb) "Owners" means the registered owner or owners of the freehold, leasehold or condominium title of the Commercial Area from time to time and includes the officers, directors, employees and agents of the Owner.

(cc) "Other Development Components" means any one or more of the commercial condominiums, freehold portions, parking units and resident condominiums which, together with the Commercial Area, comprise the Development.

(dd) "Person" means any individual, firm, partnership, corporation, government, governmental agency, quasi-governmental agency, commission, incorporated or unincorporated association, co-tenancy, joint venture, syndicate, estate, authority or trust or any other form of entity howsoever designated or constituted, or any group or combination or aggregation of any of them.

(ee) "Proportionate Share" means a fraction which has as its numerator the Rentable Area of the Premises and as its denominator the Rentable Area of the Commercial Area, provided that the Landlord, in its sole discretion acting reasonably, may adjust the Proportionate Share but not in excess of a ratio of 1/1, as applied to Taxes and any other amounts payable by the Tenant under this Lease to more equitably allocate those costs or components of them among tenants of the Commercial Area. Without limiting the generality of the foregoing, some of the factors and criteria which the Landlord may consider in adjusting Proportionate Share include: (i) details set forth on bills and assessments for Taxes; (ii) the value of improvements in the Premises; (iii) the use of the Premises; (iv) the location of the Premises in the Development; (v) the relative use of Utilities and other Development services by the Tenant, and (vi) the obligations of the Landlord under any Development Agreements or Insurance Trust Agreement. Notwithstanding the foregoing, for the purposes of this Lease, the Tenant's Proportionate Share of any calculation under this Lease shall mean 100% of such calculation.

(ff) "Rent" means the aggregate of Net Rent and Additional Rent.

(gg) "Rentable Area" means for a given leaseable space the aggregate of the areas, whether above or below grade, calculated from dimensioned architect's drawings, as certified by an Ontario Land Surveyor, to extend: (i) to the centre line of the structural portion of every wall or division separating the given leaseable space from other leaseable spaces; (ii) to the exterior face of any other wall or division marking the boundaries thereof; (iii) to include the exterior face and any recessed portions of any storefront to extend from the top surface of the structural subfloor to the bottom of the structural ceiling, and (iv) to include all interior space whether or not occupied by interior projections, stairways, shafts, ventilation spaces, columns, pipes, conduits or the like and other physical features.

(hh) "Rental Year" means: (1) for the first (1<sup>st</sup>) Rental Year, the period from the Commencement Date to the last day of the calendar month in which the first anniversary of the Commencement Date occurs, unless the Commencement Date is the first (1<sup>st</sup>) day of a calendar month, in which case the first consecutive twelve (12) calendar month period commencing on the Commencement Date; (ii) in the case of following Rental Years, consecutive twelve (12) calendar month periods commencing one (1) day after the end of the first (1<sup>st</sup>) Rental Year, provided that the last Rental Year ends on the expiry or earlier termination of this Lease.

(ii) "Rules and Regulations" means the rules and regulations and amendments to them adopted and promulgated by the Landlord from time to time with respect to the Commercial Area, the Development and the Lands pursuant to Section 13.1. The Rules and Regulations may differentiate between types of business in the Commercial Area and may vary between portions of the Development. In addition, any rules and regulations which may be adopted and promulgated in respect of the condominium units forming part of or servicing the Commercial Area shall form part of the rules and regulations adopted and promulgated by the Landlord for the purposes of this Lease.

(jj) "Sales Taxes" has the meaning ascribed to it in Section 3.17.

(kk) "Service Units" has the meaning ascribed to it in Section 12.3B.

(ll) "Shared Common Facilities" means those areas, facilities, Utilities, Improvements, lands, signs, equipment and installations in or adjacent to the Development from time to time which serve or are for the benefit of the tenants of the Commercial Area and the owners and occupants of any other area of the Development, including the Other Development Components, which are not designated or intended by the Landlord to be leased and which are provided or designated from time to time by the Landlord for the benefit or use of the tenants of the Commercial Area, their employees, customers and invitees in common with the owners and occupants of the Other Development Components and others entitled to the use or

benefit of them. Without limiting the generality of the foregoing, Shared Common Facilities may include, without limitation, the following, provided they service or give access to the Commercial Area: truck receiving areas; service corridors; elevators, stairways; electrical, telephone, telephone room, sprinkler room, emergency generator room, diesel storage room, transformer room, mechanical room, electrical room, fire pump, fire alarm system, exhaust fan, diesel tank, meter, valve, mechanical storage and janitor rooms; music, fire prevention, security and communication systems; general signs; columns, structural elements and bearing walls; sidewalks, ramps, laneways, driveways and other means of ingress to and egress from the Development or any part of it; pedestrian sidewalks; landscaped and planted areas; public seating and service areas, if any; pipes, electrical, plumbing, drainage, refuse removal, mechanical and other installations and services located in or related to the Development, as well as the structures housing them.

(mm) "Statement" has the meaning ascribed to it in Section 3.8(b).

(nn) "Taxes" means all taxes, levies, rates, duties, fees, charges, local improvement rates and assessments whatsoever (whether general, special, ordinary or extraordinary) now or in the future imposed, levied, rated, assessed or charged against the Commercial Area or any part of it and/or against the Landlord on account of its ownership of it or interest in it by any lawful taxing authority or allocated or attributed by the Landlord to the Commercial Area or any part of it and includes, without limitation, any amounts assessed, imposed, levied, rated or charged in substitution for or in lieu of or in addition to any of the foregoing whether of the foregoing character or not or in existence at the Commencement Date or not, but excluding only such taxes as capital gains taxes or corporate, income, profit or excess profit taxes to the extent those taxes are not levied in lieu of any of the foregoing and to the extent those taxes are not expressly included in this Section (ww) of this Schedule or in any other Section of this Lease. Notwithstanding the foregoing, "Taxes" includes, without limitation, any commercial concentration, density or similar levy, tax, rate, duty, charge or assessment (such as, without limitation, any commercial concentration levy imposed on the Commercial Area or on the Landlord on account of the Landlord's ownership of the Commercial Area or interest in it), whether characterised as such or otherwise. Taxes shall in every instance be calculated on the basis of the Commercial Area being entirely completed and operational and entirely occupied by occupants having no special exemptions with respect to Taxes. Taxes also do not include: the Landlord's income tax, 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, and 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.

(oo) "Tenant" means the party of the Second Part and includes every Person mentioned as Tenant in this Lease and all assignees, occupants and other permitted users of the Premises and those for whom any of the foregoing are responsible at law.

(pp) "Trade Fixtures" means trade fixtures as determined at common law, but for greater certainty, shall not include those items defined as Leasehold Improvements in this Schedule.

(qq) "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, any transaction by which any right to or use or occupancy of all or any part of the Premises is conferred upon any Person, any mortgage, charge or encumbrance or other arrangement under which either this Lease or the Premises become security for any indebtedness or other obligations and includes any transaction or occurrence whatsoever (including, but not limited to, expropriation, receivership proceedings, seizure by legal process and transfer by operation of law) which has changed or might change the identity of the Persons having lawful use or occupancy of any part of the Premises.

(rr) "Transferee" means the Person or Persons to whom a Transfer is or is proposed to be made.

(ss) "Utilities" means electricity, gas, water, telephone, data and cable TV service, sanitary (including sewer) services and any other fuel, power or utilities.



W18

Extreme Fitness, Inc.  
8281 Yonge Street, Thornhill, Ontario L3T 2C7  
Telephone: 905.709.1248 / fax: 905.693.3462

HAND DELIVERED

June 1, 2007

2125879 Ontario Inc.  
1054 Centre Street  
Unit 136  
Thornhill, Ontario  
L4J 8E5

Attention: Steven Da Costa

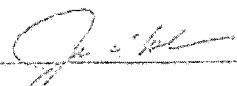
Sir:

Re: A lease agreement (the "Lease") dated as of the 1st day of June, 2007 between 2125879 Ontario Inc. (the "Landlord") and Extreme Fitness, Inc. (the "Tenant") for certain premises in that building municipally known as 111 Wellington Street West, Toronto, Ontario

Please be advised that the Tenant hereby exercises its First Extension, Second Extension and Third Extension as provided in Section 14.1 of the Lease such that the Term shall now expire on May 31, 2022, subject to one further five-year right of renewal.

Yours truly

Extreme Fitness, Inc.

  
\_\_\_\_\_

per: James E. Solomon  
title: C.E.O.  
I have authority to bind the company

Copy: Fluxgold Izsak Jaeger LLP  
100 York Boulevard  
Suite 220  
Richmond Hill, ON, L4B 1J8

Attention: Leslie A. Fluxgold  
2293557.1

**TAB G**

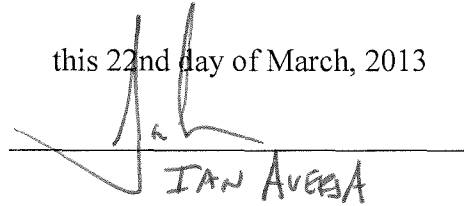
Attached is Exhibit "G"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 22nd day of March, 2013

A handwritten signature in black ink, appearing to read "IAN AVERSA", is written over a horizontal line. The signature is stylized and somewhat cursive.

Commissioner for taking Affidavits, etc



ORIGINAL

550 Adelaide Properties Inc.  
Landlord

- and -

1152245 Ontario Inc.  
Tenant

LEASE OF COMMERCIAL SPACE  
MULTI-TENANT COMMERCIAL PROPERTY

PROPERTY:  
8281 Yonge Street, Markham, Ontario

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- Schedule I - Certificate of Compliance

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**TERM SHEET - FORMING PART OF LEASE OF COMMERCIAL SPACE - MULTI TENANT**

1. **LANDLORD:** **TELEPHONE:**  
 550 Adelaide Properties Inc. (416)865-1622  
**ADDRESS:** **FAX NUMBER:** (416)865-1547  
 550 Adelaide Street East  
 Toronto, Ontario M5A 1N7  
 Attention: Mr. Dick Hammer, President
2. **TENANT (legal name):** **TELEPHONE:** (905) 709-9498  
 1152245 Ontario Inc.  
**ADDRESS:** **FAX NUMBER:** (905) 709-2960  
 8281 Yonge Street  
 Markham, Ontario  
 L3T 4S1  
 Attention: Steven Colivas and Steven Da Costa and Daniel Bogdanovich
3. **MUNICIPAL ADDRESS OF PREMISES:**  
 8281 Yonge Street, Markham, Ontario, L3T 2C7
4. **LEASED PREMISES:**  
 Attached as Schedule A to the Lease is a plan of the Premises showing the Leased Premises by a distinguishing outline. The rentable area of the Leased Premises is approximately 26,200 square feet consisting of (i) an area of approximately 22,600 s.f. for use as a health club and related retail businesses; and (ii) an area shown cross-hatched on Schedule "A" (the "Pool Area") of approximately 3,600 sq. ft. in which a swimming pool is to be installed. Landlord shall provide an Architect's Certificate confirming the area measurements of the Leased Premises and Tenant's proportionate share under Section 4.05.
5. (i) **SECURITY DEPOSIT:** \$ NIL  
 (ii) **OTHER DEPOSIT:** \$22,167 (SECTION 4.07)
6. (a) **TERM:** Three (3) Years (36 months)  
 (i) **FIRST DAY OF TERM:** JULY 8, 1996  
 (ii) **LAST DAY OF TERM:** JULY 7, 1999
- (b) **RENEWAL OPTION:**  
 No. 1 One (1) x 2 years (1st Renewal Term)  
 No. 2 One (1) x 5 years (2nd Renewal Term)  
 No. 3 One (1) x 5 years (3rd Renewal Term)  
 No. 4 One (1) x 5 years (4th Renewal Term)  
 as specified under Section 3.02
7. **BASIC RENT:**  
**EXCLUDING THE POOL AREA**
- From: July 8, 1996 To: July 7, 1999 @ \$7.00/s.f. per annum = \$ 13,183.33 per mo. *Term*
  - From: July 8, 1999 To: July 7, 2001 @ \$7.00/s.f. per annum = \$ 13,183.33 per mo. *1st*
    - (First Renewal Term)
  - From: July 8, 2001 To: July 7, 2006 @ \$8.00/s.f. per annum = \$ 15,066.67 per mo.
    - (Second Renewal Term)

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EXTRA

LEASE OF COMMERCIAL SPACE  
MULTI-TENANT COMMERCIAL PROPERTY

THIS LEASE is made as of the 8th day of July, 1996.

BETWEEN:

550 Adelaide Properties Inc., a company incorporated under the laws of the Province of Ontario having a business office at 550 Adelaide Street East, Toronto Ontario, M5A 1N7

("Landlord")

AND:

1152245 Ontario Inc., a company incorporated under the laws of the Province of Ontario having its registered office at 34 Doncaster Avenue, Thornhill, Ontario, L3T 4S1

("Tenant")

AND:

Steven Da Costa  
Steven Coliva  
Daniel Bogdanovich  
jointly and severally

(" the Indemnifiers")

IN CONSIDERATION of the mutual covenants contained herein, the parties hereby agree as follows:

ARTICLE 1.00  
DEFINITIONS

1.01 Definitions - In this Lease the terms defined in Schedule C shall have the meanings designated therein respectively.

ARTICLE 2.00  
GRANT OF LEASE AND GENERAL COVENANTS

2.01 Grant - Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises, to have and to hold during the Term, subject to the terms and conditions of this Lease, RESERVING ALWAYS unto Landlord, Rent as herein provided.

2.02 Landlord's General Covenants - Landlord covenants with Tenant:

(a) subject to the provisions of this Lease, for quiet enjoyment of the Leased Premises so long as Tenant shall observe and perform all the covenants and conditions herein contained on the part of Tenant to be observed and performed; and

(b) to observe and perform all the covenants and conditions herein contained on the part of Landlord to be observed and performed;

2.03 Tenant's General Covenants - Tenant covenants with Landlord:

(a) to pay Rent without any deduction, abatement or set-off whatsoever, except as expressly set forth herein;

(b) to observe and perform all the covenants and conditions herein contained on the part of Tenant to be observed and performed; and

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(c) without limiting the generality of the foregoing, to comply with all laws applicable to Tenant's use and occupation of the Leased Premises and the exercise of the rights of Tenant hereunder.

**ARTICLE 3.00  
POSSESSION**

3.01 **Term** - The Term of this Lease shall be for a period of three (3) years as and from the Commencement Date. The term is to end on the date set out in item 6(a)(ii) of the Term Sheet unless extended by Renewal pursuant to section 3.02 or unless terminated earlier as provided in this Lease.

3.02 **Right to Renew** - The Tenant shall have one (1) option to renew the lease for a term of Two (2) years (the "First Renewal Term") and upon expiry of the First Renewal Term, Three (3) consecutive options to renew the lease each for a term of five (5) years (respectively, the "Second Renewal Term", "Third Renewal Term" and "Fourth Renewal Term"). Each such option shall automatically be exercised unless written notice to the contrary is given by the Tenant to the Landlord at least six (6) months prior to the expiry of the Term or then current renewal term. Each renewal of the lease shall be on the same terms and conditions as herein contained, except for any further options to renew and except for rent for the Third Renewal Term and Fourth Renewal Term which such rent shall be at the then market rate of rent for similar premises and which shall be agreed upon between the parties at the relevant time. If the parties fail to agree upon rent for the Third Renewal Term and Fourth Renewal Term by the 60th day prior to the commencement date of such Renewal Term, then such rent shall be fixed by arbitration in accordance with the *Arbitration Act* of Ontario at a rate equal to the fair market rental rate for similar premises in the vicinity at the commencement of each such renewal (without taking into account the Tenant's leasehold improvements or any leasehold allowances provided by the Landlord to the Tenant at the commencement of the Term). In no event shall the Minimum Rent for each Renewal Term be less than the Minimum Rent for the immediate prior term. Landlord and Tenant agree that the costs of the arbitration shall be determined by the arbitrators in their sole discretion and the decision of the arbitrators shall be final and binding.

In the event that the Tenant shall fail to renew for the First Renewal Term and the Second Renewal Term, the Tenant shall pay to the Landlord a fee (which shall not be deemed to be a bonus or penalty but rather a predetermined liquidated sum intended to reimburse the Landlord for damages sustained by the early termination of the lease) equal to Two Hundred Thousand Dollars (\$200,000) for each full or part year remaining during the First Renewal Term and Second Renewal Term. This payment shall be made by the Tenant at the time it advises the Landlord in writing of its intention not to renew the lease. Until the Tenant has complied with the provisions of this second paragraph of Section 3.02, the Landlord shall at all times continue to have the same rights and remedies as a landlord of a tenant in default of its covenants under the lease.

3.03 **Early Occupancy** - Tenant may use or occupy the Leased Premises or any part thereof before the Commencement Date but upon receipt of the Zoning Notice, totally free of Rent but subject to the terms and conditions herein stated, mutatis mutandis; and any default during such occupancy shall be a default hereunder.

3.04 **Acceptance of Leased Premises** - Taking possession of, or occupation of, all or any part of the Leased Premises by Tenant or its contractors or subcontractors sixty (60) days after completion of Landlord's work shall be conclusive evidence as against Tenant that the Leased Premises or such part thereof are in satisfactory condition on the date of possession or occupation subject only to latent defects and to deficiencies (if any) listed in writing in a notice delivered by Tenant to Landlord not more than sixty (60) days after completion of Landlord's work.

**ARTICLE 4.00  
RENT**

4.01 **Rent** - Tenant shall pay to Landlord as Rent for the Leased Premises the aggregate of:

(a) Basic Rent payable in equal monthly installments, in advance, without notice or demand such amounts as are set forth in item 7 of the Term Sheet in respect of the

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Term and each Renewal Term, respectively, commencing as of the Commencement Date and on the first day of each calendar month thereafter during the Term and each exercised Renewal Term;

(b) Tenant's Occupancy Rent during the Term and each successive Renewal Term, payable in monthly installments at the times and in the manner provided in Section 4.05; and

(c) all amounts [other than payments under Subsections 4.01(a) and (b)] payable by Tenant to Landlord under this Lease, at the times and in the manner provided in this Lease or, if not so provided, as reasonably required by Landlord.

Prior to the Commencement Date, the Landlord at its cost shall deliver to the Tenant a certificate of a surveyor or architect confirming the actual measurement of the rentable floor area of the Leased Premises, including the Pool Area (the "Leasable Area").

4.02 Intent - It is purpose and intent of Landlord and Tenant that this Lease and the Rent payable under Subsection 4.01(a) shall be fully net and carefree to Landlord. Accordingly, subject only to exceptions stated herein, Tenant will pay or will reimburse to Landlord all expenses relating to the Leased Premises, their use and occupancy, their contents, or the business carried on therein, or the part of such costs attributable thereto in accordance with the provisions of this Lease from time to time. Nothing in this Lease shall limit the generality of this Section. Tenant will not be responsible for Landlord's income taxes. G.S.T. are not income taxes for the purposes of this Lease.

4.03 Payment of Rent (General) - As and from the Commencement Date, the Tenant shall not be required to pay Basic Rent, under Section 4.01(a) for the first twelve (12) months of the Term (the "Rent Free Period"). Notwithstanding, all other Occupancy Rent payable by the Tenant under this Lease, shall be payable when due and as required hereunder, as and from the Commencement Date. All amounts payable by Tenant to Landlord pursuant to this Lease shall be deemed to be Rent and shall be payable and recoverable as Rent in the manner herein provided and Landlord shall have all rights against Tenant for default in any such payment as in the case of arrears of Rent. All Rent shall be paid to Landlord in lawful money of Canada, without deduction, abatement or set-off (unless expressly provided for herein) at the local address of Landlord set out in the Terms Sheet or to such other Person or such other address as Landlord may from time to time designate in writing. Tenant's obligation to pay Rent shall survive the expiration or earlier termination of this Lease. Any Rent or other sum received or accepted by Landlord and made by anyone other than Tenant, on behalf of Tenant, shall not release or in any way affect the covenants of Tenant set out in this Lease and is not to be construed by Tenant as Landlord's consent to a Transfer under Article 12. Any Rent or other sum received by Landlord from or for the account of Tenant while Tenant is in default under this Lease may be applied at Landlord's option to the satisfaction in whole or in part of any of the obligations of Tenant then due under this Lease in such manner as Landlord sees fit regardless of any designation or instruction of Tenant to the contrary, except as against any item which is being disputed, in good faith, by the Tenant so long as such item in dispute has been resolved within 180 days of its due date or legal process instituted.

4.04 Partial Month - If the Term or any Renewal Term stated in the Term Sheet shall include any partial month at the beginning or end, Minimum Rent payable at the beginning of such partial month shall be prorated on a per diem basis. A corresponding adjustment will be made for Tenant's Occupancy Rent.

#### 4.05 Payment of Tenant's Occupancy Rent

(1) Estimate and Payment - Landlord shall deliver to Tenant a written reasonable estimate of Tenant's Occupancy Rent for each Lease Year. Tenant shall pay to Landlord 1/12 of the amount so estimated in equal monthly installments (except as otherwise required in this Section 4.05 with respect to Property Taxes) in advance over that Lease Year simultaneously with Tenant's payments on account of Basic Rent. If Landlord does not deliver to Tenant such an estimate, Tenant shall continue to pay Tenant's Occupancy Rent based on the last such estimate delivered by Landlord until another estimate is delivered by Landlord and the next payment thereafter on account of Tenant's Occupancy Rent shall be adjusted to take into account any over or under-payment in the preceding installments paid in that Lease Year.

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The Tenant shall pay, as Occupancy Rent, its proportionate share (i.e. the Leasable Area of the Leased Premises divided by total leasable area of the ground floor area of the Building) of all common expenses of a non-capital nature relating to the maintenance repair and operation of the Property, as set out in the definition of Operating Costs in Schedule "C".

The Tenant's proportionate share of the Operating Costs but excluding Tenant's share or Property Taxes, shall not exceed Sixty Cents (\$.60) per sq. ft. (the "Cap") of the Leasable Area for the first Twelve (12) months of the Term.

The Tenant shall also pay, as Rent, with respect to the Leased Premises, Property Taxes assessed against the Leased Premises (whether separately billed to the Tenant or if not specifically assessed against the Leased Premises or Tenant, in respect of the Leased Premises allocated by the Landlord in an equitable and reasonable manner based on Tenant's proportionate share), and other Taxes as more particularly set out in Article 8, and shall be solely responsible for payment of any and all water, hydro, gas and other utilities which shall, in respect of the Leased Premises, be separately metered. Any common area utilities not separately metered shall be added to operating costs and paid by Tenant based on its proportionate share.

Any portion of Property Taxes accrued with respect to the Term or any part thereof and paid by Landlord prior to the Commencement Date shall be reimbursed by Tenant to Landlord on the Commencement Date or on demand thereafter. Tenant will pay Property Taxes or installments of Property Taxes falling due during the Term in equal monthly installments in advance during the period between the due dates for payment of Property Taxes or such installments thereof. Notwithstanding the foregoing, the Landlord shall always have the right:

- (a) to revise the amount of the installments on account of Property Taxes payable by the Tenant to an amount that allows the Landlord to collect all Property Taxes payable by the Tenant by the final due date of Property Taxes for the calendar year, and/or
- (b) to schedule and require payment by the Tenant of installments on account of Property Taxes payable by the Tenant such that by the final installment due date of Property Taxes for any calendar year, the Tenant shall have paid to the Landlord the full amount of Property Taxes payable by the Tenant for such calendar year.

(2) **Annual Statement and Adjustment** - Within ninety (90) days after the end of each Lease Year selected by the Landlord, the Landlord shall deliver a detailed statement of all Operating Costs and Property Taxes not specifically assessed against Tenant incurred by the Landlord on behalf of the Tenant and all other tenants of the Building. The Landlord and Tenant shall make appropriate adjustments between themselves within thirty (30) days after receipt of such statement as herein set forth. If the total of monthly installments of Tenant's Occupancy Rent actually paid by Tenant to Landlord during that Lease Year differs from the amount of Tenant's actual Occupancy Rent payable for that Lease Year under Subsection 4.01(b), Tenant shall pay to Landlord or, if Tenant is not in default, Landlord shall credit to Tenant on account of the next succeeding payments of Tenant's Occupancy Rent, as the case may be, the difference, without interest, within 30 days after the date of delivery of the statement. Tenant shall have the right, on at least seven (7) days written notice to Landlord, and at Tenant's sole cost and expense, to audit Landlord's books and records relating to Operating Costs and Property Taxes.

(3) **Disputes** - Tenant may dispute Landlord's statement of Tenant's Occupancy Rent for any Lease Year only by giving written notice thereof in writing to Landlord within 6 months of delivery of the statement in respect of that Lease Year. Notwithstanding delivery of such notice, Tenant shall continue to pay Rent in accordance with the terms of this Lease

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4.06 **Postdated Cheques** - Unless Landlord advised otherwise in writing, Tenant shall provide to Landlord on or before the Commencement Date and thereafter on or before each anniversary date of the Commencement Date during the Term, postdated cheques in the amount of Rent for each month during that Lease Year.

4.07 **Deposit** - The Landlord acknowledges that the Tenant has delivered to the real estate broker, Royal LePage in Trust, a cheque in the amount of Twenty Two Thousand One Hundred and Sixty-Seven Dollars (\$22,167) the "Deposit", representing a deposit for the first

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two month's Basic Rent and to be invested in a 30 day rolling term deposit with interest earned thereon to be credited to the Tenant's Basic Rent account.

**ARTICLE 5.00**  
**USE, OCCUPATION AND CONTROL**

5.01 Use of Leased Premises - The Tenant shall use and occupy the Leased Premises only for the purpose set out in item 8 of the Term Sheet, subject to any restrictions or regulations imposed by any government authority having jurisdiction and shall not use or permit the Leased Premises or any part thereof to be used or occupied for any other purpose or business or, except as otherwise expressly permitted under Article 12 of this Lease, by any Person other than the Tenant.

The Landlord covenants and agrees that throughout the Term of the Lease or any renewal it will not occupy or use, nor suffer or permit to be occupied or used by any Person other than the Tenant, any other premises (other than the Leased Premises) or space in the Building or upon the Property as presently constituted at the Commencement Date or as same may be expanded or altered from time to time during the Term of the Lease, for use as a health and fitness facility, pro shop, martial arts, or suntanning salon.

The Tenant will be responsible for obtaining, at its expense, all necessary approvals, licenses and permits, including, but not limited to, development, building, occupancy, hours of operation and business approvals, licenses and permits for its intended use of the Leased Premises and will submit all applications for such approvals to the Landlord. The Tenant will indemnify and defend the Landlord and save it harmless from and against any and all claims incurred or suffered by the Landlord directly or indirectly arising out of the Tenant's application for such approvals, licenses or permits or the resulting approvals, licenses or permits with respect to the use, intended or otherwise, of the Leased Premises whether such Claims are in respect of the Leased Premises or in respect of the Building or the Property. Except as expressly provided for herein, the Landlord makes no representation or warranty, express or implied, respecting the present, future or intended use of the Leased Premises by the Tenant or respecting whether or not necessary approvals licenses and permits can be obtained for the Tenant's use or intended use.

The Landlord warrants that it has obtained the necessary zoning approvals and consents from the appropriate government authorities in the form attached hereto in Schedule "G" to permit the use of the same as a fitness facility (the "Zoning Notice"), which such zoning notice is acknowledged and accepted by Tenant.

5.02 Compliance with Laws - Tenant shall promptly and at its own cost comply with all present and future laws, regulations and orders relating to, and obtain and maintain in force all approvals, permits, licenses and registrations required for, any of the following:

- (a) the occupation or use of and the conduct of any business in or from the Leased Premises;
- (b) the Leasehold Improvements, fixtures, furniture and equipment installed in the Leased Premises by Tenant;
- (c) Pollutants and the protection of the environment so far as those laws, regulations and orders or any of them relate to the Tenant's use and occupation of the Property; and
- (d) the making by Tenant of any repairs, changes or improvements in or to the Property; and Tenant shall immediately give written notice to Landlord of the occurrence of any event in the Leased Premises constituting an offense or breach thereof and if Tenant shall, either alone or with others, cause the happening of any such event, Tenant shall immediately give Landlord notice to that effect and thereafter give Landlord from time to time written notice of the extent and nature of Tenant's corrective action and compliance herewith.

Tenant agrees that if Landlord determines in its own discretion acting reasonably, that Landlord, its property, or the Leased Premises is put at risk or placed in any jeopardy, by any work required to ensure compliance with the foregoing provisions of this Section, and the Tenant is unable to fulfill its obligations of compliance under this Section following expiration

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of any curative provisions of the Lease, Landlord may upon prior written notice to Tenant, itself undertake such work or any part thereof at the reasonable cost and expense of Tenant.

Tenant shall, at its own expense, remedy any damage to the Leased Premises caused by such event or work or by the performance by Landlord under this Section.

If alterations or improvements to the Leasehold Improvements or to the Leased Premises are necessary to comply with any of the foregoing provisions of this Section or with the reasonable requirements of insurance carriers, Tenant shall forthwith complete such work, complying always with the applicable provisions of this Lease, and in any event shall pay the entire cost of any alterations and improvements so required.

Except for improvements undertaken by the Tenant, Landlord represents and warrants that the Leased Premises, including work undertaken by Landlord or its building contractors, shall comply with all applicable laws, regulations and orders in force upon the completion of Landlord's work.

**5.03 Prohibited Manner of Use** - Tenant shall not commit, cause or permit any nuisance in or about or any damage to the Leased Premises or any part thereof, or any of the Leasehold Improvements, goods or fixtures therein, any overloading of the floors of the Leased Premises, or any use or manner of use causing annoyance to other Tenants in the Building or to the owners and/or occupants of properties in the immediate vicinity of the Property. Without limiting the generality of the foregoing, Tenant shall not use or permit the use of any portion of the Leased Premises for any dangerous, illegal, noxious, odorous or offensive trade, business or occurrence. Tenant shall keep the Leased Premises free of debris, pollutants and anything of a dangerous, noxious, odorous or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or vibration, heat or noise detectable outside the Leased Premises in the discretion of the Landlord, acting reasonably. Tenant shall not use equipment in the Leased Premises in a manner that results in it being heard outside the Leased Premises.

**5.04 Rules and Regulations** - Tenant shall observe and cause its employees and others over whom Tenant can reasonably be expected to exercise control to observe the Rules and Regulations.

**5.05 Permitted Signs** - The Tenant may install and maintain at its cost an identification sign on the Leased Premises which shall be subject to the prior written approval of Landlord, (which approval shall not be unreasonably withheld or unduly delayed) shall be in accordance with the sign criteria established by Landlord from time to time for the Property, and shall comply with all applicable by-laws, regulations and codes. Sign criteria will maximize coverage but it comply with all by-laws.

The Tenant shall also be permitted to occupy its proportionate share (based on the total gross leasable area of the ground floor area of the Building) of the top portion of the existing pylon sign (or new pylon sign which the Landlord may, in its discretion, install on the Property) the costs of installation and ongoing maintenance of the pylon to be proportionately shared by the Tenant and other tenants utilizing such pylon sign. If permitted by the City of Markham, the Tenant shall instead be permitted to install its own pylon sign on the Property at its expense. It is understood that the Landlord shall not make any direct or indirect profit. At the expiration or sooner termination of the Term or any Renewal Term, the Tenant shall remove all fascia signs and repair all damage at its sole expense. It is understood that if the Landlord shall not replace the existing metal cladding on the front of the Building, the Tenant will be permitted to paint the cladding on the front of the Leased Premises to suit its fascia signage. The Tenant shall be permitted to temporarily use the existing pylon signage for its own use, without cost, from the date of the Zoning Notice until the later of the Commencement Date or the date the Landlord arranges to use the pylon for the benefit of other tenants of the Building.

Except as permitted above, Tenant shall not install or erect any fence, aerial, satellite dish or mast or do any exterior painting or make any change to the building front except with the prior written consent of Landlord, which consent shall not be unreasonably or arbitrarily withheld. Should Landlord at any time object to any fence, aerial, satellite dish, mast or exterior painting, Tenant shall remove the same forthwith at its cost and indemnify Landlord against any Claims arising therefrom.

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5.06 **Overloading** - Tenant will not install equipment that in the opinion of the Landlord's engineer overloads the capacity of any utility or of any electrical or mechanical facility or which may exceed the load-bearing capacity of the floors of the Building.

5.07 **Authorization of Enquiries** - The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or municipality or governmental or municipal agency with respect to the Tenant's compliance with any and all laws and regulations pertaining to the Tenant or the business conducted in the Leased Premises including, without limitation, laws and regulations pertaining to Pollutants and the protection of the environment; and the Tenant covenants and agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information.

#### ARTICLE 6.00

#### MAINTENANCE, REPAIR AND ALTERATIONS BY LANDLORD

##### 6.01 Maintenance, Repair and Replacement

Except as otherwise provided in this Lease, the Tenant shall maintain the interior of the Leased Premises in good order and condition and make, at its own expense, all repairs to the Leased Premises and to the fixtures, equipment and machinery contained therein (reasonable wear and tear, damage by fire, lightning and tempest and repair to the structural portions of the Leased Premises only excepted). The Landlord shall maintain and repair (or replace, if necessary) in first class condition as a careful owner would do, the Building (except for the interior of the Leased Premises) and the common areas inside and outside including the parking areas to be kept clear of ice and snow for the entire Term and each applicable Renewal Term of the Lease. The Landlord shall be responsible for (without contribution from the Tenant) and shall promptly perform all structural repairs to the Leased Premises and the Building, including without limitation, repairs to the foundation; structural floor slab; parking lot pavement and lighting; exterior weather walls, bearing walls, structural columns and beams; structural roof; and drains, electrical and utility services leading up to, from, over and under the Leased Premises. All repairs to waterproof membrane are the responsibility of Landlord, the cost of which shall be shared by Tenant based upon its proportionate share, provided however, such repairs made at the Commencement Date (as set out in Schedule "D") shall be paid by Landlord alone and without contribution from Tenant.

6.02 **Alterations by Landlord** - Landlord may from time to time dedicate for public purposes part or parts of the Property if so required by any authority having jurisdiction.

6.03 **Access by Landlord** - Following reasonable efforts to contact the Tenant, Tenant shall permit Landlord without notice to enter the Leased Premises at any time outside normal business hours in case of an emergency and otherwise upon reasonable notice to the Tenant during normal business hours as Landlord may reasonably require: (a) to examine, inspect and show the Leased Premises for purposes of leasing, sale or financing; (b) to maintain and make repairs and replacements as provided for in this Lease; and (c) to take such steps as Landlord may deem necessary for the safety or preservation of the Leased Premises. No such entry shall constitute a breach of Landlord's covenant for quiet enjoyment or entitle Tenant to any abatement of Rent.

6.04 **Energy Conservation** - Landlord shall not be in default of its obligations under this Lease if it acts in accordance with any requirement of any authority having jurisdiction with respect to energy conservation, security or environmental matters.

6.05 **Supervision and Extended Services** - Landlord may supervise any work done by Tenant in the Leased Premises and the moving of heavy articles therein and shall not interfere therewith unless Landlord, acting reasonably, determines any portion of the Property to be at risk or such acts or omissions by Tenant constitute a breach of any term of this Lease. In the case of the installation of the Pool and the construction of the mezzanine level contemplated by Tenant and any other structural work undertaken by Tenant, Tenant agrees to that such work is completed in accordance with all applicable rules, regulations, laws, by-laws and codes affecting such work and the Property, and agrees to provide Landlord with such engineering and other certificates as Landlord may reasonably require as proof thereof, upon completion of such work.

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6.06 Landlord's and Tenant's Work - Tenant agrees that it has entered into this Lease on the express understanding that Landlord's Work in respect of the Leased Premises is limited to the scope delineated as Landlord's Work in Schedule D and all other improvements to the Leased Premises shall be performed at the sole expense of Tenant in accordance with the terms of this Lease.

The Landlord shall, at its own expense, be responsible for the completion of the work and improvements to the Leased Premises and Property described in Schedule "D" (Landlord's and Tenant Work). Subject to the following paragraph below, all such work and improvements shall be performed by the Tenant's contractor in a good and workmanlike manner using first class new quality materials which are proper for the purpose.

The Tenant's contractor shall provide the Landlord with a written estimate for the completion of the Landlord's Work. If the Landlord agrees with the estimate, the Landlord shall enter into an agreement directly with the Tenant's contractor on the terms acceptable to the parties. The Landlord is not bound to deal with the Tenant's contractor in any manner whatsoever but if not, the Landlord shall use its own forces so as to complete the Landlord's Work.

The Tenant shall perform and complete such additional work and improvements to the Leased Premises as are necessary to open the Leased Premises for the business as a fitness club, including changes to the structure and exterior walls and entrances, if appropriate, following receipt of Landlord's approval of structural, mechanical, plumbing and electrical alterations. The Landlord shall approve all Tenant's Work on a timely basis and at its expense; approval delays shall not exceed three business (3) days in each event and the Landlord shall not act unreasonably. Tenant shall promptly pay all amounts for work, service and materials when due and shall forthwith remove any construction liens that may be outstanding against the Leased premises or the lands on account of work performed by Tenant. If the Tenant wishes to install a mezzanine level in the Leased premises, it shall first obtain the approval from all relevant governmental authorities and the Landlord, acting reasonably, however, the size of the Leased Premises shall not increase nor shall Minimum Rent be payable for such space (although Property and business taxes are to remain the responsibility of the Tenant). Skylights and window cut-outs to be permitted provided that they are quality units and provided that they are properly installed. The Tenant acknowledges that the Leased Premises will, when fully constructed, be comparable in design to clubs typically operated by Premier Health Clubs and that the proposed leasehold improvements, furniture, fixtures and equipment together with professional fees will cost at least Five Hundred Thousand (\$500,000) Dollars.

The Tenant shall be entitled to the benefit of all warranties received by the Landlord in connection with the Landlord's Work. The Landlord shall assign such warranties to the Tenant on request, if the same are assignable. If such warranties are not assignable, then the Landlord shall enforce the same in its own name but for the benefit of and at the request of the Tenant. The Landlord shall provide the Tenant with a copy of warranties on the Commencement Date.

If available, the Landlord will use its best efforts to obtain and provide to Tenant plans and specifications for the Leased Premises showing all mechanical electrical, and architectural detail of the Leased Premises.

6.07 Interruption - Landlord's obligations under this Article 6.00 are subject to the following limitations and restrictions:

- (a) if and so long as all or part of the systems, facilities and equipment in the Property or the supply of utilities to the Property are destroyed, damaged or interrupted, Landlord shall have a reasonable time using its best efforts in which to diligently complete any necessary repair or replacement and shall only be required to maintain such services as are reasonably possible in the circumstances;
- (b) Landlord shall not be liable under any circumstances for any consequential damage, whether direct or indirect, to any Person or property for any failure to carry out its obligations under this Article 6.00;
- (c) no reduction or discontinuance of service under this Article 6.00 shall be construed as a breach of Landlord's covenant for quiet enjoyment or as an eviction of Tenant or entitle Tenant to any abatement of Rent or release Tenant from any

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obligation under this Lease provided Landlord forthwith commences using its best efforts and continues diligently to effect the resumption of service and such reduction or discontinuance do not result in Tenant's inability to conduct its business;

(d) Landlord shall have no responsibility for any inadequacy or performance of any systems within the Leased Premises if the Leased Premises or the use thereof depart from the design criteria for such systems as established by the Landlord's consultants which may include the manufacturers or installers of such systems for the Building;

(e) nothing contained in this Article 6.00 shall derogate from Article 10.00; and

**ARTICLE 7.00 -  
PAYMENT FOR SERVICES AND MAINTENANCE,  
REPAIR AND ALTERATIONS BY TENANT**

7.01 Utilities - Tenant shall pay as same become due all rates, charges, costs and expenses as may be assessed or levied by a supplier of utilities to the Leased Premises.

7.02 Lights, Etc. - At the Landlord's option, Tenant shall pay to Landlord monthly, as part of the Operating Costs a reasonable amount as determined by Landlord in respect of replacement of building standard fluorescent tubes, light bulbs and ballasts in the common areas of the Property on a periodic basis or as required from time to time and the costs of cleaning, maintaining and servicing of the electrical light fixtures in the Leased Premises.

7.03 Heating, Ventilation and Air Conditioning - Tenant shall be responsible for the heating, ventilation and air conditioning of the Leased Premises and any or all parts thereof and shall be responsible for the costs of operating, repairing, replacing and maintaining the systems and facilities therefor in a good operating condition.. Tenant covenants, at its expense, to heat the Leased Premises at all times to a reasonable temperature for the reasonable use thereof, so that a comfortable level of temperature is maintained, and no part of the Building is damaged by frost.

Landlord covenants represents and warrants to Tenant that the existing HVAC units, located on the roof of the Building and to be provided to the Tenant for its exclusive use shall be, as of the Commencement Date, in good working order and repair and shall subject to Tenant's compliance with its obligations of maintenance and repair as provided for under this lease remain so for a period of Three (3) years following the Commencement Date.

7.04 Alterations by Tenant - After completion of Tenant's work undertaken at the Commencement of the Term, Tenant may from time to time at its own expense make additional changes, additions and improvements to the Leased Premises to better adapt the same to its business provided that any change, addition or improvement:

(a) shall comply with the requirements of Landlord's insurers and any governmental or municipal authority having jurisdiction;

(b) shall be made only after detailed plans and specifications therefor have been submitted to Landlord and received the prior written approval of Landlord, all at the expense of Tenant, and should the Landlord provide its written approval, such approval shall not be deemed to mean that the proposed changes, additions or improvements comply with any existing or future municipal by-laws or any other applicable laws, by-laws codes or requirements;

(c) shall equal or exceed the then current standard for the Building;

(d) shall be carried out in a good and workmanlike manner and only by Persons selected by Tenant who shall provide to Landlord upon request proof of adequate financing as well as proof of workers' compensation and public liability and property damage insurance coverage, with Landlord named as an additional insured, in amounts, with companies and in a form reasonably satisfactory to Landlord, all of which shall remain in effect during the entire period in which the work be carried out;

(e) will not require Landlord to do any work or incur any expense except as Landlord may approve; and

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(f) will be made only after Tenant has provided to Landlord evidence of all requisite permits, approvals, and licenses and any other information required by Landlord.

Notwithstanding the foregoing, Landlord's approval shall not be required to be obtained for interior design or decoration work by Tenant which is of a non-structural nature and which does not affect the Building's electrical, mechanical or sprinkler systems.

7.05 Maintenance and Repair - Except to the extent that Landlord has agreed herein to perform such work at Tenant's cost (including without limitation Tenant's proportionate share of the cost of repairs to the roof membrane as set out in Section 6.01), Tenant, at its costs, shall maintain, repair and replace (where applicable) the Leased Premises including, without limitation, all Leasehold Improvements so as to keep them in good order and condition and in compliance with the requirements of all authorities having jurisdiction including without limitation:

- (a) keeping the Leased Premises and surrounding area in a clean and tidy condition and free of debris and garbage;
- (b) making repairs and replacements, to, and maintaining the non-structural portions of the Leased Premises including, without limitation, the heating, air conditioning and ventilation apparatus, glass, plate glass, doors, hardware, inside face of non-structural partitions and walls, fixtures, lighting and plumbing fixtures, wiring, piping, ceilings, floor coverings and thresholds in the Leased Premises so as to keep the Leased Premises in good tenable condition (reasonable wear and tear excepted).
- (c) at reasonable intervals and as otherwise required, oiling, cleaning and servicing the plumbing, heating, ventilation, air-conditioning and other building systems or equipment within or exclusively serving the Leased Premises. Tenant further agrees, during the Term to obtain normal and usual service and maintenance contracts for the care and upkeep of the heating, ventilating and air conditioning system on the Leased Premises and to promptly provide copies thereof to Landlord or its agent.

7.06 Inspection - Landlord or its Consultants may from time to time enter upon the Leased Premises upon at least 24 hours prior notice to Tenant:

- (a) to inspect the Leased Premises, the building systems and equipment and their condition; and
- (b) to inspect any work being done by Tenant.

Tenant shall, within fifteen (15) days (or such longer period as may be reasonably required to comply with this section) from receipt of written notice from Landlord, at its own costs, make good any deficiency in the condition of the Leased Premises or in such work. If Landlord or its agents shall determine acting reasonably and in good faith that the work being done by Tenant is in breach of this Lease or fails to comply with the requirements of this Lease in any respect, Tenant shall forthwith remedy such breach or failure to comply and shall desist from continuing such work until the deficiency has been remedied and satisfactory proof thereof has been delivered to Landlord.

7.07 Liens - Tenant shall pay promptly when due all costs for work done or caused to be done or goods affixed by Tenant in the Leased Premises which could result in any lien or encumbrance on Landlord's interest in the Property or any part thereof, or the filing or registration of any security interest or notice thereof, shall keep the title to the Property, including every part thereof and the Leasehold Improvements, free and clear of any such lien, encumbrance or security interest or notice thereof and shall indemnify and hold harmless Landlord against any Claims arising out of the supply of goods, materials, services or labor for the work. Tenant shall immediately notify Landlord of any lien, encumbrance, claim of lien, security interest, or notice thereof or other action of which it has, or reasonably should have, knowledge and which affects the title to the Property or Landlord's interest in the Property and shall cause the same to be removed within 5 business days (or such additional time as Landlord may consent to in writing), failing which Landlord may upon notice to Tenant take such action as Landlord deems necessary to remove same and the entire cost thereof shall immediately become due and payable by Tenant to Landlord. In the event, that Tenant

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advises the Landlord that payment to any lienholder would be prejudicial to Tenant's bona fide dispute with such lienholder, Landlord's sole remedy to remove such lien shall be limited to payment into court of a sufficient amount, which amount shall be due and payable to Landlord by Tenant, forthwith. Landlord may from time to time post such notices in such places on the Leased Premises as Landlord considers advisable to prevent or limit the creation of any liens upon the Property or any part thereof.

7.08 Roof - Tenant shall not be entitled to install upon the roof of the Building any equipment except as consented to in writing by Landlord and then only on the terms and conditions imposed or approved by Landlord in writing, all of which Tenant hereby agrees to perform, observe and comply with.

7.09 Tenant's Fixtures and Personal Property - The Tenant may install in the Leased Premises its usual fixtures and personal property in a proper manner; provided that no installation, repair or removal thereof shall interfere with or damage the mechanical or electrical systems or the structure of the Building. If the Tenant is not then in default hereunder, the Leasehold Improvements and personal property installed in the Leased Premises by the Tenant may be removed by the Tenant from time to time in the ordinary course of the Tenant's business or in the course of reconstruction, renovation or alteration of the Leased Premises by the Tenant as required or permitted hereunder, provided that the Tenant promptly repairs at its own expense any damage to the Leased Premises and the Building resulting from the installation and removal and provided further that in the case of removal of Leasehold Improvements except at the end of the Term or any Renewal Term, the Tenant shall, unless such Leasehold Improvement becomes excess to Tenant's needs, promptly replace such Leasehold Improvements with Leasehold Improvements of equal or greater quality and value, subject to the provisions of Section 4.01.

#### ARTICLE 8.00 TAXES

8.01 Taxes Payable by Landlord - Landlord or, at Landlord's option in respect of Tenant's taxes payable by Tenant pursuant to Section 4.05(1) of this Lease Tenant, shall pay promptly when due all Property Taxes which are imposed, levied, assessed or charged by a taxing or other authority having jurisdiction and which is payable in respect of the Leased Premises or the Property.

8.02 Taxes Payable by Tenant - Tenant shall pay promptly when due every tax, rate, levy, assessment fee and other charge which is imposed, levied, assessed or charged to or for the account of Tenant or the Leased Premises or any part thereof by a taxing authority having jurisdiction and which is payable upon or on account of:

- (a) operations at, occupancy of, or conduct of business in and from the Leased Premises; and
- (b) personal property in the Leased Premises or Leasehold Improvements if levied or assessed separately from taxes upon the remainder of the Land and the Building (hereafter "Business Taxes").

Tenant shall on request furnish Landlord with receipts for payment of Business Taxes and any amounts payable by Tenant under Section 8.01 within five (5) business days of Landlord's request; provided that if Landlord so elects by notice to Tenant, Tenant shall add any amounts payable under Sections 8.01 and Section 8.02 to the monthly installments of Rent payable under Section 4.01 and Landlord shall remit the amounts to the appropriate authorities.

If requested by Landlord's mortgagee, Tenant shall remit any taxes payable by Tenant pursuant hereto, directly to such mortgagee or forward to such mortgagee all assessment notices, tax bills and other notices affecting the imposition of Property Taxes or proof of payment of such Property Taxes over which Tenant exercises control.

8.03 Tax Increase Attributable to Tenant - If any Property Taxes increase in respect of the Property by reason of the use or occupation by the Tenant, the use of the Leased Premises by Tenant, the school support of the Tenant, or any other reason peculiar to Tenant, the portion of such Property Taxes in each year attributable to such reason, as determined by Landlord, shall be paid by Tenant to Landlord at least fifteen (15) days prior to the due date

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for payment thereof by Landlord, and in addition to Property Taxes and other taxes otherwise payable by Tenant under this Lease.

8.04 G.S.T. - The Tenant shall pay to Landlord the amount of G.S.T. accruing due with respect to Rent at the time the Rent is due and payable to Landlord under this Lease. Tenant's obligation to pay G.S.T. under this Section shall not be limited or precluded by any limitation contained in this Lease upon Landlord's right to recover or receive payment from Tenant for taxes upon Landlord's income or profits or otherwise.

8.05 Right to Contest - Each of Landlord and Tenant (provided Tenant is legally entitled to do so) shall have the right to contest in good faith the validity or amount of any tax, rate, levy, assessment, fee or other charge which, in the case of Landlord, relates to taxes payable pursuant to Section 8.01 and which, in the case of Tenant, Tenant is responsible to pay under Section 8.02. Landlord may defer payment of any amounts payable by it pursuant to Section 8.01 and Tenant may, upon notice to Landlord, defer payment of any amounts payable by it pursuant to Section 8.02, in each case to the extent permitted by law; provided that no contest by Tenant shall involve the possibility of forfeiture, sale or disturbance of Landlord's interest in the Leased Premises or the imposition of any penalty or interest, charge or lien and that, upon the final determination of any contest by Tenant, Tenant shall immediately pay and satisfy the amount found to be due, together with any costs, penalties and interest. If as a result of any contest by Tenant, any tax, rate, levy, assessment, fee or other charge is increased, Tenant shall be responsible for the full amount of such increase in respect of both the period to which the contest relates and to any subsequent tax periods which commence during the Term.

Tenant shall not contest any amounts payable by it under Section 8.02 or appeal any assessment therefore except as follows:

- (a) Tenant will deliver to Landlord any notices of appeal or other like instrument and obtain Landlord's consent thereto, which consent will not be unreasonably withheld, before filing the same;
- (b) Tenant will deliver whatever security Landlord reasonably requires;
- (c) Tenant will promptly and diligently prosecute the contest or appeal at its sole expense; and
- (d) Tenant will keep Landlord fully informed thereof.

#### ARTICLE 9.00 INSURANCE AND LIABILITY

9.01 Landlord's Insurance - During the Term, Landlord, shall place insurance coverage on and with respect to the Property as would a prudent owner of similar property, which coverage shall include the following:

- (a) all risks insurance for the full reconstruction value of the Property as determined by Landlord; the policy shall be subject to replacement cost endorsement and stated amount co-insurance clause, plate glass insurance excluded;
- (b) as an extension to the insurance maintained pursuant to Subsection 9.01(a), insurance on the rental income derived by Landlord from the Property on a gross rental income form with a period of indemnity of not less than the period, as estimated by Landlord from time to time, which would be required to rebuild and, if necessary, to re-tenant the Property in the event of the complete destruction thereof;
- (c) comprehensive boiler and machinery insurance if applicable, including repair or replacement coverages;
- (d) bodily injury and property damage liability insurance; and
- (e) such other insurance which is or may become customary or reasonably for owners of properties similar to the Property to carry in respect of loss of, or damage to, the Property or liability arising therefrom.

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The insurance referred to in this Section shall be carried in amounts determined reasonable by Landlord and shall be obtained from a company or companies and be of a type and form satisfactory to Landlord. The insurance shall be written in the name of Landlord with loss payable to Landlord and to any mortgagee (including any trustee under a deed of trust and mortgage) of the Property from time to time if required by Landlord. The policies of insurance referred to in Subsections 9.01(a), (b) and (c) shall contain a waiver of the insurer's right of subrogation as against Tenant. Landlord, so long as Tenant fully maintains insurances as required by section 9.02 hereof hereby waives its rights of recovery against Tenant, its employees and those for whom it is in law responsible with respect to occurrences required to be insured against pursuant to this Section 9.01.

Notwithstanding full payment by Tenant of its share of the insurance premiums as provided for in this Lease, no insurable interest is conferred upon Tenant under policies obtained pursuant to this Section 9.01. Except as specifically provided in this Lease, Landlord shall in no way be accountable to Tenant regarding the use of the insurance proceeds arising from any Claims. Nothing contained in this Lease shall require Landlord to insure any of Tenant's equipment or stock, or any other personal property owned by or brought into the Leased Premises by Tenant or its invitees whether affixed to the Building or not, or the Tenant's Leasehold Improvements. Any and all deductibles shall form part of the Operating Costs.

**9.02 Tenant's Insurance** - At its own expense Tenant shall take out and thereafter maintain in force at all times during the currency of this Lease insurance policies as follows:

- (a) all risks insurance on Tenant's Leasehold Improvements and on all other property of every description, nature and kind owned by Tenant or for which Tenant is legally liable, which is installed, located or situate within the Leased Premises or elsewhere on the Property in an amount not less than the full replacement cost thereof without deduction for depreciation; such insurance shall be subject to a replacement cost endorsement and shall include a stated amount co-insurance clause and a breach of conditions clause;
- (b) comprehensive or commercial general bodily injury and property damage, including fire damage and third party liability insurance in the minimum amount of \$2,500,000 and in a form satisfactory to Landlord and including the following extensions: owners and contractors protective; products and completed operations; personal injury; occurrence basis property damage; blanket contractual; and non-owned automobile; such insurance shall include Landlord and Landlord's mortgagee as additional named insured, and shall protect Landlord and Landlord's mortgagee in respect of Claims by Tenant as if Landlord and Landlord's mortgagee were separately insured; such insurance shall also include cross liability and severability of interest clauses;
- (c) business interruption insurance on the extra expense form providing all risks coverage in an amount satisfactory to Landlord;
- (d) comprehensive pressure vessel and machinery insurance if applicable, including repair or replacement endorsement in an amount satisfactory to Landlord and providing coverage with respect to all objects introduced into the Leased Premises by or on behalf of Tenant or otherwise constituting Tenant's Leasehold Improvements; and
- (e) any other form of insurance in such amounts and against such risks as Landlord may from time to time reasonably require.

After the completion of the fifth (5th) Lease Year of the Term, the insurance policies referred to in this Section shall be subject to such higher limits as Tenant, or Landlord acting reasonably, or any mortgagee of Landlord's interest in the Property, acting reasonably, may require from time to time and against such additional risks and in such amounts as a prudent tenant would insure. The policies of insurance referred to in Section 9.02 shall contain a waiver of the insurer's right of subrogation as against Landlord. Tenant hereby waives its right of recovery against Landlord, its employees and those for whom Landlord is in law responsible with respect to occurrences required to be insured against by Tenant hereunder. Any deductibles in the Tenant's insurance policies shall be borne by Tenant and shall not be recovered or attempted to be recovered from Landlord. In addition, all such policies shall be

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non-contributing with, and will apply only as primary and not excess to, any insurance proceeds available to Landlord.

9.03 Evidence of Insurance - Tenant shall provide to Landlord at the commencement of the Term and on the commencement of each Lease Year and in any event, at least 30 days prior to the renewal of all insurance referred to in Section 9.02, and promptly at any time upon request at the option of Landlord, either certified copies of insurance policies or a certificate of insurance, in a form standard in the insurance industry, evidencing such insurance coverages. The delivery to Landlord of a certificate of insurance or a certified copy of an insurance policy or any review thereof by or on behalf of Landlord shall not limit the obligation of Tenant to provide and maintain insurance pursuant to the requirements of this Lease or derogate from Landlord's rights if Tenant shall fail to fully insure. All policies of insurance shall be placed with a company or companies reasonably satisfactory to Landlord. All policies shall provide that the insurance shall not be canceled or changed to the prejudice of Landlord without at least 30 days prior written notice given by the insurer to Landlord.

9.04 Placement of Insurance by Landlord - If Tenant fails to place or maintain all or any of the insurance coverage's required in this Lease, Landlord may, at its option, after delivery of notice to Tenant and the expiration of 15 days from such delivery place all or any part of such insurance and Tenant shall pay to Landlord upon demand all costs incurred by Landlord in so doing including, without limitation, the premium or premiums for such insurance, together with Landlord's administrative fee of 10% of such premium.

9.05 Hazardous Use - The Tenant shall not do, omit to do or permit to be done anything which will cause or may have the effect of causing the cost of the Landlord's insurance in respect of the Property or any part thereof to be increased at any time during the Term or any policy of insurance on or relating to the Property to be subject to cancellation. Without waiving or limiting the foregoing prohibition, the Tenant shall pay to the Landlord upon demand, the amount of any increase in the cost of insurance caused by any such act or omission. The Tenant shall forthwith upon the Landlord's request comply with the requirements of the Landlord's insurers, cease any activity complained of and make good any circumstance which has caused any increase in insurance premiums or the cancellation or threatened cancellation of any insurance policy. If any policy of insurance in respect of the Property or any part thereof is canceled or becomes subject to cancellation by reason of anything so done or omitted or permitted to be done, the Landlord may without prior notice terminate this Lease and re-enter the Leased Premises. Landlord acknowledges and covenants to make Landlord's insurers aware of Tenant proposed use of the property and agrees that the use pursuant to Section 5.01 does not, per se, constitute hazardous use.

9.06 Limitation of Landlord's Liability - Landlord shall not be liable, unless such would constitute a breach of Landlord's covenants under this Lease, for the following: (a) any damage to the Leased Premises or any property located therein, or being delivered thereto or therefrom, caused by any latent defect or by steam, water, rain or snow which may leak into, issue or flow from, any part of the Leased Premises or (b) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring or (c) any damage caused by interruption or failure of any utility (d) any damage resulting from the exercise of Landlord's control over the Property or any part thereof (e) any damage however caused to inventory, equipment (including, without limitation, computer software and the information stored therein), stock-in-trade, books, records, files, money, securities, negotiable instruments, papers or other valuables, (f) any act or omission on the part of any contractor from time to time engaged to perform janitorial, security or other service or work in or about the Leased Premises or the Property or any business interruption or loss.

9.07 Indemnity - Tenant shall indemnify and save harmless Landlord and its agents and employees from any and all Claims growing or arising out of:

- (a) any breach, violation or non-performance of any covenant, condition or agreement in this Lease on the part of Tenant to be fulfilled, kept, observed and performed by the Tenant;
- (b) any damage to property in or about the Leased Premises;
- (c) any injury or damage to any Person (including death resulting at any time therefrom) occurring in the Leased Premises or as a result of the business, acts or omissions of the Tenant or any other Person authorized or permitted by Tenant to

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occupy the Leased Premises or any of its respective employees, agents, contractors, or visitors; and

(d) any legal or administrative action commenced by, or claim made by or notice from, any third party, including, without limitation, any government authority, to or against the Landlord and pursuant to or under Environmental Laws or concerning a release or alleged release of a Pollutant at the Leased Premises into the environment, and related to or as a result of the operations of the Tenant or those acting under its authority or control at the Leased Premises.

Notwithstanding anything else herein contained, in the event of any occurrence or loss which is not covered by any insurances required to be maintained hereunder, the Landlord shall indemnify and save Tenant harmless against any loss suffered by Tenant as a result of Landlord's and those for whom it is in law responsible, negligence and Tenant shall indemnify and save Landlord harmless against any loss suffered by Landlord as a result of Tenant's, its agents, subtenants or invitees negligence.

#### 9.08 Environmental Issues

(1) Landlord's Requirements - The Tenant shall not bring into or allow to be present in the Leased Premises or the Property any Pollutants except those of the Tenant shall have notified the Landlord in writing in advance and the Landlord shall have provided his written consent thereto.

(2) Intentionally Deleted

(3) Governmental Requirements - If any governmental authority having jurisdiction shall require the clean-up of any Pollutant held, released, abandoned or placed upon the Leased Premises or the Property or released into the environment by the Landlord, Tenant or any person for whom it is in law responsible or over whom the Landlord or Tenant may reasonably be expected to exercise authority or control, or as it relates to Tenant, in the course of the use, occupancy, or conduct of business in, the Leased Premises, then the Tenant or Landlord as the case may be, shall, at its own expense without recovery, carry out all required work and shall provide to the other full information with respect to all such work and comply with the reasonable requirements of the governmental authority with respect to such work. Except for any asbestos introduced to the Leased Premises by the Tenant, Landlord is responsible for any asbestos existing or released on the Leased Premises.

(4) Environmental Covenants - In addition to and without restricting any other obligations or covenants herein, the Tenant covenants that it will:

(a) comply in all materials respects with all Environmental Laws (including, but not limited to, obtaining any required permits, licenses or similar authorizations) relating to its occupation or use of the Leased Premises or the Property by the Tenant, its sub-tenants or others for which it is responsible at law; and

(b) promptly notify the Landlord in writing of any charges laid by any governmental authority alleging violation of any Environmental Laws, including but not limited to spills or releases of Pollutants, relating to the Leased Premises or the Property or the operations therein of the Tenant or any Person for whom it is in law responsible or over whom the Tenant may reasonably be expected to exercise authority or control, and of any notice by any governmental authority alleging or concerning violation of, or imposing requirements or asserting responsibility under, or pursuant to, any Environmental Laws, and of any order made by any governmental authority against the Tenant. The Tenant shall also promptly notify the Landlord in writing of any notice received by it from any other third party concerning any release or alleged release of any Pollutants from the Leased Premises and/or Property. The Tenant undertakes to notify the appropriate regulatory authorities if so required under any Environmental Law within the time period set out in such law and failure by the Tenant to do so shall authorize but not obligate the Landlord to notify the regulatory authorities; and

(c) permit the Landlord upon 48 hours prior notice to Tenant, to enter and inspect the Leased Premises and the operations conducted therein; conduct tests and environmental assessments or appraisals; remove samples from the Leased Premises;

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examine and make abstracts from the copies of any documents records relating to the Leased Premises; and interview the Tenant's employees; all at such reasonable times and intervals as the Landlord may desire; and

(d) not cause or permit a release at or from the Leased Premises of any Pollutant except in compliance with Environmental Laws and not seek or permit at any time during the currency of this Lease to dispose of any Pollutant in the Leased Premises and/or on the Property without the prior written approval of the Landlord to do so; and

(e) not permit any Person to engage in any activity on the Leased Premises that may reasonably be anticipated to lead to a violation of any Environmental Laws or the imposition or assertion of liability or responsibility under any Environmental Laws on such Person, the Tenant or the Landlord, including without limitation, the issuance of an order; and

(f) upon expiration or termination of the Lease or any renewal thereof, remove any aboveground or underground storage tanks, pipes and other equipment associated with the swimming pool, installed at the Leased Premises by or on behalf of, the Tenant, including but not limited to removal of any product which is in or has escaped from any such tank or associated equipment, but excluding any tanks, pipes and associated equipment located on the Leased Premises as at the Commencement Date.

(g) promptly provide to the Landlord a copy of any environmental site assessment or investigation of the Pool Area conducted by or for the Tenant at the termination or earlier expiration of this Lease if obtained and only upon the reasonable request of any governmental authority having jurisdiction, retain environmental consultants approved by the Landlord, to carry out an environmental site assessment of the Leased Premises including such additional investigations as the environmental consultant may recommend upon completing a preliminary assessment or Phase I assessment, all of which shall be at the cost of the Tenant; and

(h) maintain all environmental and operating documents and records, including but not limited to permits relating to the operations at the Leased Premises of the Tenant or any Person for whom it is in law responsible or over whom, the Tenant may reasonably be expected to exercise authority or control, which may be reviewed by the Landlord at any time during the Term on forty eight (48) hours prior written notice (excepting emergencies, whether real or perceived, in which case no prior notice shall be required); and

(i) if requested by the Landlord, provide the Landlord with written confirmation of any prior or existing spills of Pollutants, non-compliance issues, notices, violations, orders; or

(j) if requested by the Landlord, the Tenant agrees to complete and execute the Certificate of Compliance, attached hereto as Schedule I, certifying that the Tenant is and has been since the date of the last Certificate of Compliance completed and executed by the Tenant or during the last twelve (12) months, whichever is the longer period, in compliance with all Environmental Laws.

Landlord covenants, represents and warrants that, as at the Commencement Date, to the best of its knowledge the Leased Premises and the Property are free of all Pollutants and be in compliance with all Environmental Laws and covenants that, subject to any Pollutants introduced to the Property by Tenant its agents or sub-tenants, the Property shall throughout the Term, remain free of all Pollutants and in compliance with all Environmental Laws. Any pollutants which are not directly attributable to Tenant, its sub-tenants or assignees, or which cannot be reasonably attributed to the use of the Leased Premises, shall be presumed to have been present at the Commencement Date and shall be the responsibility of Landlord as required by law or by the terms of this Lease. If Landlord is required by law to eliminate and remove any Pollutants for which it is responsible, it is agreed that such work undertaken may result in damage to the Leased Premises to which the provisions of Article 10 shall be deemed to apply. Except asbestos introduced to the Leased Premises by the Tenant, asbestos existing or released in the Building shall be removed by Landlord at its sole cost and expense.

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**(5) General Requirements**

- (a) **Pollutants** - If subject to this Section 9.08, the Tenant shall bring or create upon the Property or the Leased Premises any Pollutants or if the use by Tenant or conduct of the Tenant's business shall cause there to be any Pollutants upon the Property or the Leased Premises then, notwithstanding any statute or rule of law to the contrary, such Pollutants shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation of the Pollutants or the goods containing the Pollutants, to the Leased Premises or the Property and, notwithstanding the expire, repudiation, disclaimer or earlier termination of this Lease and, and at the option of the Landlord, any substance contaminated by such Pollutants shall become the property of the Tenant and the Tenant, or at the Landlord's option, the Landlord, shall remove such Pollutants and, if directed by the Landlord, any substance contaminated by such Pollutants from the Property and make good any damage done in so doing; all at the cost and expense of the Tenant and upon terms and conditions approved by the Landlord.
- (b) **Survival of Covenants etc.** - The obligations of the Tenant and the Landlord hereunder relating to Pollutants shall survive any assignment, expiry, repudiation, disclaimer or earlier termination of this Lease, except that Tenant shall not be held responsible or liable for such a claim caused by the acts of any assignee after an assignment of this Lease. To the extent that the performance of those obligations requires access to or entry upon the Leased Premises or the Property or any part thereof the Tenant shall have such entry and access after such expiration, repudiation, disclaimer or earlier termination only at such times and upon such terms and conditions as the Landlord may reasonably from time to time specify.

The Landlord may on the giving prior written notice to the Tenant and the failure by the Tenant to cure the breach pursuant to Section 11.05, at the Tenant's cost and expense, itself or by its agents, servants, employees, contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Tenant hereunder; but having commenced such work, the Landlord shall have no obligation to the Tenant to complete such work.

This Subsection 9.08(5)(b) supersedes any other provision of this Lease to the contrary.

**ARTICLE 10.00**  
**DAMAGE, DESTRUCTION AND EXPROPRIATION**

**10.01 Limited Damage** - If during the Term, the Leased Premises or any part thereof including any portion thereof providing access or services essential to the Leased Premises shall be destroyed or damaged by any hazard against which Landlord or Tenant is obligated to insure or has insured under Article 9.06, Landlord, using its insurance proceeds, if any, shall proceed with reasonable diligence to rebuild and restore or repair the Leased Premises and such access routes or services, as the case may be, in conformance with current laws. The covenants of Tenant to repair shall not include any repairs of damage required to be made by Landlord under this Section 10.01. Rent payable by Tenant from the date of such damage or destruction to the date of substantial completion of the rebuilding, restoration or repair as determined by Landlord's architect or engineer or availability of access or services, as the case may be, shall abate.

**10.02 Major Damage** - Notwithstanding anything in this Lease to the contrary, if in the opinion or determination Landlord's architect or engineer, acting reasonably rendered within thirty (30) days of the happening of damage or destruction, the Building shall be damaged or destroyed to the extent that any one or more of the following conditions exist:

- (a) the Building must be totally or more than eighty percent (80%) destroyed based on floor area;
- (b) the Leased Premises are rendered unfit or unsafe for occupancy and in the reasonable opinion of Landlord's architect or engineer the Leased Premises shall be incapable of being rebuilt or repaired or restored with reasonable diligence within 6 months after the rendering of such opinion;

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either Landlord or Tenant may, at its option, terminate this Lease by notice in writing to the other given within 60 days after the rendering of the opinion or determination by Landlord or Landlord's architect or engineer, as the case may be, and this Lease shall terminate from the date of such notice; and Tenant shall immediately surrender the Leased Premises and all interest therein to Landlord and the Rent shall be apportioned and shall be payable by Tenant only to the date of such notice and Landlord may re-enter and repossess the Leased Premises.

If the Landlord terminates the Lease for any of the above reasons, and if the Landlord elects to lease the Building (as it may be rebuilt) for the uses set forth in Section 8 of the Term Sheet within three (3) years following termination of the Lease, then the Landlord shall first offer to lease such space to the Tenant on the same terms and conditions as contained in this Lease, except for rent which shall be the rent for which the Landlord is prepared to lease such space. If the Tenant fails to accept such offer within thirty (30) days, then the Landlord shall be entitled to lease such space to a third party on terms no more favourable to such party than those offered to the Tenant without again re-submitting the offer to the Tenant, once again in accordance with the terms hereof.

10.03 No Abatement - Except as specifically provided in Section 10.00, there shall be no abatement of Rent, and Landlord shall have no liability to Tenant by reason of any injury to, loss of or interference with Tenant's business or property arising directly or indirectly from fire or other casualty, howsoever caused, or from the making of any repairs resulting therefrom or from any damage to the Property or any parts thereof.

10.04 Notify Landlord - Tenant shall immediately notify Landlord of any material defect in or damage to the Property.

10.05 Expropriation - If at any time during the currency of this Lease the whole or any part of the Leased Premises or the Property shall be taken by any lawful power or authority by the right of Expropriation, the Landlord shall give notice to the Tenant of such Expropriation of this Lease either in its entirety or only insofar as it affects the part of the Leased Premises taken by the lawful power or authority and Tenant may elect, by written notice to Landlord, to terminate this Lease as a result thereof. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term, but the parties shall each be entitled separately to advance their claims for compensation for the loss of their respective interests in the Leased Premises so taken; the Tenant with respect to relocation costs, the loss of its Leasehold interest and business interruption and the Landlord with respect to all other compensation arising from or related to such Expropriation of the Property and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If the whole or part of the Leased Premises are so Expropriated resulting in termination hereunder, the rights and obligations of the parties shall continue until the day on which the Expropriation is to take effect. Where used in this Section 10.05 "Expropriation" means expropriated by a governmental or municipal authority, or transferred, conveyed or dedicated in contemplation of a threatened expropriation and "Expropriated" and "Expropriating" have corresponding meanings.

#### ARTICLE 11.00 DEFAULT

11.01 Interest - Following the curative period in Section 11.05, Tenant shall pay monthly to Landlord interest at a rate per annum equal to the lesser of the Prime Rate plus 5% and the maximum rate permitted by applicable law upon all Rent required to be paid hereunder from the due date for payment thereof until the same is fully paid and satisfied.

11.02 Costs of Enforcement - Tenant shall pay to Landlord forthwith upon demand all costs and charges (including legal fees on a solicitor and his own client basis) reasonably incurred either during or after the currency of this Lease in enforcing payment of Rent hereunder and in obtaining possession of the Leased Premises after default of Tenant or upon expiration or earlier termination of this Lease or in enforcing any covenant, proviso or agreement of Tenant herein contained, or in determining Landlord's rights or Tenant's obligations under this Lease or both. All such costs and charges shall be paid by Tenant to Landlord forthwith upon demand.

11.03 Performance of Tenant's Obligations - All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant, at Tenant's sole cost and expense, and without any abatement of Rent. If Tenant fails to perform

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any act to be performed by it hereunder, then in the event of an emergency, or if the failure continues for 10 business days following notice thereof (or such longer period as Landlord, acting reasonably agrees is required to remedy such default), Landlord may, upon further notice to Tenant, perform the act without waiving or releasing Tenant from any of its obligations relative thereto; but having commenced to do so, Landlord may cease to do so without completing performance thereof. Tenant shall pay to Landlord forthwith upon demand all sums paid and costs incurred by Landlord in so doing, plus 10% of the cost for overhead and supervision, together with interest thereon at the rate set out in Section 11.01 from the date payment was made.

11.04 Events of Default - Subject to Section 11.05, if and whenever:

- (a) all or any part of the Rent hereby reserved is not paid when due; or
- (b) the Term, any Renewal Term or any goods, merchandise, stock in trade, chattels or equipment of the Tenant is or are seized or taken or exigible in execution or in attachment or if a creditor takes possession thereof or if a judgement in excess of \$ 10,000 which has not been appealed, vacated or fully satisfied within 30 days is issued against the Tenant; or
- (c) Tenant or any Person constituting Tenant, takes any steps in furtherance of or suffers any order to be made for its winding-up or other termination of its corporate existence or becomes insolvent or commits an act of bankruptcy (as defined under the *Bankruptcy and Insolvency Act*) or becomes bankrupt or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors or becomes involved in voluntary or involuntary winding-up proceedings or if a receiver or receiver/manager shall be appointed and such sufferance, commitment or appointment is not being contested diligently by Tenant or is not removed within 45 days of such sufferance, commitment or appointment, for all or any part of the business, property, affairs or revenues of Tenant; or
- (d) Tenant makes a bulk sale of its goods (other than in compliance with the *Bulk Sales Act*) or moves or commences, attempts or threatens to move its goods, chattels and equipment, or any of them out of the Leased Premises (other than in the normal course of its business) or ceases or threatens to cease to conduct business in the Leased Premises for more than 60 days; or
- (e) Tenant fails to move into or take possession of the Leased Premises or vacates or abandons the Leased Premises in whole or in part for longer than sixty (60) days or fails or ceases to actively carry on business in the whole of the Leased Premises for longer than sixty (60) days; or
- (f) Tenant fails to observe and perform the covenants, agreements, provisions, stipulations and conditions herein contained to be observed and performed by Tenant.
- (g) any Transfer occurs except as permitted by, and in accordance with, Article 12.00; or
- (h) any Pollutant is introduced to the Property by the Tenant and is present in the Leased Premises without the prior written consent of Landlord or otherwise than in compliance with terms conditions imposed by Landlord in giving its consent thereto; or
- (i) any policy of insurance taken out by either Landlord or Tenant with respect to the Property shall be canceled by reason of any act or omission of Tenant; or
- (j) Tenant is in material breach of the Rules and Regulations set forth in Schedule "E" and such breach interferes with the use and enjoyment of the Property by other tenants of the Property or puts at risk the interests of the Landlord in and to the Property.

then Landlord shall be entitled to any or all of those remedies set out in Section 11.05. Each of the foregoing circumstances constitutes as "Event of Default" for the purposes of this Lease.

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11.05 Remedies on an Event of Default - Upon the happening of an Event of Default, the Landlord shall give immediate written notice to the Tenant and the Tenant shall have, in the case of monetary defaults, three (3) business days to remedy such default after receipt of such notice and in the case of non-monetary defaults, ten (10) business days to remedy such default unless a longer period of time is reasonably required to rectify the breach. Landlord may, at its option, and in addition to and without prejudice to all rights and remedies of Landlord available to it either by any other provision of this Lease or by statute or the general law;

(a) be entitled to the full amount of the current month's and the next ensuing 3 months' installments of Rent which shall immediately become due and payable, and Landlord may immediately distrain for the same together with any arrears then unpaid;

(b) without notice or any form of legal process, forthwith re-let or sublet the Leased Premises or any part or parts thereof for whatever term or terms and at whatever rent and upon whatever other terms, covenants and conditions Landlord considers advisable including, without limitation, the payment or granting of inducements all on behalf of Tenant; and on each such re-letting or subletting the rent received by Landlord therefrom will be applied first to reimburse Landlord for any such inducements and for any expenses, capital or otherwise, incurred by Landlord in making the Leased Premises ready for re-letting or subletting; and secondly to the payment of any costs and expenses of re-letting or subletting including brokerage fees and legal fees on a solicitor and his own client basis; and third to the payment of Rent; and the residue if any will be held by Landlord and applied to payment of Rent as it becomes due and payable. If rent received from re-letting or subletting during any month is less than Rent to be paid during that month hereunder, Tenant will pay the deficiency which will be calculated and paid monthly on or before the first day of every month; and no re-letting or subletting or subletting of the Leased Premises by Landlord or entry by Landlord or its agents upon the Leased Premises for the purpose of re-letting or subletting or other act of Landlord relating thereto including, without limitation, changing or permitting a sub-tenant to change locks, will be construed as an election on its part to terminate this Lease unless a written notice of termination is given to Tenant; and if Landlord elects to re-let or sublet the Leased Premises without terminating, it may afterwards elect to terminate this Lease at any time by reason of any Event of Default then existing;

(c) seize and sell such goods, chattels and equipment of Tenant as are in the Leased Premises and apply the proceeds thereof to all Rent to which Landlord is then entitled under this Lease. Any such sale may be effected by public auction, private sale or otherwise, and either in bulk or by individual item, or partly by one means and partly by another, all as Landlord in its sole discretion may decide;

(d) terminate this Lease by leaving upon the Leased Premises notice in writing of the termination, and such termination shall be without prejudice to Landlord's right to damages; it being agreed that Tenant shall pay to Landlord on demand as damages the loss of income of Landlord to be derived from this Lease and the Leased Premises for the unexpired portion of the Term had it not been terminated;

(e) re-enter into and upon the Leased Premises or any part thereof in the name of the whole and repossess and enjoy the same as of Landlord's former estate, anything herein contained to the contrary notwithstanding;

and Tenant shall pay to Landlord forthwith upon demand all reasonable expenses of Landlord in re-entering, terminating, re-letting, collecting sums due or payable by Tenant or realizing upon assets seized or otherwise exercising its rights and remedies under this Section including tenant inducements, leasing commissions, legal fees (on a solicitor and his own client basis) and all disbursements and the expense of keeping the Leased Premises in good order, repairing the same and preparing them for re-letting.

11.06 Availability of Remedies - The Landlord may from time to time resort to any or all of the rights and remedies available to it upon the occurrence of an Event of Default either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other additional rights or remedies available to the Landlord by statute or by law.

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11.07 Waiver - If the Landlord shall overlook, excuse, condone or suffer any default, breach or non-observance by Tenant of any obligation hereunder, this shall not operate as a waiver of the obligation in respect to any continuing or subsequent default, breach or non-observance, and no such waiver shall be implied but shall only be effective if in writing.

The Landlord's acceptance of Rent after a default is not a waiver of any preceding default under this Lease even if the Landlord knows of the preceding default at the time of acceptance of the Rent. No term, covenant or condition of this Lease will be considered to have been waived by the Landlord or the Tenant unless the waiver is in writing. The Tenant waives any statutory or other rights in respect of abatement, set-off or compensation in its favour that may exist or come into existence hereafter with respect to Rent.

11.08 Waiver of Exemption and Redemption - Notwithstanding anything contained in any statute now or hereafter in force limiting the right of distress, none of the Tenant's goods, equipment or Trade Fixtures in the Leased Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and this agreement of the Tenant in this Section may be pleaded as an estoppel against the Tenant.

11.09 Companies' Creditors Arrangement Act - By virtue of its interest in this Lease, the importance of Tenant continuing to carry on business in the Leased Premises in accordance with this Lease, and the Landlord's entitlement to damages where this Lease is terminated by reason of an Event of Default, Landlord does and will unless otherwise ordered by a court of competent jurisdiction (despite any changes in circumstances of Tenant or its business) constitute a separate class or category of creditor in any plan of arrangement or other proposal submitted by or on behalf of Tenant under the Companies' Creditors Arrangement Act of Canada or any similar legislation for bankrupt or insolvent debtors.

11.10 Repudiation of Lease - Notwithstanding any statute or rule of law to the contrary, in the event of a repudiation of this Lease by the Tenant under the Bankruptcy and Insolvency Act (Canada) or any other present or future statute for bankrupt or insolvent debtors, the Tenant covenants and agrees:

(a) that the Landlord shall have no further liability to pay to the Tenant or any third party any amount of remaining security deposit, prepaid rent or prepaid taxes or any amount on account or in respect of any tenant inducement, leasehold improvement allowance, lease takeover or lease subsidy or any other concession or inducement otherwise provided to the Tenant under or with respect to this Lease, and any Rent-free period otherwise provided to the Tenant hereunder shall be null and void and of no further force or effect and Rent shall be payable in full hereunder without regard to any such Rent-free period; and

(b) that in the event of repudiation during the Term, First Renewal Term or Second Renewal Term pay to the Landlord forthwith upon demand as damages for the loss of income of the Landlord to be derived from this Lease and the Leased Premises for the unexpired portion of the Term and First and Second Renewal Terms had this Lease not been repudiated, the sum set forth in the second paragraph of section 3.02

#### ARTICLE 12.00

#### ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS

12.01 Limitation - Tenant will not cause or permit a Transfer without the prior written consent of Landlord, and then only as provided in this Article. When no Event of Default exists, that consent shall not be unreasonably withheld with respect to a Transfer which is not by way of mortgage of this Lease.

12.02 Permitted Transfers - The Tenant shall be entitled, without the Landlord's Consent, to assign the Lease or sublease a portion of the Leased Premises to an affiliate or subsidiary of the Tenant. In addition, The Landlord hereby consents to the Tenant entering into a sublease with a qualified pool operator in respect of the Pool Area and further agrees to Tenant entering into a sub-lease with a qualified indoor rock-climbing operator in respect of such portion of the Leased Premises as Tenant in its sole discretion deems advisable, provided however that the total square footage of the Leased Premises subject to such sub-lease for the purposes of an indoor rock-climbing operation does not exceed 2,500 square feet (all of the foregoing hereafter referred to as the "Permitted Transfers"). If Tenant wishes to assign this

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Lease or sublet or otherwise Transfer (as the case may be) to a named third party, Tenant shall first advise Landlord in writing of the terms, conditions, rents, parties and particulars of such assignment, sublease or transfer and Landlord shall be entitled to receive such financial information on any Transferee as Landlord, acting reasonably, may require to ensure the financial capability of such Transferee. Any assignment or subletting by the Tenant shall not relieve the Tenant of its obligations under the Lease.

#### 12.03 Consent

(a) **Information** - Any request for the consent of Landlord to any Transfer shall be in writing and accompanied by full particulars of the terms of the proposed Transfer, and shall provide detailed information as to the identity, business and financial status of the proposed Transferee as Landlord may reasonably require.

(b) **Time** - Tenant will give Landlord a period of (10) business days following receipt of sufficient information to make a determination concerning the matters which Landlord considers relevant (including, without limitation, the information referred to in subsection 12.03(a)) to notify Tenant in writing that Landlord either gives or refuses to give its consent to the proposed Transfer.

(c) **Costs** - All costs associated with considering or the giving of such consents and the preparation of necessary documentation as provided herein, including Landlord's reasonable legal fees (on a solicitor and his own client basis) shall be payable by Tenant to Landlord forthwith upon demand as set forth in section 12.05(d) hereunder.

(d) **Basis of Consent** - Notwithstanding anything in the *Landlord and Tenant Act* or any other statute or law and without limiting the grounds upon which a consent may be refused, the Landlord will not be deemed to be unreasonable in refusing consent when:

(1) the giving of such consent would place the Landlord in breach of any agreement between Landlord and its institutional mortgagee acting reasonably or in breach of any other tenant's lease in the Property if the proposed use by the Transferee is not the same as, or reasonably connected to, that of the Tenant as contemplated by section 8 of the Term Sheet;

(2) such consent is requested for a mortgage or charge, creating a mortgage of this Lease provided that Landlord will not, acting reasonably, prohibit Tenant from obtaining an operating credit facility in respect of its business conducted from the Leased Premises;

(3) the Transferee in the opinion of the Landlord, acting reasonably, (i) does not have a history of successful business operation in the business to be conducted in the Leased Premises, (ii) does not have a good credit rating or a substantial net worth, or (iii) there is a history of default under other leases by the Transferee or by companies or partnerships that the Transferee was a principal shareholder of or a partner in at the time of the defaults;

(4) in the case of a Transfer to a subtenant of less than the entire Leased Premises, if such would result in a configuration which would require access to be provided through space leased or held for lease to another tenant or improvements to be made outside of the Leased Premises.

(6) the required information received from the Tenant or the Transferee is not sufficient in the Landlord's opinion acting reasonably and in good faith, to enable the Landlord to make a determination concerning the matters set out above; or

(7) the use of the Leased Premises by the proposed Transferee will not be as a health and fitness facility.

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In no event shall any Transfer to which the Landlord may have consented release or relieve the Tenant or any Indemnifiers from its obligations to fully perform all the terms, covenants and conditions of this Lease, the Indemnity Agreement or any renewals or extensions of this Lease or the Term, on its part to be performed and in any event the Tenant shall be liable for the Landlord's reasonable costs incurred in connection with the Tenant's request for consent as set out in subsection 12.05(d).

**12.04 Receipt of Payments -** No acceptance by Landlord of Rent or other payments made by a Transferee, or made by any other Person on behalf of the Transferee or Tenant, is:

- (a) a waiver of the requirement for Landlord's consent to every Transfer or of Landlord's remedies and rights;
- (b) the acceptance by Landlord of the Transferee as Tenant;
- (c) a release of Tenant by Landlord with respect to any unpaid Rent; or
- (d) a release of Tenant from its obligations under this Lease.

Any Transfer which is consented to by Landlord under this Article shall be conditional, whether or not so stated, upon the Transferee, jointly and severally with the Transferor, entering into a written agreement directly with Landlord assuming the obligations of Tenant hereunder.

**12.05 Effect of Transfer**

- (a) No Transfer shall relieve Tenant of its obligations under the Lease, unless specifically so provided in writing;
- (b) the Transferor, unless the Transferee is a sub-tenant of the Tenant, will retain no rights under this Lease in respect of obligations to be performed by the Landlord or in respect of the use or occupation of the Leased Premises after the Transfer and will execute an Indemnity Agreement on the Landlord's standard form, as agreed to by Tenant acting reasonably, in respect of obligations to be performed after the Transfer by the Transferee;
- (c) the Transferee shall, if, and when, required by the Landlord, jointly and severally with the Tenant, enter into an agreement directly with the Landlord agreeing to be bound by this Lease as if the Transferee had originally executed this Lease as the Tenant, and the Tenant will not be released nor relieved from its obligations under this Lease including, without limitation, the obligation to pay Rent; and
- (d) any documents relating to a Transfer or the Landlord's consent may, at the Landlord's option, be prepared by the Landlord or its solicitors and a reasonable, the total cost of which shall not exceed Four Hundred and Fifty Dollars (\$450.00) increased by the Consumer Price Index (Metropolitan Toronto Index, all items) (the "CPI") with a base index of 100 being the CPI as published by Statistics Canada as at the Commencement Date. . In all events, prior to entering into any sub-lease or Transfer agreement, Tenant shall submit all documents or agreements effectuating such sub-lease or Transfer to Landlord and all such documents and agreements shall be in form and content satisfactory to Landlord and its counsel, acting reasonably.

**12.06 Subsequent Transfers -** Landlord's consent to a Transfer shall not be deemed to be a consent to any subsequent Transfer whether or not so stated.

**12.07 Profit Rents upon Subleases -** In the event of any Transfer by the Tenant by virtue of which the Tenant receives a rent in the form of cash, goods and services from the Transferee which is greater than the Rent payable hereunder to the Landlord, the Tenant will, unless the Transferee also operates from the Leased Premises principally a health and fitness facility including such other uses permitted by Section 8 of the Term Sheet, pay any such excess to the Landlord in addition to all Rent payable under this Lease, and such excess rent shall be deemed to be further Rent payable hereunder.

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**ARTICLE 13.00**  
**TRANSFERS BY LANDLORD**

13.01 Sale, etc. by Landlord - Nothing in this Lease shall restrict the right of Landlord to sell, convey, assign, pledge or otherwise deal with the Property subject (except as provided in Section 13.02) to the rights of Tenant under this Lease. A sale, conveyance or assignment of the Property by Landlord shall operate to release Landlord from liability accruing under this Lease from and after the effective date thereof and Tenant shall thereafter, to the extent Landlord's successor in interest agrees in writing to assume and be bound by Landlord's obligations hereunder, look solely to Landlord's successor in interest.

13.02 Subordination - Subject to Section 13.01, this Lease is and shall be subject and subordinate in all respect to any and all mortgages (including deeds of trust and mortgage) and other interests in the Property or any part thereof now or hereafter created by Landlord, its predecessors or successors in title and all advances thereunder, past, present and future, and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant agrees to execute promptly and in any event within 10 days after request therefore by Landlord, creditor of the Landlord or the mortgagee or trustee under any such mortgage or deed of trust and mortgage any instrument confirming such subordination in such form as such mortgagee, creditor or trustee may request. Landlord hereby represents and warrants that it is the registered owner of the Property in fee simple and that, as of the Commencement Date, the only mortgage, or registered encumbrance over the Property is as set out in Schedule "F". Tenant acknowledges and agrees to cooperate with Landlord in the event Landlord is notified by its mortgagee of a breach under such documents and such breach results from any act or omission of the Tenant. Notwithstanding, Landlord shall obtain from each holder of a mortgage affecting the Leased Premises, a covenant of non-disturbance in which the mortgagee agrees to be bound by the terms of this Lease, in the event such mortgagee becomes a mortgagee in possession provided that the Tenant maintains the Lease in good standing.

13.03 Attornment - Tenant agrees, whenever requested by any mortgagee (herein called the "Purchaser") taking title to the Property by reason of foreclosure or other proceedings for enforcement of any such mortgage or deed of trust or by delivery of a deed in lieu of such foreclosure or other proceeding, to attorn to such Purchaser as tenant under all of the terms of this Lease. Tenant agrees to execute promptly and in any event within 10 days after a request by any Purchaser an instrument confirming such attornment in such form as may be required by it.

13.04 Effect of Attornment - Upon attornment pursuant to Section 13.03, this Lease shall continue in full force and effect as a direct lease between the Purchaser and Tenant, upon all of the same terms, conditions and covenants as are set forth in this Lease except that, after attornment, the Purchaser and its successors in title:

- (a) shall not be liable for any act or omission of Landlord occurring before the Purchaser took title to the Property;
- (b) shall not be subject to any offsets or defences which Tenant might have against Landlord; and
- (c) shall not be bound by any prepayment by Tenant for more than one month's installment of Rent unless the prepayment shall have been approved in writing by the Purchaser or by any predecessor in title of the Purchaser's interest as mortgagee of the Property.

**ARTICLE 14.00**  
**SURRENDER**

14.01 (a) Possession and Restoration - Upon the expiration or other termination of the Term or any renewals thereof, Tenant shall immediately quit and surrender possession of the Leased Premises and all Leasehold Improvements in substantially the condition in which Tenant is required to maintain the Leased Premises, reasonable wear and tear, insured perils, structural repairs excepted, and Tenant shall deliver to Landlord the keys, mechanical or otherwise, and combinations, if any, to the locks in the Leased Premises and the entries thereto. Notwithstanding the foregoing: (a) Landlord shall have the right, at its sole option, upon expiration or other termination of the Term or Renewal Term to require that Tenant remove or cause to be removed at Tenant's cost the swimming pool in the Leased Premises

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whether or not installed by or on behalf of the Tenant or installed by or on behalf of a previous tenant or during a previous term and to restore the area comprising the swimming pool to base building standards, broom swept condition; and (b) Tenant may, immediately before expiry of the Term or Renewal Term, as the case may be if no Event of Default exists, remove its trade fixtures and repair at its cost any damage occasioned thereby.

**14.02 Tenant's Leasehold Improvements, Trade Fixtures and Personal Property** - After the expiration or other termination of the Term, or in the event of the abandonment of the Leased Premises by the Tenant, all Leasehold Improvements, trade fixtures and personal property remaining in the Leased Premises shall be deemed conclusively to have been abandoned by Tenant and may be kept, sold, destroyed or otherwise disposed of by Landlord without notice or obligation to compensate Tenant or to account therefor.

**14.03 Overholding** - If Tenant remains in the Leased Premises or any part thereof after the expiration or other termination of the Term or applicable Renewal Term:

(a) without the consent of the Landlord, no yearly or other periodic tenancy shall be created, but Tenant shall be bound by the terms and provisions of this Lease (except any options thereby granted to Tenant) and except that Basic Rent shall be 150% of the amount otherwise then being paid hereunder; or

(b) with the consent of Landlord and agreement as to the Rent payable, the tenancy shall be month-to-month at the Rent agreed and otherwise on the terms and conditions of this Lease but without any option to renew.

Tenant shall promptly indemnify and hold harmless Landlord from and against all Claims against Landlord as a result of Tenant remaining in possession of all or any part of the Leased Premises after the expiration of the Term or any applicable Renewal Term.

#### ARTICLE 15.00 GENERAL

**15.01 Estoppel Certificates** - Tenant shall whenever requested by Landlord, a prospective purchaser or any mortgagee (including any trustee under a deed of trust and mortgage) promptly, and in any event within 10 business days after request, execute and deliver to Landlord, or to any party or parties designated by Landlord, a certificate in writing as to the then status of this Lease, including certification as to whether this Lease is in full force and effect, and is modified or unmodified, confirming the Rent payable hereunder and each element thereof and the then state of the accounts between Landlord and Tenant, the existence or non-existence of any Event of Default, and any other matters pertaining to this Lease in respect of which Landlord shall request a certificate, and provide such other information as may reasonably be required. The party or parties to whom such certificates are addressed may rely upon them.

**15.02 Entire Agreement** - There is no promise, warranty representation, undertaking, covenant or understanding by or binding upon Landlord except such as are expressly set forth in this Lease; and this Lease including the Term Sheet and Schedules hereto contains the entire agreement between the parties hereto. The Schedules form part of this Lease and the parties agree to perform and observe the covenants and agreements therein contained on their part respectively to be observed and performed. The Term Sheet forms part of this Lease.

**15.03 Registration** - Tenant acknowledges the confidential nature of this Lease and agrees with Landlord not to register or apply to register this Lease and waives any statutory obligation upon Landlord to execute and deliver this Lease in registrable form. If Tenant wishes to register a caveat or notice of this Lease, Landlord agrees to execute an acknowledgment or short form of lease sufficient for such purpose in such form as Landlord shall have approved and which shall preserve the confidentiality of the Rent and other financial terms of this Lease; provided that if there is a conflict between the provisions of such notice or short form of lease and this Lease, the provisions of this Lease shall govern. Tenant shall, at its own cost, promptly on request, after the expiration or earlier termination of the Term, discharge any such caveat or notice or any other registration carried out contrary to this Section.

**15.04 Unavoidable Delays** - If either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes,

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labour troubles, inability to procure materials or services, power failure, restrictive governmental laws, riots, insurrection, sabotage, rebellion, war, act of God, or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance is excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay.

**15.05 Notice** - Any notice under or with respect to this Lease shall be in writing and shall be sufficiently given if delivered personally or by prepaid registered mail or by telecopy or similar form of immediate transmission and if to Landlord, delivered to the executive officer of Landlord at Landlord's head office and to the local address, each set out in the Term Sheet; and if to Tenant, either delivered to Tenant and to any Indemnifier personally (or to a partner or officer of Tenant if tenant is a firm or corporation) at its address specified in the Term Sheet. Any notice shall be deemed to have been received on the business day following the date of delivery if personally delivered or sent by telecopy, telex or similar immediate transmission, or on the 3<sup>rd</sup> day following the date of delivery by registered mail. Either party may from time to time by notice in writing to the other designate another address in Canada in lieu of any address stated for it in item 1 or 2 of the Term Sheet.

If two or more Persons are named as or bound to perform the obligations of Tenant hereunder, notice given as herein provided to any one of the Persons constituting Tenant or so bound shall be deemed to be notice simultaneously to all Persons constituting Tenant and to all Persons so bound.

**15.06 Relationship of Parties** - Nothing contained in this Lease shall create any partnership between Landlord and Tenant or, except for the purposes of Subsection 11.05, the relationship of principal and agent.

**15.07 Governing Law** - This Lease shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the province of Canada in which the Property is situate, which shall be the venue of any proceedings if taken in respect of this Lease so long as that venue is permitted by law; and Tenant and/or Indemnifiers hereby consent to any application to change the venue of any proceedings taken elsewhere by Tenant and/or Indemnifiers.

**15.08 Amendment or Modification** - No amendment, modification or supplement to this Lease shall be valid or binding unless set out in writing and executed by Landlord and Tenant with the same degree of formality as the execution of this Lease.

**15.09 Construction of Lease**

(a) **Provisions** - All provisions of this Lease are to be construed as covenants and agreements.

(b) **Consultants** - Any reference in this Lease to Landlord's accountant, auditor, architect, surveyor or other consultant shall be deemed to be such duly qualified consultant appointed by Landlord in its absolute discretion for the purposes of this Lease or of any provision hereof; and they will act in accordance with this Lease and the principles and standards of their professions. In determining any cost allocation Landlord may rely on, and the parties shall be bound by, Landlord's consultants, subject to unreasonableness, or error demonstrated by Tenant.

(c) **Interpretation** - Wherever necessary or appropriate in this Lease, the plural shall be interpreted as singular, and vice-versa, and the masculine gender as feminine or neuter and vice-versa. When there are two or more parties bound by Tenant's covenants and agreements herein contained, their respective obligations shall be joint and several, and when there are two or more parties bound by Indemnifiers's covenants and agreements herein contained, their respective obligations shall be joint and several. If Landlord or Tenant or Indemnifiers shall consist or more than one legal entity, reference to Landlord or Tenant or Indemnifiers herein shall include reference to each such entity.

(d) **Exculpatory Provisions** - In all provisions of this Lease containing a release, indemnity or other exculpatory language in favour of Landlord or Tenant, reference to such party includes reference also to such party's agents and the directors, officers, and

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employees of Landlord and its agents while acting in the ordinary course of their employment, except as otherwise expressly provided for hereunder.

(e) Severability - If any part of this Lease or the application of it in any circumstance is to any extent held or rendered invalid, unenforceable or illegal:

(i) at the option of the Person for whose benefit that part is included, that part shall be deemed to be independent of the remainder of this Lease and severable from it and the invalidity, unenforceability or illegality of that part shall not affect, impair or invalidate the remainder of this Lease; and

(ii) that part continues to be applicable to and enforceable to the fullest extent permitted by law in all other circumstances.

(f) Captions and Headings - The captions and headings contained in this Lease are for convenience of reference only and are not intended to limit, enlarge or otherwise affect the interpretation of the Articles, Sections or Subsections to which they apply.

15.10 Successors and Assigns - Subject to specific provisions contained in this Lease to the contrary, this Lease shall enure to the benefit of and be binding upon (and references to the parties shall include reference to) the successors and assigns of Landlord and the heirs, executors and administrators and the permitted successors and assigns of Tenant and Indemnifiers.

15.11 Time of the Essence - Time shall be of the essence hereof.

15.12 Independent Legal Advice - The Tenant acknowledges that the Landlord hereby advises the Tenant to obtain advice from independent legal counsel prior to signing this Lease. Then Tenant further acknowledges that any information provided by the Landlord is not to be construed as legal, tax or any other expert advice and the Tenant is cautioned not to rely on any such information without seeking legal, tax or any other expert advice.

15.13 "For Lease" Signs - Landlord shall have the right during the last six (6) months of the Terms to place upon the Leased Premises a notice of reasonable dimensions that the Leased Premises are "for lease" and Tenant shall not obscure or remove such notice or permit the same to be obscured or removed.

15.14 Brokerage Commissions and Costs - The parties agree that each shall be solely responsible for its own costs and expenses incurred by it respectively, in relation to this Lease including, without limitation, all fees and expenses of lawyers, accountants, consultants, contractors, and real estate brokers, retained by such party. For purposes of clarification, Steven Doyle and/or Royal LePage shall be deemed to have been retained by the Landlord.

15.15 Further Schedules - Tenant and Landlord agree to comply with the provisions of Schedule G which relates to additional covenants, agreements and conditions, if any. If an Indemnifier is a party hereto the form of Indemnity Agreement to be executed by the Indemnifiers and the Landlord, as a separate agreement, is attached as Schedule H. Landlord acknowledges and agrees that all obligations of the Indemnifiers in respect of this Lease, shall expire and be of no force and effect in respect of any events occurring after July 8, 1997.

15.16 Survival of Covenants and Indemnities - All obligations of Tenant which arise during the Term or any extension thereof pursuant to this Lease and which have not been satisfied at the end of the such Term and all indemnities of Tenant contained in this Lease shall survive the expiration or other termination of this Lease.

15.17 Underground and Aboveground Storage Tanks - Only if underground and/or aboveground storage tanks are to be or have been installed by or on behalf of the Tenant, or will be used or have been used by the Tenant in the Leased Premises or the Property this Section 15.17 shall apply to the Tenant. A swimming pool filled with water conditioned for public swimming use shall be deemed not to be an underground storage tank. A whirlpool filled with water conditioned for public use shall be deemed not to be an above ground storage tank.

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Upon receiving the prior written consent of the Landlord, which consent may not be arbitrarily withheld, the Tenant may install aboveground and/or underground storage tanks in the Leased Premises or Property necessary to conduct its business in the Leased Premises providing the Tenant undertakes, at its cost to:

- (a) prior to installation, provide the Landlord with a description of any and all aboveground and underground storage tanks including but not limited to the construction of the tanks, age of the tanks and leak detection system; and
- (b) have a leak detection system in place for all underground storage tanks and associated piping, and ensure that the fill spouts of all underground storage tanks are protected by overflow or spill protection devices that meet provincial requirements and any and all other applicable Environmental Laws; and
- (c) have secondary containment in place for all aboveground storage tanks capable of holding 150% of the volume of the aboveground storage tanks, and ensure that the fill spouts of all aboveground tanks are protected by drip pads or some other means to prevent spillage into the environment; and
- (d) comply with all applicable Environmental Laws and all federal and provincial legislation, guidelines and regulations with respect to aboveground and underground storage tanks including but not limited to, their design, installation, operation, testing and removal, maintain records with regard to such operation and testing, and provide the Landlord with written confirmation of such compliance if so requested by the Landlord; and
- (e) allow the Landlord from time to time during the Term to review the Tenant's leak detection test records and product/inventory reconciliation and calculation records with regard to any aboveground and/or underground storage tanks; and
- (f) in the event of any spill, leak or unreconciled product loss from an aboveground and/or underground storage tank which is greater than five (5) litres, to immediately contact the party identified as the "Landlord's Contact" on the Term Sheet of this Lease.
- (g) in the event of any spill, leak or unreconciled product loss from any aboveground or underground storage tank remove, decontaminate, dispose of and replace the affected tanks, associated equipment, contents and any substance contaminated by same, all in compliance with the applicable Environmental Laws and all federal and provincial legislation, regulations and guidelines respecting aboveground or underground storage tanks.

15.18 **Parking** - The Tenant, its customers, employees and invitees shall have the right, at all times, to the use of the parking spaces in the parking lot located on the Lands in common with others entitled thereto, without any charge whatsoever. The Landlord may designate a portion of the parking lot for employee parking and all Tenants of the building shall use such designated parking. All parking on the Lands shall be for the exclusive use of the tenants of the Building and their invitees only.

15.19 **Landlord and Representatives to Act Reasonably and In Good Faith** - Landlord, and each person acting for Landlord, in making any determination (including, without limitation, a determination as to whether or not to grant any consent or approval required of it), designation, calculation, estimate, conversion or allocation under this Lease, will act reasonably and in good faith and each accountant, architect, engineer, surveyor or other professional person employed or retained by Landlord will act in accordance with the applicable principles and standards of such person's profession.

15.20 **Tenant's Remedies** - In addition to any other rights of Tenant hereunder, if Landlord defaults in the performance of any of its obligations hereunder and, after 10 business days (or such longer period as may reasonably be required to perform what is required to be performed to remedy such default), of Tenant providing written notice to Landlord of such default, Landlord fails to remedy such default, then Tenant may, upon the delivery of further notice to the Landlord, perform or cause to be performed all or part of what Landlord failed to perform and in so doing may incur any expense reasonably required to perform the obligations of Landlord, in which event the cost of performing such obligation shall be due and payable by

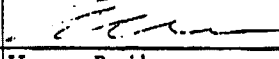
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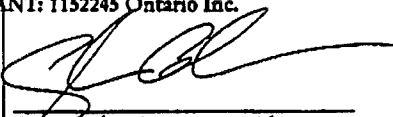
Landlord to Tenant forthwith within 10 business days after demand plus an administration charge of ten (10) percent of such cost. If Landlord fails to pay any monies to Tenant as and when due and payable hereunder, such unpaid amount shall bear interest from the due date until the date of full payment at the rate per annum set forth in section 11.01. Tenant may, at its option, deduct from the Rent becoming due hereunder, any and all amounts from time to time due and payable from Landlord to Tenant pursuant to this section

IN WITNESS WHEREOF the parties have executed this Lease.

LANDLORD: 550 Adelaide Properties Inc.

By:   
Dieter Hammer, President

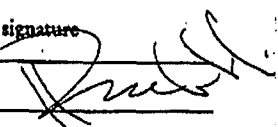
TENANT: 1152245 Ontario Inc.

Per:   
Name: STEVEN EPLIVAS  
Title: President

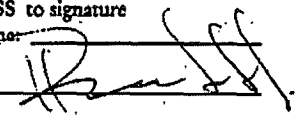
I/We have authority to bind the Corporation.

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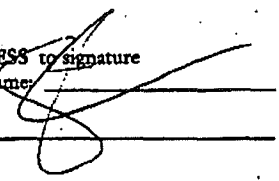
WITNESS to signature  
print name: \_\_\_\_\_



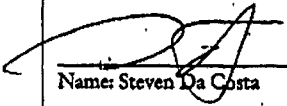
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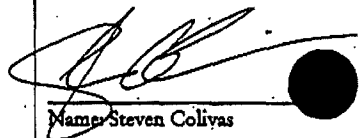


INDEMNIFIERS:  
for the purposes of section 15.15

 ●

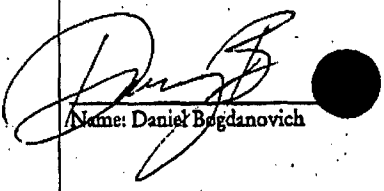
Name: Steven Da Costa

INDEMNIFIERS:

 ●

Name: Steven Colivas

INDEMNIFIERS:

 ●

Name: Daniel Bogdanovich

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SCHEDULE A

**LEASED PREMISES**

See Attached

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SCHEDULE B

LEGAL DESCRIPTION OF THE LAND

Part of Lot 34, Concession 1, designated as Part 3, Plan 64R-7209, Town of Markham,  
Regional Municipality of York, Land Registry Office for the Registry Division of  
York Region (No. 65)

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## SCHEDULE C

## DEFINED TERMS

"Basic Rent" means the collective amounts thereof set out in item 7 of the Term Sheet payable by Tenant to Landlord in respect of each year during the Term and any Renewal Term.

"Building" means the buildings, structures and improvements from time to time during the Term erected in, upon or under the Land and municipally identified in item 3 of the Term Sheet and all alterations and additions thereto and replacements thereof.

"Capital Tax" means the applicable amount of any tax or taxes including but not limited to Large Corporations Tax payable based upon or computed by reference to the paid-up capital or place of business of the Landlord as determined for the purposes of such tax or taxes; provided that for the purposes thereof, the "applicable amount" of such tax or taxes shall mean the amount thereof that would be payable if the Property were the only establishment of the Landlord in the jurisdiction of the taxing authority or if any other establishment of the Landlord therein were located outside that jurisdiction.

"common area" wherever used in this Lease or any schedule shall mean any cost, thing or area which is not attributable to any specific tenant but relates to the Property as a whole or all tenants generally.

"Commencement Date" means the first day of the Term as specified in item 6(a)(i) of the Term Sheet.

"Consultants" means any reference in this Lease to Landlord's accountant, auditor, architect, surveyor or other consultant each of whom shall be a duly qualified consultant appointed by Landlord in its absolute discretion for the purposes of this Lease. All such consultants will act in accordance with the provisions of this Lease and the principles and standards of conduct of their respective professions.

"Environmental Laws" shall include any applicable domestic federal, provincial, municipal, or local laws, statutes, regulations, ordinances, guidelines, policies, judge made laws or common laws and any orders of a court or governmental authority, relating to the protection and preservation of the environment, occupational health and safety or hazardous substances including without limitation the Environmental Protection Act, R.S.O. 1990, c.E.19 (Ontario) and the Canadian Environmental Protection Act, R.S.O. 1985 C.16 (4th Supp.) and any amended or successor legislation.

"G.S.T." means good and services tax being that tax payable pursuant to Parts VIII and IX of the Excise Tax Act, as amended and re-enacted from time to time and other like taxes levied from time to time.

"Land" means those lands legally described in Schedule B.

"Lease" means this lease, the Term Sheet, obligations of Indemnifiers, if any, and all Schedules attached hereto which are referred to in this Lease and every properly executed instrument which by its terms amends, modifies or supplements this lease, and includes the rights, obligations and interests arising hereunder and thereunder, but does not include any offer pursuant to which this lease has been entered into.

"Lease Year" means each successive period of 12 months during the Term commencing on the Commencement Date or on any other date specified by Landlord from time to time; provided that if the first Lease Year commences on a day other than the first day of a month, it shall continue until 12 months after the last day of the month in which it commences unless the Lease is sooner terminated as herein provided; and provided that if and whenever Landlord deems it necessary for Landlord's accounting purposes, Landlord may by written notice to Tenant specify the date upon which each subsequent Lease Year is to commence and in such event the then current Lease Year shall terminate on the day preceding the date specified in the notice and any appropriate adjustment shall be made in respect of any Lease Year which is as a result less than twelve calendar months; and provided further that the last Lease Year shall end on the last day of the Term even if it is less than 12 months.

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"Leased Premises" means the portion of the Property leased by the Tenant hereunder, namely that area of the Building referenced in section 4 of the Term Sheet and as set forth in Schedule "A".

"Leasehold Improvements" means:

(a) all improvements, fixtures, installations, alterations and additions from time to time made, erected or installed to or in the Leased Premises, in addition to beyond or replacing the base building standards including all partitions however affixed (excluding moveable and demountable partitions), millwork and affixed wall units, internal stairways, doors, hardware, light fixtures, carpeting and other applied floor finishes, and heating, ventilating and air-conditioning equipment and other building services not forming part of the Landlord's base building equipment and services;

(b) alterations, improvements and equipment made or installed for the exclusive benefit of the Tenant elsewhere in the Property;

in either case whether or not installed by or on behalf of the Tenant and whether or not installed during the Term including, without limitation, all fixtures in the Leased Premises but excluding all Tenant's trade fixtures.

"Occupancy Rent" means for each Lease Year, Tenant's proportionate share of all Operating Costs for that Lease Year, calculated on the basis set forth in section 4.05 and the actual Property Taxes separately assessed against the Leased Premises or the Tenant in respect of the Leased Premises.

"Operating Costs" means the total of all non capital common area costs and expenses calculated on a basis consistent with GAAP, reasonably incurred by Landlord (or on behalf of Landlord by any manager or agent of the Landlord) in any Lease Year with respect to repairing, maintaining, managing and operating the Property, net of those Deductions and Exclusions listed below. Such common area costs and expenses to include without profit or limitation and without duplication of costs and expenses:

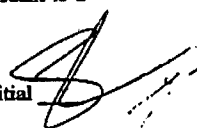
- (a) the total cost of Landlord insuring the Property, improvements and equipment and other personal property installed at the Property owned by the Landlord or for which Landlord is legally liable; all in accordance with the insurance obligations of the Landlord under this Lease;
- (b) cleaning, repairs, snow and ice removal, garbage and waste collection and disposal, striping, paving and repairing the parking and other areas, the cost of operating and maintaining the common area merchandise holding areas and the loading and receiving areas and truck docks; if any;
- (c) lighting, electricity, public utilities, loudspeakers, public address and fire equipment relating to the common areas of the Property;
- (d) policing, supervising, traffic control, and security;
- (e) amounts paid for all direct, arm's length labour and/or wages and other direct, arm's length payments including fringe benefits made to janitors, caretakers, landscapers, and other persons or employees (including wages and fees of a property manager) involved in the repair, maintenance, management and operation of the Property whether or not on-site, the total charges under service contracts with independent arm's length contractors employed in the management, repair, care, maintenance or cleaning of the Property on a competitive basis;
- (f) the cost to the Landlord of the rental of any leased equipment and signs, and the cost of building supplies, used by the Landlord in the maintenance of the common areas;
- (g) unless specifically assessed against and payable by tenants in respect of their premises exclusively, Property Taxes from time to time payable by the Landlord in respect of the Property as a whole, and Property Taxes levied or assessed or allocated by the Landlord against or to the common areas or against the Landlord on account of its ownership thereof;

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- (h) the cost of all utilities levied or incurred or reasonably allocated by the Landlord against or to the common areas, or against or to the Property as a whole if not separately metered to the Leased Premises and paid by the Tenant;
- (i) the cost of acquiring equipment for maintenance of the Property for an amount less than \$2,000.00 if expensed fully in the Lease Year in which such equipment is acquired;
- (j) depreciation on all common area fixtures, equipment and facilities which, by their nature, require periodic replacements or substantial replacement (but excluding buildings or structures and permanent parts thereof) at rates on the various items determined from time to time by the Landlord in accordance with generally accepted accounting principles;
- (k) the costs of services performed by arm's length Consultants appointed by Landlord as referred to in section 15.09(b), including any audit fees incurred in the preparation of any audited statements referred to hereunder;
- (l) all costs expenses fully in the Lease Year in which the expense is incurred, and cost of work done whether on-site or off-site which:
  - (i) is required by any insurers of the Property; or
  - (ii) is required by any governmental authority having jurisdiction;
- (m) all other reasonable common area costs and expenses of a non-capital nature relating to the repairs, maintenance, and operation of the Property for the benefit of all tenants of the Building incurred by the Landlord as are reasonably and customarily incurred by prudent owners of properties similar to the Property;
- (n) provided Landlord has not retained and paid a property manager pursuant to the provisions of subsection (e), and in lieu thereof, assumes management of the Property itself, Landlord's reasonable charge therefor, not to exceed 15% of such total annual Operating Costs in such Lease Year calculated without reference to Property Taxes; and

**Exclusions -** Operating Costs shall exclude, without duplication and without limiting the generality of the foregoing:

- (a) any interest or payments on any financing for the Land or Building, or any payments to lessors under head or ground leases, or interest and penalties incurred as a result of Landlord's late payment of any bill and any bad debt loss, rent loss or reserves for bad debt or rent loss;
- (b) tenant improvement allowances, leasing commissions and leasing costs including legal fees; and
- (c) the cost of providing utilities or performing improvements, work or repairs exclusively to or within any portion of the premises of any other tenants or occupants of the Property.
- (d) the cost to effect repairs to be exclusively performed by Landlord pursuant to section 6.01 which cannot be charged to Tenant.
- (e) the cost (excluding maintenance cost) of providing signage for any particular tenant except as pursuant to section 5.05 of the Lease.
- (f) interest on any depreciation.
- (g) Capital Taxes.
- (h) costs of performing Landlord's Work pursuant to Schedule "D" attached
- (i) energy conservation expenses.
- (j) costs and expenses relating to the work required by the City of Markham pursuant to a site plan agreement; and

Please Initial 

*[Handwritten Signature]*  
 ✓ WITHIN FIVE (5) YEARS OF ✓

- (k) repaving of the parking lot, undertaken by the Landlord <sup>at</sup> the Commencement of the Term.

**Deductions-** There shall be deducted from Operating Costs, without duplication, but only to the extent that related expenses were actually included therein for that Lease Year:

- (a) net recoveries that reimburse or reduce Operating Costs received by Landlord from tenants as a result of any act, omission, default or negligence of tenants or as the result of breaches by tenants of the provisions of their leases which have caused Landlord to incur such Operating Costs; and
- (b) net recoveries from insurance policies taken out by Landlord, to the extent that the proceeds reimburse Landlord or expenses which have previously been included or which would otherwise be included in Operating Costs.

All amounts taken into account in determining operating costs shall be determined on the basis of actual payments made during the Lease Year except as otherwise provided in this Lease.

"Person" means any person, partnership, corporate entity or any combination of them.

"Pollutants" means any substances declared to be hazardous or toxic under any Environmental Laws now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Landlord, the Tenant, the Leased Premises or the Property of which the Leased Premises form a part and includes anything contaminated by any other Pollutant;

"Prime Rate" means the rate of interest per annum established from time to time by the Bank of Nova Scotia (or such other bank being one of the 5 largest Canadian chartered banks as Landlord may designate from time to time) at its head office in Toronto, Ontario as the reference rate of interest to determine interest rates it will charge on Canadian dollar loans to its Canadian customers and which it refers to as its "prime rate".

"Property" means the Land and the Building.

"Property Taxes" means all real property taxes, rates, levies, duties and assessments whatsoever whether municipal, school, provincial, parliamentary or otherwise levied, charged, imposed or assessed against the Property or in respect of the Property or any amounts, charged, imposed or assessed in the future in lieu thereof or in addition thereto, including, without limitation, those levied, charged, imposed or assessed for education, school and local improvements, and all business taxes, if any, from time to time payable by the Landlord or levied against the Landlord on account of its ownership or interest in or the operation of the Property; and all costs and expenses incurred by the Landlord in good faith in contesting, resisting or appealing any such taxes, rates, duties, levies or assessments, including, without limitation, legal fees on a solicitor and his own client basis and other professional fees; but excluding income, capital gains, capital tax or profits taxes upon the income of the Landlord; if any portion of the Property is assessed or taxed other than at the prevailing commercial assessment rates and mill rates due to the occupancy of any tenant or the nature of any tenant's operation, then the amount of such taxes, rates, levies, duties or assessments shall be adjusted to be an amount equal to the amount which would have been incurred had such portion of the Property been assessed and taxed at the prevailing commercial assessment rates and mill rates throughout the entire period for which the calculation is being made. Provided that if any such taxes are levied for a period not coinciding with the Lease Year, the amount of such taxes, rates, duties, levies or assessments included in Operating Costs in each Lease Year shall be that amount accruing during that Lease Year.

"Rent" means the aggregate of all amounts payable by the Tenant to the Landlord under this Lease. Provided that any and all amounts so payable which are collectible by the Landlord as agent of a taxing authority and which are taxes, levies, duties or assessments imposed by that authority on the Tenant are included in Rent so as to determine the Landlord's rights and remedies in the case of delay or failure to pay the same notwithstanding that the same do not accrue to the Landlord as Rent hereunder.

"Rules and Regulations" means the rules stated in Schedule E and any and all other reasonable rules and regulations promulgated by Landlord from time to time for the regulation

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of the Property, Tenant and its invitees, which shall be communicated to Tenant in writing and shall not conflict with the provisions of the Lease, shall not discriminate against Tenant and its invitees nor be unreasonable.

"Term" means the term of the leasehold interest hereby granted being the periods of time set out in item 6 of the Term Sheet unless sooner terminated, and shall be deemed to include any applicable Renewal Term.

"Term Sheet" means the page so titled and attached to this Lease and which forms part of this Lease.

"Transfer" means

- (a) an assignment, sublease licensing or other disposition by Tenant of this Lease or any interest therein or any interest in the Leased Premises (whether or not by operation of law) or in a partnership that is a Tenant under this Lease, or a mortgage or charge (floating or otherwise) or other encumbrance of or upon this Lease by Tenant except a Transfer that occurs on the death of the Transferor;
- (b) a parting with all or part of the Leased Premises; and
- (c) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription, of all or part of the corporate shares of the Tenant which will result in a change in the effective voting control of Tenant.

"Transferor" and "Transferee" have meanings corresponding to the definition of "Transfer". In the case of a Transfer described in item c) of the definition of Transfer, the Transferor is the Person that has or would have effective voting control before the Transfer and the Transferee is the Person that has or would have effective voting control after the Transfer. The singular and plural forms of defined words and phrases shall have corresponding meanings.

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## SCHEDULE D

## LANDLORD'S AND TENANT'S WORK

THE LANDLORD WILL PROVIDE AND INSTALL AT ITS OWN EXPENSE THE FOLLOWING:

1. Landlord to install a fire-rated masonry block demising wall approved by the Ontario Building Code and the City of Markham separating the Leased Premises from the adjacent tenant. Block wall to be finished with drywall, taped, sanded and primed ready for Tenant's finish, or to pay Tenant and Tenant's contractor jointly upon completion of construction of such wall, the sum of \$13,500 plus GST.
2. Landlord to provide the existing two (2) Lennox HVAC units, located on the roof of the Building for the Tenant's exclusive use, including main duct disconnect ready for Tenant to diffuse within the Leased Premises. Landlord to connect HVAC units to Tenant's electrical meter. Landlord shall also pay to Tenant and Tenant's contractor jointly upon completion of installation, the sum of \$37,000 plus GST in respect of the acquisition and installation of a total of 35 tons of additional HVAC units.
3. Provide and install water service and meter together with sanitary drain to the newly erected demising wall on Tenant's Premises.
4. Existing sprinkler system to be fully operational and approved by appropriate authorities for the proposed use by Tenant. Landlord to provide separate control within Leased premises if required by governmental authorities.
5. If local building authority requires fire resistant coating or other treatment to existing ceiling as a result of a multi-tenant use for the Building, Landlord to provide at its cost.
6. Landlord shall satisfy all requirements to the City of Markham relating to any Site Plan Approval including without limitation median, signage, landscaping, etc.
7. Gas supply hook-up to be brought within Leased Premises. Separate metering or check meter to be installed by Landlord, at its sole expense.
8. Landlord will demolish all existing leasehold improvements in the Leased Premises and clean up all debris in the Leased Premises and leave the Leased Premises broom clean for the Tenant, ready for the Tenant's fixturing.
9. Landlord shall provide two (2) new high quality storefront double door units, each with side light panels and constructed with anodized aluminum, located in the front and rear of the Leased Premises.
10. Landlord to supply electrical service to a point in the Leased Premises where designated on the Tenant's plans, which service shall provide no less than 250 amp, 600 volt three phase to a panel located in the Leased Premises (main disconnent may remain in its present location). Separate metering or check meter to be installed by Landlord at its cost.
11. Landlord to provide proper and sufficient outdoor security lighting of the parking areas on the lands.
12. (Unless Landlord agrees to permit the Tenant to perform the Landlord's Work), Landlord to obtain necessary permits and approvals for its work. Verification of permits and inspections to be available for review by Tenant's construction personnel.
13. Landlord will leak test, and repair if necessary, waterproof membrane over the Leased Premises portion of the Building and to pay to Tenant and Tenant's contractor jointly, upon completion of instalation, the sum of \$36,000 plus GST to bring roof insulation up to R10 factor.

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14. Landlord to remove the truck protection steel posts located perpendicularly along the westerly side of the Building adjacent to the Leased Premises and to repair damage to the pavement caused by their removal.

Please Initial



## SCHEDULE E

## RULES AND REGULATIONS

1. **Definition** - In these rules and regulations, "Tenant" includes the employees, servants, agents, invitees, subtenants and licensees of the Tenant and others over whom the Tenant can reasonably be expected to exercise its control.
2. **Deliveries** - The Tenant shall not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area, or other common areas. The Tenant shall ensure that deliveries of materials and supplies to the Leased Premises are made through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in or to the Building caused by any person making such deliveries. The Landlord reserves the right to remove at the expense and risk of the owner any vehicle not using designated Vehicle Standing areas.
3. **Security** - Subject to section 8 of the Term Sheet relating to proposed hours of operation, the Landlord may from time to time adopt appropriate systems and procedures for the security and safety of the Building and the Tenant shall comply with the Landlord's reasonable requirements relating thereto.
4. **Locks** - Upon termination of the Tenant's lease, the Tenant shall surrender to the Landlord all keys to the Leased Premises and other parts of the Building together with any parking passes or other devices permitting entry.
5. **Antennae** - The Tenant shall not mount or place an antenna or aerial of any nature on the exterior of the Leased Premises or Building.
6. **Garbage** - The handling and disposal of garbage shall comply with arrangements prescribed by the Landlord from time to time. No disproportionate or abnormal quantity of waste material shall be allowed to accumulate in or about the Leased Premises and the cost of removal or clearing in excess of a normal and usual amount of waste may be charged to the Tenant.
7. **Installations and Wiring** - Tenant shall not otherwise deface or commit waste upon any part of the Property. No gas pipe will be permitted to be installed which has not been authorized in writing by the Landlord.
8. **Heating, Air Conditioning and Plumbing Systems** - Except as otherwise agreed to under the Lease, the Tenant shall not attempt any alterations or modifications to the heating air conditioning or plumbing systems without the prior written consent of the Landlord.
9. **Water Fixtures** - The Tenant shall not use the plumbing facilities for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the Tenant shall pay the cost of any breakage, stoppage or damage thereof.
10. **Personal use of Leased Premises** - The Leased Premises shall not be used for residential, lodging or sleeping purposes or for the long term storage of personal effects or property not required for business purposes of the Tenant.
11. **Solicitations** - The Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling at the Building.
12. **Heavy Articles** - All damage done to the Building by moving or using any such heavy equipment or machinery shall be repaired at the expense of the Tenant.
13. **Bicycles, Animals** - The Tenant shall not bring any animals into the Building, and shall not permit bicycles or other vehicles inside the Building so as to interfere with the ingress or egress of any person at the Building.

Please Initial 





DATED as of the 27<sup>th</sup> day of May, 1998

550 ADELAIDE PROPERTIES INC.

the "Landlord"

- and -

1152245 ONTARIO INC.

the "Tenant"

#### RECITALS

- (a) The Landlord and the Tenant have entered into a lease dated the 8th day of July, 1996 (the "Lease") of certain premises which form part of 8281 Yonge Street, Markham, Ontario.
- (b) The capitalized terms in this agreement shall have the same meaning as in the Lease.
- (c) The Landlord and the Tenant have agreed to amend the Lease in certain respects, and wish to record their agreement as set out below.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of TEN DOLLARS (\$10.00) now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

1. (i) The Landlord hereby leases to the Tenant and the Tenant hereby leases from the landlord the Mezzanine Premises, to have and to hold during the Mezzanine Term (as defined below), subject to the terms and conditions of this Lease reserving always unto the Landlord, Rent as herein provided.  
(ii) The "Mezzanine Premises" consist of approximately 3,500 square feet representing the mezzanine floor of the Building as highlighted in red on Schedule "A" hereto. Landlord shall provide an architects certificate confirming the actual area measurement of the Mezzanine Premises.
2. "Mezzanine Term" means from July 1st, 1998 to and including June 30th, 2001.
3. Right to Renew.

The Tenant shall have three consecutive options to renew the Lease with respect to the Mezzanine Premises for terms of five (5) years each (respectively, the "First Renewal Term", the "Second Renewal Term", and the "Third Renewal Term"). Each such option shall automatically be exercised unless written notice to the contrary is given by the Tenant to the Landlord at least six months prior to the expiry of the Mezzanine Term or the then current renewal term. Each renewal of the Lease shall be on the same terms and conditions as herein contained except for any further options to renew and except for rent. Rent for any renewal term shall be based on \$12.00 per square foot gross rental (as described below) plus an amount, if any, which represents the percentage increase in the "Consumer Price Index" (or its replacement index if such index is no longer used in Canada) from the base year amount as at June 1998 to the date of renewal. In no event shall the Rent payable for any Renewal Term be less than the Rent for the immediate prior term.

4. Rent

From and including the 1st day of July, 1998 to and including June 30th, 2001, Rent shall be at the rate of \$12.00 per square foot based on the area of the Mezzanine Premises as determined by the Architects Certificate provided by the Landlord (the "Mezzanine Rent"). Notwithstanding the other provisions of the Lease, the Rent shall be Gross Rent and the Tenant shall not be obligated to pay any Occupancy Rent or other additional rent of any kind whatsoever, including without limitation, costs for utilities, water, gas, repairs, lights and taxes of any kind. The Tenant shall not be required to remove all leasehold improvements made by the Landlord in connection with the Mezzanine Premises at the expiration or earlier termination of the Term.

5. "Leased Premises" shall be amended to include "Mezzanine Premises".

6. "Rent" shall be amended to include "Mezzanine Rent".

7. Landlord's Work.

The Tenant acknowledges that the Landlord's Work is completed for the Mezzanine Premises other than for painting, carpeting and glazing, all at a standard as determined by the Landlord subject to the colour scheme as selected by the Tenant.

8. Use of Mezzanine Premises

The Tenant agrees that the Mezzanine Premises shall be used only for business office purposes.

9. Assignment, Subletting and Other Transfers.

The Landlord and Tenant agree that the provisions with respect to "Assignment, Subletting and Other Transfers" described in the Lease shall apply to the Mezzanine Premises except in respect of the following. If the Rent payable by a Transferee is greater than the amount which would otherwise be payable hereunder by the Tenant to the Landlord, such greater amount shall be the property of the Landlord and shall be payable to the Landlord by such Transferee.

10. Parking Spaces.

The provisions of the Lease are confirmed without amendment. Provided however, in the event only that the Tenant subleases the whole or any part of the Mezzanine Premises to an arms length third party, the subtenant shall be restricted in the use of any parking on the Land based upon a proportionate share (where the numerator is the leasable area of the Mezzanine Premises and the denominator is the leasable area of the Building) of the parking spaces then available on the Land.

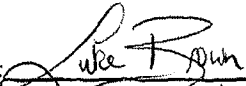


11. Early Occupancy

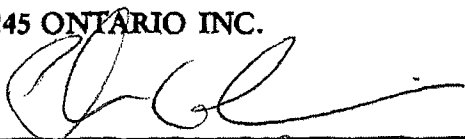
Tenant shall be permitted to have early occupancy of the Mezzanine Premises without rent cost upon obtaining the written approval of the Landlord, which approval shall not be unreasonably withheld.

IN WITNESS WHEREOF the parties have executed this Lease Amending Agreement and have hereto hereunto affixed its corporate seal duly attested to by its proper signing officers in that behalf.

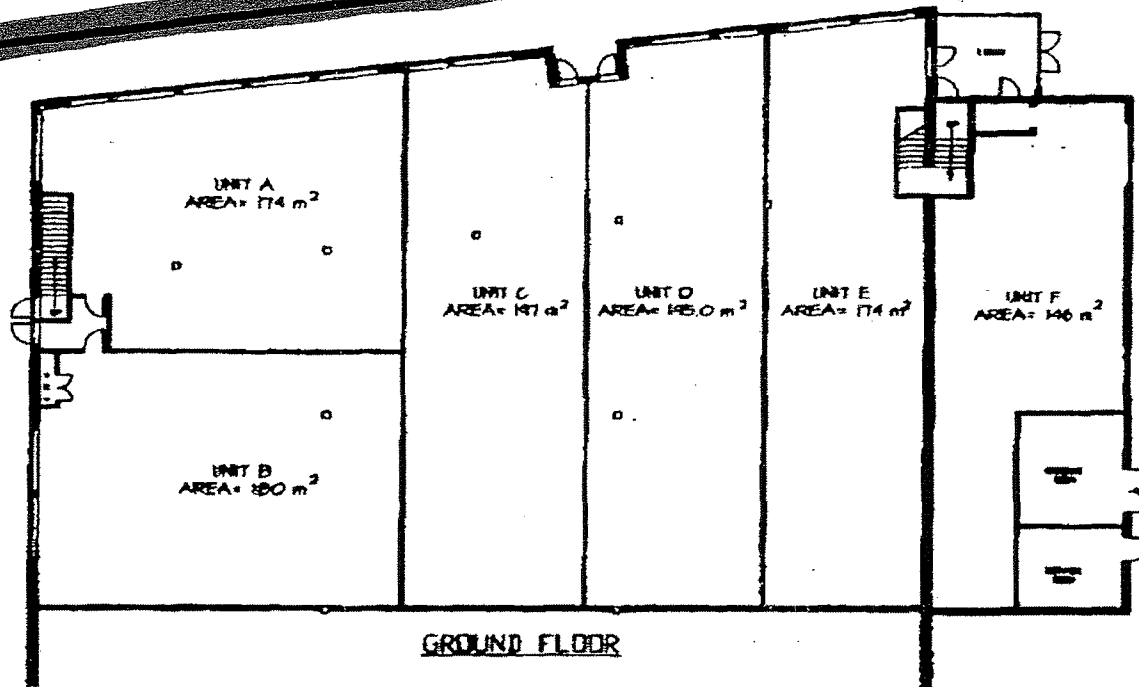
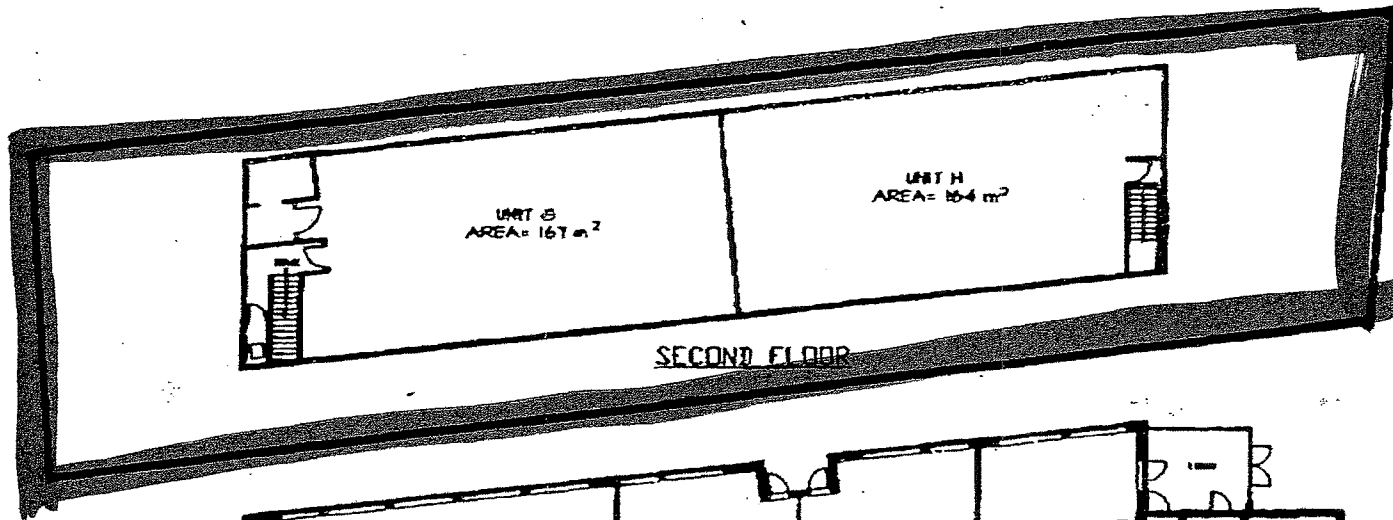
550 ADELAIDE PROPERTIES INC.

Per:   
Name: Luke Brown  
Title: Corporate Controller

1152245 ONTARIO INC.

Per:   
Name: Steve Collins  
Title: President





*[Handwritten signatures and scribbles]*

550 ADELAIDE PROPERTY INC.

8281 YONGE STREET  
UNIT AREAS

416 777 1611

MAY-21-1998 15:38



9. Assignment, Subletting and Other Transfers.

The Landlord and Tenant agree that the provisions with respect to "Assignment, Subletting and Other Transfers" described in the Original Lease shall apply to the Additional Premises.

10. Indemnifiers

The Indemnifiers as described under the Original Lease agree to enter into an Indemnity Agreement in the form attached hereto as Schedule C.

11. Right of First Refusal

In the event that the Landlord receives an offer (the "Offer") to purchase the Property from a third party which it is prepared to accept during the currency of the Lease, the Landlord agrees to notify the Tenant in writing providing the Tenant with a copy of the Offer and the Tenant shall have forty-eight (48) hours from the time of delivery of the notice to present the Landlord with an offer to purchase the Property on the same terms and conditions (including the delivery of any deposit), failing which the Landlord shall be free to proceed with the sale of the Property to the third party under the terms of the Offer. In the event that the sale to the third party under the terms of the Offer is not completed, the rights of the Tenant hereunder shall be revived and the Tenant shall be entitled to receive notice of any new offer to purchase the Property on the same terms and conditions as described above.

IN WITNESS WHEREOF the parties have executed this Lease Amending Agreement and have hereto hereunto affixed its corporate seal duly attested to by its proper signing officers in that behalf.

550 ADELAIDE PROPERTIES INC.

Per: 

Name: S. HAMMER

Title: PRESIDENT

1152245 ONTARIO INC.

Per: 

Name: Steve Colivas

Title: President





DATED as of the 1st day of September, 1998

550 ADELAIDE PROPERTIES INC.

the "Landlord"

- and -

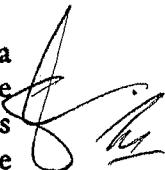
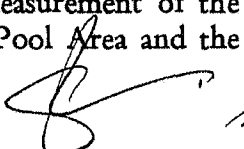
1152245 Ontario Inc.

the "Tenant"

RECITALS

- (a) The Landlord and the Tenant have entered into a lease dated the 8th day of July, 1996 (the "Original Lease") and a lease amending agreement dated May 27th, 1998 (the "Lease Amending Agreement") of certain premises which form part of 8281 Yonge Street, Markham, Ontario.
- (b) The capitalized terms in this agreement shall have the same meaning as in the Original Lease. The Original Lease, the Lease Amending Agreement and this Second Lease Amending Agreement are hereinafter referred to as the "Lease".
- (c) The Landlord and the Tenant have agreed to amend the Original Lease in certain respects, and wish to record their agreement as set out below.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of TEN DOLLARS (\$10.00) now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

1.
  - (i) The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the "Additional Premises", to have and to hold during the "Additional Premises Term" (as those terms are defined below), subject to the terms and conditions of the Original Lease as amended herein, reserving always unto the Landlord, Rent as herein provided.
  - (ii) The "Additional Premises" consist of 12,335 square feet of rentable area representing the northerly portion of the ground floor (now vacant) of the Building as highlighted in red on Schedule "A" hereto. The Landlord has retained building surveyors, Measure Masters Toronto North ("Measure Masters") and a certificate confirming the actual area measurement of the Additional Premises as well as the Leased Premises, the Pool Area and the Mezzanine Premises is attached as Schedule B.  
"A" 
2. "Additional Premises Term" means from September 1st, 1998 to and including July 7th, 2001. 
3. Right to Renew.
  - (i) The Tenant shall have three consecutive options to renew the Lease for terms of five (5) years each (respectively, the "First Renewal Term", the "Second Renewal Term", and the "Third Renewal Term"). Each such option shall



Tenant to the Landlord at least six months prior to the expiry of the Additional Premises Term or the then current renewal term. Each renewal of the Lease shall be on the same terms and conditions as herein contained except for any further options to renew and except for rent.

- (ii) Basic Rent for the Additional Premises for the First Renewal Term shall be based on \$7.00 per square foot commencing on July 8th, 2001 plus an amount, if any, which represents the percentage increase in the Consumer Price Index Metropolitan Toronto, All Indexes published by Statistics Canada (or its replacement index if such index is no longer used in Canada) from the base year amount as at June 1998 to the date of renewal. In no event shall the Basic Rent payable for the First Renewal Term be less than the Basic Rent for the immediate prior term. Basic Rent for the Second Renewal Term and for the Third Renewal Term shall be adjusted based upon market rates on July 7th, 2006 and July 7th, 2011 respectively, on the same terms and conditions as described in Article 3.02 of the Original Lease. with respect to the Third Renewal Term and Fourth Renewal Term.
- (iii) The Tenant shall pay Occupancy Rent for the Additional Premises during any renewal term on the same terms and conditions as described in the Original Lease.

4. Rent for Additional Premises

- (i) From and including the 1st day of April, 1999 to and including the 7th day of July 2001, Basic Rent for the Additional Premises shall be at the rate of \$7.00 per square foot based on the Additional Premises having a rentable area as determined by Measure Masters of 12,335 square feet for a Basic Rent of \$86,345 per annum (the "Additional Premises Rent"). In addition to Basic Rent the Tenant shall pay Occupancy Rent commencing December 1st, 1998. Notwithstanding the above, the Tenant agrees to pay all direct utilities commencing September 1st, 1998.

- (ii) The Landlord acknowledges that there are no Operating Costs associated with the Mezzanine Premises, and that the Landlord is obligated to pay on behalf of the Tenant in connection with the Mezzanine Premises all costs for utilities, water, gas, repairs, lights and taxes of any kind. The Tenant acknowledges that upon the execution of this Second Lease Amending Agreement it is the tenant of 100 per cent of the Building and responsible for all Operating Costs associated with the Building. The Tenant agrees to save the Landlord harmless from all Operating Costs for the Building.

SUBJECT to the  
FORGOTTEN,

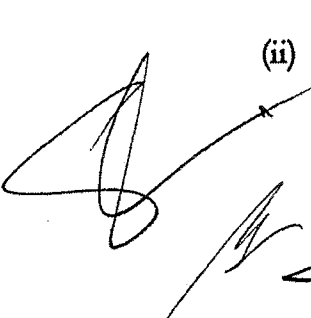
5. "Leased Premises" shall be amended to include the "Additional Premises".

6. "Rent" shall be amended to include the "Additional Premises Rent".

7. Leasehold Allowance Loan

- (i) The Landlord will provide the Tenant with a "Leasehold Allowance Loan" of \$20.00 per square foot based on the rentable area of the Additional Premises for

a total of \$246,700.00. The Leasehold Allowance Loan will be advanced by the Landlord based on invoices for work done and materials supplied submitted by the Tenant and the Tenant agrees that the Landlord may pay such invoices directly to the appropriate contractors and suppliers. The Leasehold Allowance Loan will be repaid by the Tenant in equal monthly principal payments (the "Monthly Payments") commencing on the first day of the month following the first advance thereunder and thereafter on the 1st day of each succeeding month until the Leasehold Allowance Loan is repaid unless the Lease is terminated or expires on or before June 30th, 2006, in which event the unpaid balance of the Leasehold Allowance Loan will become due and payable on the termination or expiry date of the Lease. The Leasehold Allowance Loan will bear interest at a floating rate calculated daily based on the "Prime Rate" as defined in the Original Lease plus two per cent (2%) per annum and shall be paid monthly in arrears on the first day of each and every month on the outstanding balance then owing. The Tenant may prepay the outstanding balance owing hereunder at any time or times without notice or bonus. The amount of the "Monthly Payments" is calculated by dividing the amount of the Leasehold Allowance Loan by the number of months between the date of the first advance thereunder and June 30th, 2006.



~~(ii) In the event that the Tenant enters into an assignment or sub-lease with respect to a part of the Additional Premises prior to the approval by the Landlord of the design of the leasehold improvements for the Additional Premises, the Landlord's obligation with respect to the payment of the Leasehold Allowance Loan may be reduced by an amount which is equal to \$20.00 times the number of square feet of the Additional Premises which are assigned or sub-let by the Tenant.~~

(iii) Upon the happening of an Event of Default under the Lease, and upon the Landlord having given the Tenant the required written notice pursuant to article 11.05 of the Original Lease and the Tenant having failed to remedy such default, the unpaid balance of the Leasehold Allowance Loan, together with all accrued interest thereon, shall become due and payable forthwith.

(iv) The Tenant shall obtain the Landlord's approval of all plans and specifications for the leasehold improvements to the Additional Premises before commencing work, such approval not to be unreasonably withheld or unduly delayed. The Tenant will comply with all zoning and building by-laws and regulations of the Town of Markham.

8. Use of Additional Premises

The Tenant agrees that the Additional Premises shall be used (i) for an expansion of the fitness club facilities already installed in the balance of Leased Premises; (ii) retail uses consistent with a fitness club facility; and (iii) an expansion of the daycare facilities. All uses of the Additional Premises will comply with the Town of Markham zoning by-laws and regulations. In the event that the Tenant wishes to use the Additional Premises for any uses other than those described above, it shall seek the approval of the Landlord by notice in writing, such approval not be unreasonably withheld.



9. Assignment, Subletting and Other Transfers.

The Landlord and Tenant agree that the provisions with respect to "Assignment, Subletting and Other Transfers" described in the Original Lease shall apply to the Additional Premises.

10. Indemnifiers

The Indemnifiers as described under the Original Lease agree to enter into an Indemnity Agreement in the form attached hereto as Schedule C.

11. Right of First Refusal

In the event that the Landlord receives an offer (the "Offer") to purchase the Property from a third party which it is prepared to accept during the currency of the Lease, the Landlord agrees to notify the Tenant in writing providing the Tenant with a copy of the Offer and the Tenant shall have forty-eight (48) hours from the time of delivery of the notice to present the Landlord with an offer to purchase the Property on the same terms and conditions (including the delivery of any deposit), failing which the Landlord shall be free to proceed with the sale of the Property to the third party under the terms of the Offer. In the event that the sale to the third party under the terms of the Offer is not completed, the rights of the Tenant hereunder shall be revived and the Tenant shall be entitled to receive notice of any new offer to purchase the Property on the same terms and conditions as described above.

IN WITNESS WHEREOF the parties have executed this Lease Amending Agreement and have hereto hereunto affixed its corporate seal duly attested to by its proper signing officers in that behalf.

550 ADELAIDE PROPERTIES INC.

Per: 

Name: D. HAMMER

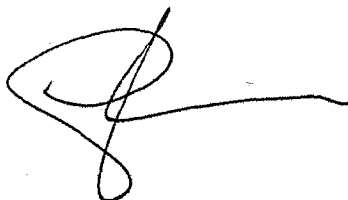
Title: PRESIDENT

1152245 ONTARIO INC.

Per: 

Name: Steve Colivas

Title: President



SCHEDULE 'A'

**Measure Masters Toronto North**

**5 McIntosh Drive, 2nd Floor, Markham, Ontario L3R 8C7  
(905) 475-4244 Fax: (905) 475-3143**



July 10, 1998.

550 Adelaide Property Inc.  
184 Front Street East, Suite 801,  
Toronto, Ontario M2A 4N3

Attention: Luke Brown:

Please find enclosed the drawing for the building at 8281 Yonge Street in Markham.

I have measured and certify this building to have a total area of forty-three thousand, three hundred and fifty-six square feet. (43,356 sq. ft.)

As retail space, this building and individual units have, been certified by measuring to the exterior of the outer building walls, to the inside finished surface of walls adjoining common areas or vertical penetrations, and to half of the demise wall between tenants, as per current B.O.M.A. standards.

Extreme Fitness has a total rentable area of twenty-six thousand, eight hundred and fifty-five square feet (26,855 sq. ft.) This includes the pool area of three thousand, two hundred and forty-seven square feet (3,247 sq. ft.)

If you have any further questions Luke, please give me a call.

Yours truly,

John C. Patterson  
President, Measure Masters Toronto North

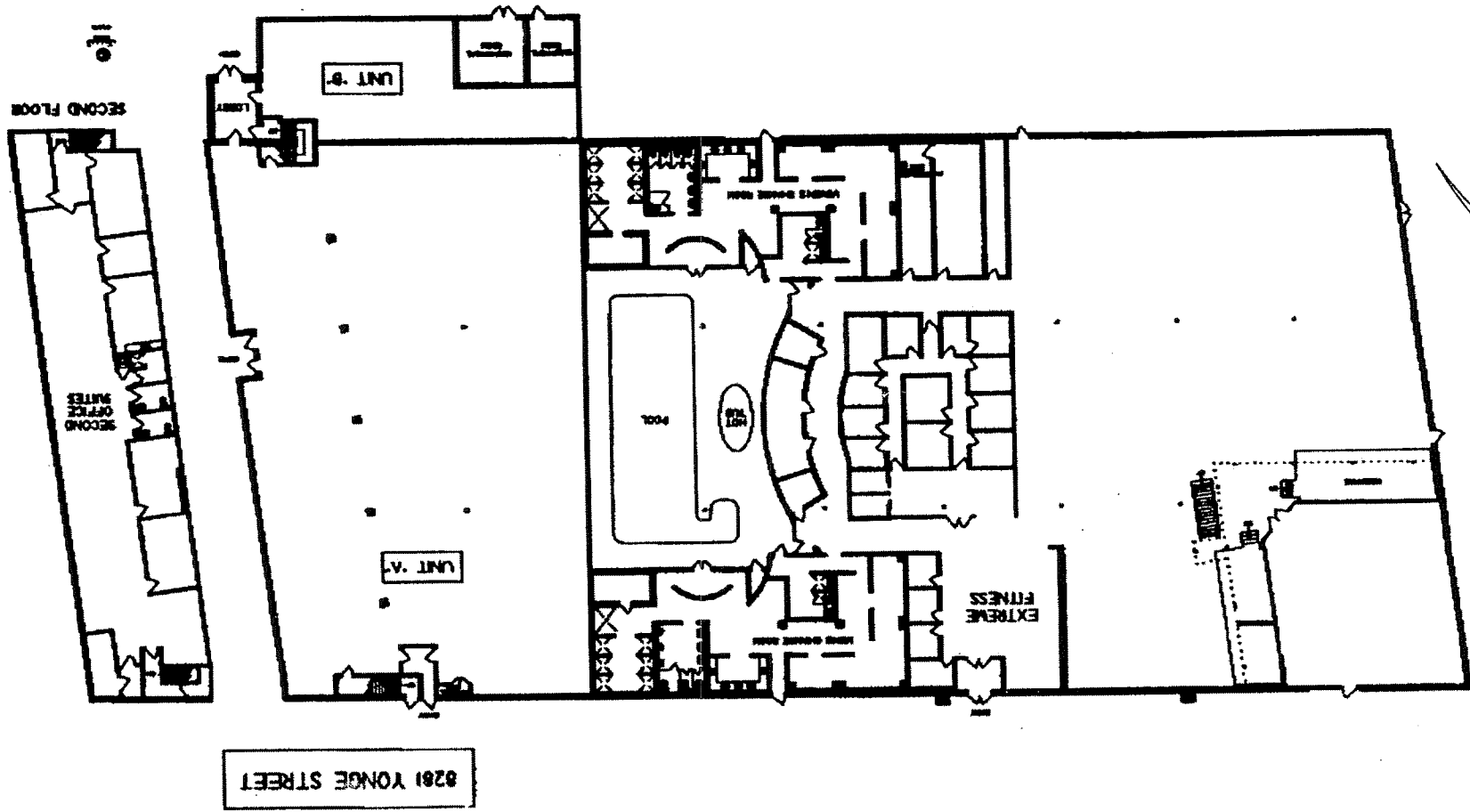
550 Adelaide Property Inc. 184 Front Street East, Suite 801, Toronto, Ontario M5A 4N3

# 8281 YONGE STREET

SCHEDULE FOR RENTABLE AREA CALCULATIONS

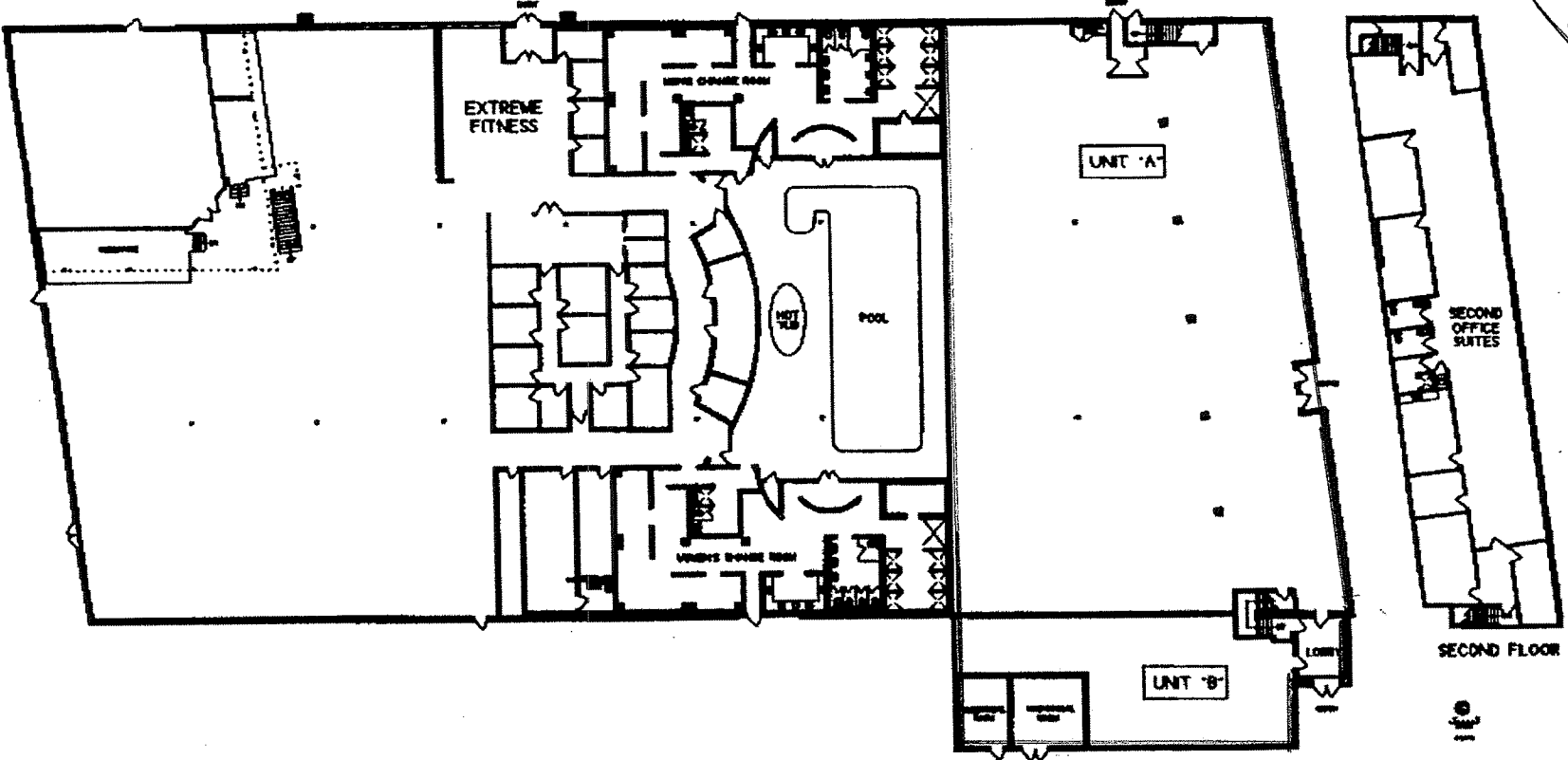
## BUILDING BREAKDOWN:

LOCATION	USABLE AREA	BUILDING GROSS UP	BUILDING COMMON AREA	SHARE OF LOBBY COMMON AREA	SEAR WELLS	
<b>First Floor:</b>						
Supreme Fitness	26,527	0.0124	320	0		26,855
Vacant area "A"	10,352	0.0124	128	141		10,621
Vacant area "B"	1,671	0.0124	21	23		1,714
<b>Second Floor:</b>						
Office Suites	3,830	0.0124	47	82	237	4,166
<b>TOTALS</b>	<b>42,300</b>		<b>524</b>	<b>215</b>		<b>43,356</b>
<b>BUILDING COMMON AREAS:*</b>						
Electrical and Mechanical rooms			495			
Sprinkler room			29			
<b>TOTAL BUILDING COMMON AREA:</b>			<b>524</b>			
<b>END UNITS AND SECOND FLOOR COMMON AREAS:*</b>						
Back entrance lobby				215		



SCHEDULE 'B'

8281 YONGE STREET



11/0





### THIRD LEASE AMENDING AGREEMENT

THIS AGREEMENT made the        day June, 2006

A M O N G:

**2079843 ONTARIO INC.**, a corporation incorporated pursuant to the laws of the Province of Ontario,

(the "Landlord")

- and -

**EXTREME FITNESS, INC.**, a corporation incorporated pursuant to the laws of the Province of Alberta

(the "Tenant")

WHEREAS:

- A. By a Lease dated the 8<sup>th</sup> day of July, 1996 (the "Original Lease"), 550 Adelaide Properties Inc. (the predecessor in interest to the Landlord) leased to 1152245 Ontario Inc. certain premises (the "Leased Premises") forming part of the property municipally known as 8281 Yonge Street, Markham, Ontario (the "Property");
- B. The Leased Premises are comprised of an area equal to approximately twenty-six thousand, eight hundred and fifty-five (26,855) square feet (the "Fitness Club Space") and a pool area (the "Pool Area") comprised of an area equal to approximately three thousand, two hundred and forty-seven (3,247) square feet;
- C. By a Lease Amending Agreement dated the 27<sup>th</sup> day of May, 1998 (the "Lease Amending Agreement"), the Original Lease was amended whereby the Leased Premises were increased in size by adding an area comprised of approximately three thousand five hundred (3,500) square feet of office space (the "Office Space") in accordance with the terms therein contained;
- D. By a Second Lease Amending Agreement dated the 1<sup>st</sup> day of September, 1998 (the "Second Lease Amending Agreement"), the Original Lease was further amended whereby the Leased Premises were increased in size by adding an area comprised of approximately twelve thousand, three hundred and thirty-five (12,335) square feet (the "Additional Space"), in accordance with the terms therein contained;
- E. The Original Lease, Lease Amending Agreement and Second Lease Amending Agreement are collectively referred to as the "Lease";
- F. The Fitness Club Space, the Pool Area, the Office Space and Additional Space, being the Leased Premises comprise the entire building located at the Property, and the building was certified to have an area of forty-three thousand, three hundred and sixty (43,356) square feet;
- G. By Articles of Amalgamation, the Tenant through a series of corporate reorganizational steps became the successor in interest to 1152245 Ontario Inc.;
- H. Pursuant to the terms of the Original Lease, Lease Amending Agreement and Second Lease Amending Agreement, the Tenant is entitled to various options to renew, each of which is on the specific terms contained in either of the Original Lease, Lease

Amending Agreement or Second Lease Amending Agreement, as the case may be;

- I. The Landlord and Tenant wish to amend each of the Original Lease, Lease Amending Agreement and Second Lease Amending Agreement to ensure that the options to renew are exercised in respect of the whole of the Lease Premises and to ensure that the remaining number of options to renew and the terms and conditions under which the Tenant may exercise the options to renew are the same in respect of the whole of the Leased Premises;
- J. The Tenant confirms that it has exercised its option to renew the Lease in respect of the whole of the Leased Premises for a period of five (5) years from July 1, 2006, upon the terms and conditions as are contained in Lease as amended by this Agreement.

**NOW THEREFORE WITNESSETH** in consideration of the mutual covenants and agreements between the parties and the sum of One Dollar (\$1.00) that has been paid by each of the parties to the other, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The parties hereby confirm the accuracy of the recitals.
2. The Term of the Lease for the whole of the Leased Premises is hereby extended for a further period of five (5) years, commencing on the 1<sup>st</sup> day of July, 2006 and expiring on the 30<sup>th</sup> day of June, 2011 (the "Extended Term") upon the same terms, covenants and conditions as are contained in the Lease except that:
  - (a) the Tenant will accept the Leased Premises and the Property in an "as is" condition;
  - (b) the Landlord has no responsibility or liability for making any renovations, alterations or improvements in or to the Leased Premises or the Property save and except as specifically provided in the Lease;
  - (c) save and except as is specifically provided in the Lease, all further renovations, alterations or improvements in or to the Leased Premises and the Property are the sole responsibility of the Tenant and shall be undertaken and completed at the Tenant's expense and strictly in accordance with the provisions of the Lease; and
  - (d) the Lease shall be amended pursuant to the amendments contained in this Agreement.
3. The options to renew the Lease as contained in each of the Original Lease, Lease Amending Agreement and Second Lease Amending Agreement are hereby deleted and of no further force and effect. To the extent that the existing term of the Original Lease, Lease Amending Agreement and Second Lease Amending Agreement do not end on June 30, 2006, the terms are hereby amended to expire on June 30, 2006.
4. In respect of the Extended Term: during the period from and including July 1, 2006 , to and including June 30, 2011, the Tenant shall pay to the Landlord as Basic Rent in respect of the Leased Premises an amount equal to the annual sum of Six Hundred and Forty-seven Thousand, Eight Hundred and Nine Dollars and Twenty Cents (\$647,809.20) based upon an annual rate of Fourteen Dollars and Ninety-four cents (\$14.94) per square foot plus GST, payable in equal consecutive monthly installments of Fifty-three Thousand, Nine Hundred and Eighty Four Dollars and Ten Cents (\$53,984.10) plus GST each in advance on the first day of each calendar month during such period.

5. Provided the Tenant is not in default, the Tenant shall have the right to renew the term of the Lease for five (5) further terms of three (3) years each. Each option to renew shall be deemed to be automatically exercised unless written notice to the contrary is given by the Tenant to the Landlord at least six (6) months prior to the expiry of the then current renewal term. The renewal of Lease shall be on the same terms and conditions as contained in the Lease and this Extension Agreement except for any further options to renew beyond the five (5) renewal terms contemplated herein and except for rent. Basic Rent in respect of the Leased Premises for the each renewal term shall be as follows:
- (a) during the period from and including July 1, 2011, to and including June 30, 2014, the Tenant shall pay to the Landlord as Basic Rent in respect of the Leased Premises (including the Additional Premises) an amount equal to the annual sum of Seven Hundred and Thirty-four Thousand, Five Hundred and Twenty-nine Dollars and Twenty Cents (\$734,529.20) based upon an annual rate of Sixteen Dollars and Ninety-four cents (\$16.94) per square foot plus GST, payable in equal consecutive monthly installments of Sixty-one Thousand, Two Hundred and Ten Dollars and Seventy-seven Cents (\$61,210.77) plus GST each in advance on the first day of each calendar month during such period;
  - (b) during the period from and including July 1, 2014, to and including June 30, 2017, the Tenant shall pay to the Landlord as Basic Rent in respect of the Leased Premises (including the Additional Premises) an amount equal to the annual sum of Eight Hundred and Twenty-one Thousand, Two Hundred and Forty-nine Dollars and Twenty Cents (\$821,249.20) based upon an annual rate of Eighteen Dollars and Ninety-four cents (\$18.94) per square foot plus GST, payable in equal consecutive monthly installments of Sixty-eight Thousand, Four Hundred and Thirty-seven Dollars and Forty-three Cents (\$68,437.43) plus GST each in advance on the first day of each calendar month during such period;
  - (c) during the period from and including July 1, 2017, to and including June 30, 2020, the Tenant shall pay to the Landlord as Basic Rent in respect of the Leased Premises (including the Additional Premises) an amount equal to the annual sum of Nine Hundred and Seven Thousand, Nine Hundred and Sixty-nine Dollars and Twenty Cents (\$907,969.20) based upon an annual rate of Twenty Dollars and Ninety-four cents (\$20.94) per square foot plus GST, payable in equal consecutive monthly installments of Seventy-five Thousand, Six Hundred and Sixty-four Dollars and Ten Cents (\$75,664.10) plus GST each in advance on the first day of each calendar month during such period;
  - (d) during the period from and including July 1, 2020, to and including June 30, 2023, the Tenant shall pay to the Landlord as Basic Rent in respect of the Leased Premises (including the Additional Premises) an amount equal to the annual sum of Nine Hundred and Ninety-four Thousand, Six Hundred and Eighty-nine Dollars and Twenty Cents (\$994,689.20) based upon an annual rate of Twenty-two Dollars and Ninety-four cents (\$22.94) per square foot plus GST, payable in equal consecutive monthly installments of Eighty-two Thousand, Eight Hundred and Ninety Dollars and Seventy-seven Cents (\$82,890.77) plus GST each in advance on the first day of each calendar month during such period; and
  - (e) during the period from and including July 1, 2023, to and including June 30, 2026, the Tenant shall pay to the Landlord as Basic Rent in respect of the Leased Premises (including the Additional Premises) an amount equal to the annual sum of One Million and Eighty-one Thousand, Four Hundred and Nine

Dollars and Twenty Cents (\$1,081,409.20) based upon an annual rate of Twenty-four Dollars and Ninety-four cents (\$24.94) per square foot plus GST, payable in equal consecutive monthly installments of Ninety Thousand, One Hundred and Seventeen Dollars and Forty-three Cents (\$90,117.43) plus GST each in advance on the first day of each calendar month during such period.

6. Notwithstanding anything in the Lease to the contrary, including the Original Lease, Lease Amending Agreement and Second Lease Amending Agreement, the Lease is a completely carefree and absolutely net lease to the Landlord. Except as otherwise stated in the Lease, the Landlord is not responsible during the Extended Term and any renewal thereof for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Leased Premises or the Property, or the use and occupancy of them, or their contents or the business carried on in them, and the Tenant shall pay all charges, impositions, costs, expenses and outlays of every nature and kind relating to the Leased Premises including all Operating Costs relating to the Leased Premises and the Property and any alterations or additions thereto. For greater clarity, Operating Costs shall have the meaning set out in the Original Lease, save and except that Operating Costs shall also include all costs associated with the alteration, maintenance and repair of the parking lot(s) and the lighting serving the parking lot(s), as the parking lot(s) may be altered, improved or expanded from time to time.
7. The Landlord and Tenant represent and warrant that they have the right, full power and authority to agree to the amendments to the Lease, and other provisions contained in this Agreement.
8. The parties confirm that the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.
9. The Tenant acknowledges and agrees that a breach, default or event of default by Tenant under the terms and conditions of the lease (the "Parking Lot Lease") dated as June 1, 2004 between 2044922 Ontario Ltd., as Landlord, and the Tenant, as Tenant, shall be considered a default, breach or Event of Default for the purposes of this Agreement and the Lease. In the event that the Landlord terminates the Parking Lot Lease as a result of a default or breach or Event of Default thereunder by the Tenant, the Landlord shall at its option be entitled to terminate the Lease. Upon merger of the title of the properties contemplated by this Lease and the Parking Lot Lease, at the option of the Landlord, the Tenant covenants and agrees to enter into a single lease covering both properties upon the Landlord's then standard form of net lease containing the same financial and business terms as herein contained and as set out in the Parking Lot Lease, subject to such reasonable amendments requested by the Tenant (save and except for the financial and business terms which shall remain the same).
10. The Landlord shall have the right at any time or times to cause the area of the Leased Premises to be measured by an Ontario Land Surveyor, following which it shall deliver a certificate of such measurement to the Tenant setting out the actual square footage of the Leased Premises. In the event that the area of the Leased Premises differs from the area contemplated in the Lease, the Landlord and Tenant shall adjust any overpayment or underpayment of Basic Rent and Additional Rent arising from such error for the period commencing from the date of this Agreement.

11. This Agreement shall enure to the benefit of and the binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.


IN WITNESS WHEREOF the Landlord has duly executed this Agreement at Markham, as of this day of June, 2006.

SIGNED, SEALED AND DELIVERED )  
in the presence of: )

2079843 ONTARIO INC.

per:

  
Name: Steve Colivas  
Title: President

  
Name: Steve daCosta  
Title: Secretary

I/We have authority to bind the Corporation

IN WITNESS WHEREOF the Tenant has duly executed this Agreement at Markham, as of the day of June, 2006.

SIGNED, SEALED AND DELIVERED )  
in the presence of: )

EXTREME FITNESS, INC.

per:

  
Name:  
Title:

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

I/We have authority to bind the Corporation

**TAB H**

Attached is Exhibit "H"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 22nd day of March, 2013

  
A horizontal line is drawn across the page, and the signature "Dan Aversa" is written in cursive over it.

Commissioner for taking Affidavits, etc

DATED as of the day of June, 2006

Landlord:

2044922 ONTARIO LTD.

Tenant:

EXTREME FITNESS, INC.

Premises:

8275 Yonge Street, Markham

---

**LEASE - PARKING LOT**

---

FLUXGOLD, IZSAK JAEGER LLP  
Barristers and Solicitors  
100 York Blvd.  
Suite 220  
Richmond Hill, Ontario  
L4B 1J8



THIS LEASE is effective from the        day of June, 2006

BETWEEN:

**2044922 ONTARIO LTD.**

(the "Landlord"),

**OF THE FIRST PART**

**-and-**

**EXTREME FITNESS, INC.**

(the "Tenant")

**OF THE SECOND PART**

**ARTICLE I**

**PREMISES - TERM AND USE**

1.1 Grant and Premises

In consideration of the performance by the Tenant of its obligations under this lease, the Landlord leases the Premises to the Tenant for the Term.

1.2 Term

The Term of this lease is five (5) years and \_\_\_\_\_ ( ) days the \_\_\_ day of June, 2006 to the 30<sup>th</sup> day of June, 2011.

1.3 Use and Conduct of Business

The Premises shall be used only for the purposes of a surface parking facility for its employees, customers and invitees and for no other purpose whatsoever, subject always to the overriding provisions of any applicable laws, by-laws or regulations. The tenant shall conduct its business in the Premises in a first class and reputable manner.

**ARTICLE II**

**RENT**

2.1 Covenant to Pay

The Tenant shall pay Rent from the Commencement Date without prior demand and without any deduction, abatement, set-off or compensation. If the first or last Rental Year of the Term comprises less than 12 calendar months, the Net Rent and Additional Rent for such Rental Years shall be pro-rated on a per diem basis, based upon a period of 365 days. The Tenant agrees that its covenant to pay Rent is an independent covenant and that all such amounts are payable without counterclaim, set-off, deduction, abatement or reduction whatsoever, except as expressly provided for in this lease.

2.2 Net Rent

The Tenant shall pay Net Rent during the period from and including June \_\_, 2006 to and including June 30, 2011, equal to the sum of One Hundred and Eighty Thousand Dollars (\$180,000.00) per annum plus GST, payable in advance in equal consecutive monthly instalments of Fifteen Thousand Dollars

(\$15,000.00) per month plus GST each in advance on the first day of each calendar month during such period. Net Rent for the period between the commencement date and the first day of the first month following the commencement date shall be calculated on a prorata basis.

### 2.3 Payment of Taxes

- (a) The Tenant covenants to pay, when due, all Taxes and to deliver promptly to the Landlord prior to the end of each calendar year during the Term receipts evidencing the payment of all Taxes. If local improvement rates form part of the Taxes payable by the Tenant at any time during the term, and if the governmental authority levying or assessing such local improvement rates permits same to be amortized and paid over an extended period of instalments, then the Tenant, rather than paying the amount of such local improvement rates in full in the year in which levied or assessed, may pay same in such instalments as permitted by the taxing authority and shall be responsible for the payment only of such installments as become due and payable during the Term.
- (b) The Tenant shall have the right and privilege of appealing assessments or applying for a reduction of any Taxes, provided that it shall first either pay the Taxes under protest, or, if such payment is not required by law or can be withheld without subjecting the Premises to sale or forfeiture proceedings or without resulting in a default under or breach of any Mortgage, either (a) furnish to the Landlord satisfactory security for the payment of such Taxes by bond, irrevocable bank letter of credit or otherwise in case of failure of such appeal or application, or (b) provide the Landlord with the evidence reasonably satisfactory to the Landlord of the Tenants' ability to pay the amount of Taxes under protest, together with any interest, penalties or other charges payable in connection therewith. The Tenant may take such action in its own name, or if required and upon giving the Landlord satisfactory indemnity in respect of such action and all costs relating thereto, in the name of the Landlord, and the Landlord agrees to join in such proceedings, sign such documents and otherwise co-operate in such proceedings as reasonably requested by the Tenant, all at the cost and expense of the Tenant. The Tenant shall diligently prosecute any such appeal, application or proceedings and shall immediately after the final determination of such appeal, application or proceedings, pay the amount of any Taxes which were the subject of such proceeding as so determined, as and when they become due and payable, together with any interest, penalties or other charges which are payable in connection with such Taxes.
- (c) If and so often as the Tenant shall neglect or omit to pay Taxes, the Landlord may (after five (5) days' notice to the Tenant) but shall not be obliged to, pay such Taxes, and may thereupon charge the amount of Taxes so paid to the Tenant, together with interest on the amount so paid at the rate set out in Section 2.5 and the Tenant covenants and agrees to pay such amount, together with interest thereon to the date of payment as aforesaid, to the Landlord forthwith upon receipt from the Landlord of a notice of stating the amount paid by it and the date of payment, accompanied by reasonable evidence of such payment.

### 2.4 Additional Rent

Except as otherwise provided in this lease, all Additional Rent payable to the Landlord shall be paid by the Tenant to the Landlord within five (5) business days after demand.

### 2.5 Rent Past Due

All Rent past due shall bear interest from the date on which the same became due until the date of payment at five per cent (5%) per annum in excess of the prime interest rate for commercial demand loans charged by any Canadian chartered bank designated by the Landlord.

## 2.6 Utilities

- (a) The Tenant shall pay, when due, to the appropriate authority, or as the Landlord directs, all gas, electricity, water, steam and other utility charges applicable to the Premises.
- (b) The Tenant shall pay the cost of installing and maintaining any meters installed at the request or requirement of the Landlord, the Tenant or any public or private utility authority to measure the usage of utilities in the Premises.

## 2.7 GST

The Tenant shall pay to the Landlord all GST payable as a result of the Tenant paying Rent, which payment shall be made at the same time as the Rent to which the GST relates is to be paid in accordance with the terms of this Lease. Regardless of any other provision of this Lease to the contrary, the amounts payable by the Tenant under this section shall be deemed not be Rent, but the Landlord shall have all of the same remedies for and rights of recovery for such amounts as it has for the recovery of Rent under this Lease, including without limitation, the right to distrain against the Tenant's property.

## 2.8 Net Lease

This lease is a completely net lease to the Landlord. The Landlord is not responsible for any expenses or outlays of any nature or kind whatsoever arising from or relating to the Premises, or the use or occupancy thereof, or the contents thereof or the business carried on therein. The tenant shall pay all charges, impositions and outlays of every nature and kind relating to the Premises.

# ARTICLE III

## ACCESS AND ENTRY

### 3.1 Right of Examination

The Landlord shall be entitled at all reasonable times to enter the Premises to examine them and to make such repairs, alterations or improvements thereto as the Landlord considers necessary or desirable. The Tenant shall not unduly obstruct any pipes, conduits or mechanical or other electrical equipment so as to prevent reasonable access thereto. The Landlord shall exercise its rights under this Section, to the extent possible in the circumstances, in such manner so as to minimize interference with the Tenants' use and enjoyment of the Premises (and shall use its reasonable best efforts to complete any work as expeditiously as possible), but shall in any event be entitled to temporarily obstruct, limit or close off access to the Premises for the purposes of completing any repairs, alterations or improvements thereto. If any excavation is made on the Lands, the Person making such excavation may enter the Premises to do any work considered necessary to preserve and protect the walls of the Lands.

### 3.2 Right to Show Premises

The Landlord and its agents have the right to enter the Premises at all reasonable times during Normal Business Hours to show them to prospective purchasers, or Mortgagees or prospective Mortgagees, and, during the last six months of the Term (or the last six months of any renewal term if this lease is renewed), to prospective tenants.

### 3.3 Entry Not Forfeiture

No entry into the Premises or anything done therein by the Landlord pursuant to a right granted by this lease shall constitute a breach of any covenant for quiet enjoyment, or (except where expressed by the Landlord in writing) shall constitute a re-entry or forfeiture, or an actual or constructive eviction. The Tenant shall have no claim for injury, damages or loss suffered as a result of any such entry or thing.

## ARTICLE IV

MAINTENANCE, REPAIRS AND ALTERATIONS4.1 Repair by Tenant: Compliance with Laws

- (a) The Tenant covenants that it shall, throughout the Term, at its sole cost and expense, maintain, repair and replace the Premises, as would a prudent owner of similar Premises, reasonable wear and tear excepted; and the Tenant shall at its sole cost and expense make or perform all necessary maintenance, repairs and replacements to the Premises and whether such maintenance, repairs and replacements are to the Premises or any improvements or services benefiting the Premises, including the repair, maintenance and replacement of all asphalt, concrete, paving, curbs, lights, electrical, mechanical and plumbing systems and or other systems serving the Premises. All of such repairs shall be performed using best quality materials and workmanship.
- (b) The Tenant covenants that it shall throughout the Term, keep and maintain the Premises, including but without limitations, the sidewalks, driveways and parking areas in a clean and orderly condition, free from any accumulation of dirt, rubbish, snow and ice and like and generally as is appropriate, and following the improvements contemplated in Section 10.18 hereof, to a high quality parking facility commensurate with its location; and the Tenant shall throughout the Term operate and manage the Premises in a prudent and businesslike manner.
- (c) The Landlord may enter the Premises at any time to view the state of repair. Such entry, except in the case of emergency, shall be on reasonable prior notice to, and after making reasonable arrangements with, the Tenant (which need to be in writing) and shall be conducted in such manner so as to minimize interference with the conduct of the Tenant's business. If the Landlord notifies the Tenant of the need for maintenance, repairs or replacements which are the obligation of the Tenant under this lease, the Tenant will repair in accordance with such notice and in the manner and to the standards required by the provisions of this lease. On the expiration or early termination of this lease the Tenant shall surrender the Premises to the Landlord in a good state of repair as required by the provisions of this lease. If the Tenant is in default of any of the provisions of this lease obliging it to maintain or repair the Premises, the Landlord may, but shall not be obliged to, make the needed repairs if the Tenant fails to make such repairs or commence to make such repairs (and thereafter diligently continues to complete such repairs) within twenty (20) days after notice from the landlord, and the Landlord may then charge all costs and expenses incurred by it in so doing, including interest thereon at the rate set out in Section 2.5, to the Tenant, for immediate payment on demand.
- (d) The Tenant shall not suffer any waste or injury to the Premises or any part thereof and shall not use or occupy the Premises or any part thereof, nor permit them to be used or occupied, for any unlawful purpose. The Tenant shall not by its act or omission permit anything to occur in or on the Premises which shall be or shall result in a nuisance.
- (e) The Tenant shall comply with and conform to the requirements of every applicable statute, law, by-law, regulation or requirement or order of any governmental authority or any insurance company by which either the Landlord or Tenant may be insured pursuant to the provisions of this lease or in connection with its obligations or interest hereunder during the Term (collectively referred to herein as "laws or orders") including, but without limitation, any laws or orders which may affect the condition, maintenance, use or occupation of the Lands or the failure to comply with which may cause the cancellation of or material reduction in coverage under any insurance policy affecting or related to this lease or the Premises, and in so doing the Tenant shall make any necessary alteration, repair or addition

to or deletion from any part of the Premises or any equipment or other faulty equipment used in connection with or appurtenant to the Premises. If the Tenant defaults under the provisions of this paragraph and fails to comply with any laws or orders, the Landlord may on twenty (20) days' notice to the Tenant (or on shorter notice or without notice where, in the reasonable judgement of the Landlord, there is a real apprehended emergency to persons or property, or where any delay in remedying such default would or might materially prejudice the Landlord) but shall not be obliged to, itself comply with such laws or orders and the Tenant shall pay to the Landlord on demand all costs and expenses incurred by the Landlord in so doing together with interest as provided in Section 2.5 of this lease. If any laws or orders are not legally binding the Tenant shall consult with and obtain the approval of the Landlord prior to complying with same.

#### 4.2 Approval of Tenant's Alterations

- (a) No Alterations shall be made to the Premises without the Landlord's written approval. Notwithstanding the foregoing, the Tenant shall be prohibited from erecting any building or other structures on the Premises. The Tenant shall submit to the Landlord details of the proposed work, including drawings and specifications prepared by qualified architects or engineers conforming to good engineering practice. All such Alterations shall be performed; (i) at the sole cost of the Tenant; (ii) by contractors and workmen approved by the Landlord; (iii) in a good and workmanlike manner; (iv) in accordance with drawings and specifications approved by the Landlord; (v) in accordance with all applicable legal and insurance requirements; (vi) subject to the reasonable regulations, supervision, control and inspection of the Landlord; and (vii) subject to such indemnification against liens and expenses as the Landlord reasonably requires. The Landlord's reasonable cost of supervising all such work shall be paid by the Tenant.
- (b) If any Alterations would affect any of the electrical, plumbing or mechanical or other systems, such work shall at the option of the Landlord be performed by the Landlord at the Tenant cost. On completion of such work the cost of the resulting repairs, replacement or alterations, shall be paid by the Tenant to the Landlord.

#### 4.3 Repair Where Tenant at Fault

Notwithstanding any other provisions of this lease, if the Premises is damaged or destroyed or requires repair, replacement or alteration as a result of the act or omission of the Tenant, its employees, agents, invitees, licensees, contractors or others for whom it is in law responsible, the cost of the resulting repairs, replacements or alterations shall be paid by the Tenant to the Landlord.

#### 4.4 Liens

The Tenant shall promptly pay for all materials supplied and work done in respect of the Premises so as to ensure that no lien is registered against any portion of the Lands or against the Landlord's or Tenant's interest therein. If a lien is registered or filed, the Tenant shall discharge it at its expense forthwith, failing which the Landlord may at its option discharge the lien by paying the amount claimed to be due into court and the amount so paid and all expenses of the Landlord including legal fees (on a solicitor and his client basis) shall be paid by the Tenant to the Landlord.

#### 4.5 Notice by Tenant

The Tenant shall notify the Landlord of any accident, defect, damage or deficiency in any part of the Premises, which comes to the attention of the Tenant, its employees or contractors notwithstanding that the Landlord may have no obligation with respect thereto.

## ARTICLE V

INSURANCE AND INDEMNITY5.1 Tenant's Insurance

- (a) The Tenant shall maintain the following insurance throughout the Term at its sole cost:
- (i) "All Risks" (including flood and earthquake) property insurance with deductibles not exceeding three per cent (3%) of the amount insured, naming the Tenant, the Landlord, the owners of the Premises and the Mortgagee as insured parties, containing a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and against those for whom the Landlord is in law responsible, and (except with respect to the Tenant's chattels) incorporating the Mortgagee's standard mortgage clause. Such insurance shall insure: (1) property of every kind owned by the Tenant or for which the Tenant is legally liable located on or in the Premises, in an amount not less than the full replacement cost thereof, with such costs to be adjusted no less than annually; and (2) extra expense insurance in such amount as will reimburse the Tenant for loss attributable to all perils referred to in this Section 5.1(a)(i) or resulting from prevention of access to the Premises. Such policy or policies, except with respect to extra expense insurance, shall provide that loss thereon shall be adjusted and payable to the Landlord, with the proceeds to be held in trust to be used for repair and replacement of the property so insured.
  - (ii) Comprehensive general liability insurance which includes the following coverages: owners protective; personal injury; occurrence property damage; and employers and blanket contractual liability. Such policies shall: contain inclusive limits of not less than \$5,000,000; provide for cross liability; and name the Landlord as an insured;
  - (iii) business interruption insurance in an amount that will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against under subclause (i);
  - (iv) Tenant's legal liability insurance for the actual cash value of the Premises, including loss of use thereof;
  - (v) Automobile liability insurance on a non-owned form including contractual liability and on an owner's form covering all licensed vehicles operated by or on behalf of the Tenant, which insurance shall have inclusive limits of not less than \$5,000,000; and
  - (vi) Any other form of insurance which the Tenant or the Landlord, acting reasonably, or the Mortgagee requires from time to time in form, in amounts and for risks which a prudent tenant would insure.
- (b) All policies referred to in this Section 5.1 shall: (i) be taken out with insurers reasonably acceptable to the Landlord; (ii) be in a form reasonably satisfactory to the Landlord; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to the Landlord; (iv) not be invalidated as respects the interests of the Landlord or the Mortgagee by reason of any breach of or violation of any warranty, representation, declaration or condition; and (v) contain an undertaking by the issuers to notify the Landlord by registered mail not less than 30 days prior to any material change, cancellation or termination. Certificates of insurance or, if required by the Landlord or its

Mortgagee, certified copies of such insurance policies, shall be delivered to the Landlord forthwith upon request. If the Tenant fails to take out or to keep in force any insurance referred to in this Section 5.1 or should any such insurance not be approved by either the Landlord or the Mortgagee and should the Tenant not commence to diligently rectify (and thereafter proceed to diligently rectify) the situation within 48 hours after written notice by the Landlord to the Tenant (stating, if the Landlord or the Mortgagee, from time to time, does not approve of such insurance, the reasons therefor) the Landlord has the right without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord shall be paid by the Tenant to the Landlord without prejudice to any other rights or remedies of the Landlord under this lease.

#### 5.2 Increase in Insurance Premiums

The Tenant shall not keep or use in the Premises any article which may be prohibited by any fire insurance policy in force from time to time covering the Premises. If: (a) the conduct of business in, or use or manner of use of, the Premises; or (b) any acts or omissions of the Tenant, cause or result in any increase in premiums for any insurance carried by the Landlord with respect to the Premises, the Tenant shall pay any such increase in premiums.

#### 5.3 Cancellation of Insurance

If any insurance policy upon the Lands or Premises or any part thereof shall be cancelled or shall be threatened by the insurer to be cancelled or the coverage thereunder reduced in any way by the insurer by reason of the use of the Premises by the Tenant or any assignee or subtenant of the Tenant, or by anyone permitted by the Tenant to be upon the Premises, and if the Tenant fails to remedy such condition within 48 hours after notice thereof by the Landlord, the Landlord may, at its option, either: (a) re-enter the Premises forthwith by leaving upon the Premises a notice in writing of its intention so to do and thereupon the Landlord shall have the same rights and remedies as are contained in Article VIII; or (b) enter upon the Premises and remedy the condition giving rise to such cancellation, threatened cancellation or reduction, including removal of any offending article, and the Tenant shall pay the cost thereof to the Landlord and the Landlord shall not be liable for any damage or injury caused to any property of the Tenant or of others located on the Premises as a result of any such entry.

#### 5.4 Loss or Damage

The Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the Lands or damage to property of the Tenant or of others located on the Premises nor shall it be responsible for any loss of or damage to any property of the Tenant or others from any cause, whether or not any such death, injury, loss or damage, results from the negligence of the Landlord, its agents, employees, contractors, or others for whom it may, in law, be responsible. Without limiting the generality of the foregoing, the Landlord shall not be liable for any injury or damage to Persons or property resulting from fire, explosion, falling fixtures, steam, gas, electricity, water, rain, flood, snow, or leaks from any part of the Premises or from the pipes, appliances, plumbing, works, or subsurface of the Lands or from the street or any other place or by any other cause whatsoever. The Landlord shall not be liable for any such damage caused by Persons on the Lands or by occupants of adjacent property thereto, or the public, or caused by Persons on the Lands or by occupants of adjacent property thereto, or the public or caused by construction or by any private, public or quasi-public work. All property of the Tenant kept or stored on the Premises shall be so kept or stored at the risk of the tenant only and the Tenant releases and agrees to indemnify the Landlord and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Tenant's insurers.

#### 5.5 Indemnification of the Landlord

Notwithstanding any other provision of this lease, the Tenant shall indemnify the Landlord and save

it harmless from all loss (including loss of Net Rent and Additional Rent) claims, actions, damages, liability, and expense in connection with loss of life, personal injury, damage to Property or any other loss or injury whatsoever arising out of this lease, or any occurrence in, upon or at the Premises, or the occupancy or use by the Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Premises by the Tenant. If the Landlord shall, without fault on its part, be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless in connection with such litigation. The Landlord may at its option participate in any litigation or settlement discussions relating to the foregoing, or any other matter for which the Tenant is required to indemnify the Landlord under this lease. Alternatively, the Landlord may require the Tenant to assume carriage of and responsibility for all or any part of such litigation or discussions.

## ARTICLE VI

### DAMAGE AND DESTRUCTION

#### 6.1 No Abatement

If the Premises are damaged or destroyed in whole or in part by fire or any other occurrence, this lease shall continue in full force and effect and there shall be no abatement of Rent except as provided in Article VI.

6.2 Damage to Premises If the Premises are at any time destroyed or damaged as a result of fire or any other casualty required to be insured against by the Landlord under this lease or otherwise insured against by the Landlord and not caused or contributed to by the Tenant, then the following provisions shall apply:

- (a) if the Premises are rendered untenable only in part, the Landlord shall diligently repair the Premises and Net Rent shall abate proportionately to the portion of the Premises rendered untenable from the date of destruction or damage until the Landlord's repairs have been completed;
- (b) if the Premises are rendered wholly untenable, the Landlord shall diligently repair the Premises and Net Rent shall abate entirely from the date of destruction or damage until the Landlord's repairs have been completed;
- (c) if the Premises are not rendered untenable in whole or in part, the Landlord shall diligently perform such repairs to the Premises but in such circumstances Net Rent shall not terminate or abate;
- (d) upon being notified by the Landlord that the Landlord's repairs have been substantially completed, the Tenant shall diligently perform all repairs to the Premises which are the Tenant's responsibility under this Lease, and all other work required to fully restore the Premises for use in the Tenant's business, in every case at the Tenant's cost and without any contribution to such cost by the Landlord, whether or not the Landlord has at any time made any contribution to the cost of supply, installation or construction of any improvements in the Premises;
- (e) nothing in this Section shall require the Landlord to rebuild the Premises in the condition which existed before any such damage or destruction so long as the Premises as rebuilt will have reasonably similar facilities to those in the Premises prior to such damage or destruction;
- (f) nothing in this Section shall require the Landlord to undertake any repairs or replacements having a cost in excess of the insurance proceeds actually received by the Landlord with



respect to such damage or destruction and in the event such insurance proceeds are less than the cost of such repair or replacement, the Landlord's obligations shall be governed in the first instance by the provisions of Section 6.4.

### 6.3 Right of Termination

Notwithstanding Section 6.2, if the damage or destruction which has occurred in the Premises is such that in the reasonable opinion of the Landlord the Premises cannot be rebuilt or made fit for the purposes of the Tenant within ninety (90) days of the happening of the damage or destruction, the Landlord may, at its option, terminate this lease on notice to the Tenant given within thirty (30) days after such damage or destruction. If such notice of termination is given, Rent shall be apportioned and paid to the date of such damage or destruction and the Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this lease.

### 6.4 Landlord's Rights

Notwithstanding any other provisions of this lease, in the event that all or any portion of the Premises shall be destroyed or damaged by reason of any cause, to the extent that the estimated cost of repairing, restoring or rebuilding it shall, by the Landlord's reasonable estimate, exceed by ten per cent (10%) or more the proceeds of insurance available to the Landlord for the purpose of repair, restoration or rebuilding, then the Landlord may at its option terminate this lease upon thirty (30) days' written notice to the Tenant, given within ninety (90) days after the happening of such destruction or damage, and the Tenant shall on the giving of such notice immediately surrender the Premises and this lease to the Landlord, and Rent shall be apportioned and adjusted to the date of such termination.

### 6.5 Architect's Certificate

The certificate of the Architect shall bind the parties as to: (a) the percentage of the Total Rentable Area of the Premises damaged or destroyed; (b) whether or not the Premises are rendered untenable and the percentage of the Premises rendered untenable; (c) the date upon which either the Landlord's or Tenant's work of reconstruction or repair is completed or substantially completed and the date when the Premises are rendered tenable; and (d) the state of completion of any work of the Landlord or the Tenant.

## ARTICLE VII

### ASSIGNMENT, SUBLETTING AND TRANSFERS

#### 7.1 Assignments, Subleases and Transfers

The Tenant shall not enter into, consent to or permit any Transfer without the prior written consent of the Landlord in each instance, which consent shall not be unreasonably withheld but shall be subject to the Landlord's rights under Section 7.2. Notwithstanding any statutory provision to the contrary, it shall not be considered unreasonable for the Landlord to take into account the following factors in deciding whether to grant or withhold its consent whether in the Landlord's opinion, the financial background, business history and capability of the proposed Transferee is satisfactory. Consent by the Landlord to any Transfer if granted shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. This prohibition against Transfer shall include a prohibition against any Transfer by operation of law and no Transfer shall take place by reason of the failure of the Landlord to give notice to the Tenant within thirty (30) days as required by Section 7.2.

#### 7.2 Conditions of Transfer

- (a) If there is a permitted Transfer, the Landlord may collect rent from the Transferee and

apply the net amount collected to the rent payable under this lease but no acceptance by the Landlord of any payments by a Transferee shall be deemed a waiver of the Tenant's covenants or any acceptance of the Transferee as Tenant or a release from the Tenant from the further performance by the Tenant of its obligations under this lease. Any consent by the Landlord shall be subject to the Tenant and Transferee executing an agreement with the Landlord agreeing:

- (i) that the Transferee will be bound by all of the terms of this lease and, except in the case of a sublease, that the Tenant will be so bound as if it had originally executed this lease as tenant; and
  - (ii) to amend the lease to incorporate such terms, covenants and conditions as are necessary so that the lease will be in accordance with the Landlord's standard form of lease in use at the time of the Transfer, and so as to incorporate any conditions imposed by the Landlord in its consent or required by this Section 7.2. Notwithstanding the foregoing, such amendments may not have the effect of increasing the Net Rent and Additional Rent payable by the Tenant under the Lease or amending or modifying any business or financial terms.
- (b) Notwithstanding any Transfer permitted or consented to by the Landlord, the Tenant shall remain liable under this lease and shall not be released from performing any of the terms of this lease.
- (c) The Landlord's consent to any Transfer shall be subject to the condition that: (i) the rent and additional rent payable by the Transferee shall not be less than the Net Rent and Additional Rent payable by the Tenant under this lease as at the effective date of the Transfer, (including any increases provided for in this lease); and (ii) if the rent and additional rent to be paid by the Transferee under such Transfer exceeds the Net Rent and Additional Rent payable under this lease, the amount of such excess shall be paid by the Tenant to the Landlord. If the Tenant receives from any Transferee, either directly or indirectly, any consideration other than rent or additional rent for such Transfer, either in the form of cash, goods or services (other than the proceeds of any financing as the result of a Transfer involving a mortgage, charge or similar security interest in this lease) the Tenant shall forthwith pay to the Landlord an amount equivalent to such consideration. The Tenant and the Transferee shall execute any agreement required by the Landlord to give effect to the foregoing terms.
- (d) Notwithstanding the effective date of any permitted Transfer as between the Tenant and the Transferee, all Net Rent and Additional Rent for the month in which such effective date occurs shall be paid in advance by the Tenant so that the Landlord will not be required to accept partial payments of Net Rent and Additional Rent for such month from either the Tenant or Transferee.
- (e) Any document evidencing any Transfer permitted by the Landlord, or setting out any terms applicable to such Transfer or the rights and obligations of the Tenant or Transferee thereunder, shall be prepared by the Landlord or its solicitors and all associated legal costs shall be paid by the Tenant.

### 7.3 Change of Control

If the Tenant is at any time a corporation or partnership, any actual or proposed Change of Control in such corporation or partnership shall be deemed to be a Transfer and subject to all of the provisions of this Article VII, the Tenant shall make available to the Landlord or its representatives all of its corporate or partnership records, as the case may be, for inspection at all reasonable times, in order to ascertain whether any Change of Control has occurred.

#### 7.4 No Advertising

The Tenant shall not advertise that the whole or any part of the Premises are available for a Transfer 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, which approval shall not be unreasonably withheld or unduly delayed. No such advertisement shall contain any reference to the rental rate of the Premises.

#### 7.5 Assignment by Landlord

The Landlord shall have the unrestricted right to sell, lease, convey or otherwise dispose of all or any part of the Lands and this lease or any interest of the Landlord in this lease. To the extent that the purchaser or assignee from the Landlord assumes the obligations of the Landlord under this lease, the Landlord shall thereupon and without further agreement be released of all liability under this lease.

### ARTICLE VIII

#### DEFAULT

#### 8.1 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 are not alternative:

- (a) to terminate this lease by notice to the Tenant;
- (b) to enter the Premises as agent of the Tenant and to relet the Premises for whatever term, and on such terms as the Landlord in its discretion may determine and to receive the rent therefor and as agent of the Tenant to take possession of any property of the Tenant on the Premises, to store such property at the expense and risk of the Tenant or to sell or otherwise dispose of such property in such manner as the Landlord may see fit without notice to the Tenant; to make alterations to the Premises to facilitate their reletting; and to apply the proceeds of any such sale or reletting first, to the payment of any expenses incurred by the Landlord with respect to any such reletting 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 in payment of future Rent as it becomes due and payable. 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 upon the Premises for such purposes. No notice of the Landlord's intention to perform such covenants need be given the Tenant unless expressly required by this lease. The Landlord shall not be liable to the Tenant for any loss, injury or damage caused by acts of the Landlord in remedying or attempting to remedy such default and the Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection with remedying or attempting to remedy such default;
- (d) to recover from the Tenant all damages and expenses incurred by the Landlord as a result of any breach 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) 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 accrue on a day-to-day basis

and shall immediately become due and payable as accelerated Rent.

#### 8.2 Distress

Notwithstanding any provision of this lease or any provision of applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during Term 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.

#### 8.3 Costs

The Tenant shall pay to the Landlord all damages and costs (including, without limitation, all legal fees on a solicitor and his client basis) 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 insure, or to indemnify the Landlord.

#### 8.4 Allocation of Payments

The Landlord may at its option apply sums received from the Tenant against any amounts due and payable by the Tenant under this lease in such manner as the Landlord sees fit.

#### 8.5 Survival Obligations

If the Tenant has failed to fulfil its obligations under this lease with respect to maintenance, repair and alteration of the Premises, such obligations and the Landlord's rights in respect thereto shall remain in full force and effect notwithstanding the expiration or sooner termination of the Term.

### ARTICLE IX

#### STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

##### 9.1 Status Statement

Within ten (10) days after written request by the Landlord, the Tenant shall deliver in a form supplied by the Landlord a statement or estoppel certificate to the Landlord as to the status of this lease, including as to whether this lease is unmodified and in full force and effect (or, if there have been modifications that this lease is in full force and effect as modified and identifying the modification agreements); the amount of Net Rent and Additional Rent then being paid and the dates to which same have been paid; whether or not there is any existing or alleged default by either party with respect to which a notice of default has been served and if there is any such default, specifying the nature and extent thereof; and any other matters pertaining to this lease as to which the Landlord shall request such statement or certificate.

##### 9.2 Subordination

This lease and all rights of the Tenant shall be subject and subordinate to any and all Mortgages and any ground, operating, overriding or underlying leases, from time to time in existence against the Lands. On request, the Tenant shall subordinate this lease and its rights under this lease to any and all such Mortgages and leases and to all advances made under such Mortgages, provided that the Landlord obtains from any Mortgagee a non-disturbance agreement in favour of the Tenant which entitles the Tenant to remain in possession of the Leased Premises in accordance with the Lease so long as it continues to pay the rent and is not in default thereunder. The form of such subordination shall be as required by the Landlord or any Mortgagee or the lessee under any such lease.

### 9.3 Attornment

The Tenant shall promptly on request attorn to any Mortgagee, or to the owners of the Premises, or the lessee under any ground, operating, overriding, underlying or similar lease of all or substantially all of the Premises made by the Landlord or otherwise affecting the Premises, or the purchaser on any foreclosure or sale proceedings taken under any Mortgage, and shall recognize such Mortgagee, owner, lessee, or purchaser as the landlord under this lease provided that the Landlord obtains from any Mortgagees a non-disturbance agreement in favour of the Tenant which entitles the Tenant to remain in possession of the Leased Premises in accordance with the Lease so long as it continues to pay the rent and is not in default thereunder.

## ARTICLE X

### GENERAL PROVISIONS

#### 10.1 Rules and Regulations

The Tenant shall comply with all Rules and Regulations, and amendments thereto, adopted by the Landlord from time to time including those set out in Schedule "C", provided any amendments thereto are not inconsistent with the terms of the Lease.

#### 10.2 Delay

Except as expressly provided in this lease, whenever the Landlord or Tenant is delayed in the fulfilment of any obligation under this lease (other than the payment of Rent and surrender of the Premises on termination) by an unavoidable occurrence which is not the fault of the party delayed in performing such obligation, then the time for fulfilment of such obligation shall be extended during the period in which such circumstances operate to delay the fulfilment of such obligation.

#### 10.3 Overholding

If the Tenant remains in possession of the Premises after the end of the Term with the consent of the Landlord but without having executed and delivered a new lease or an agreement extending the Term, there shall be no tacit renewal of this lease, and the Tenant shall be deemed to be occupying the Premises as a tenant from month to month at a monthly Net Rent payable in advance on the first day of each month equal to the monthly amount of Net Rent payable during the last month of the Term, and otherwise upon the same terms as are set forth in this lease, so far as these are applicable to a monthly tenancy.

#### 10.4 Waiver

If either the Landlord or Tenant excuses or condones any default by the other of any obligation under this lease, no waiver of such obligation shall be implied in respect of any continuing or subsequent default.

#### 10.5 Registration

Neither the Tenant nor anyone claiming under the Tenant shall register this lease or any Transfer without prior written consent of the Landlord. If the Tenant or any permitted Transferee wishes to register a document for the purposes of giving notice of this lease or a Transfer, then the Landlord shall at the request and expense of the Tenant execute a notice, caveat or short form of lease for the purposes of registration in such form as approved by the Landlord and without disclosure of any terms which the Landlord does not desire to have disclosed. If the Lands comprise more than one parcel of land, the Landlord may direct the Tenant or Transferee as to the parcel or parcels against which registration may be

effected.

#### 10.6 Notices

Any notice, consent or other instrument which may be or is required to be given under this lease shall be in writing and shall be delivered in person or sent by registered mail postage pre-paid addressed (a) if to the Landlord, at 8281 Yonge Street, Markham, Ontario, and (b) if to the Tenant, at 8281 Yonge Street, Markham, Ontario. Any such notice or other instrument shall be deemed to have been given and received on the day upon which personal delivery is made or, if mailed, then 48 hours following the date of mailing. Either party may give notice to the other of any change of address and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices. If postal service is interrupted or substantially delayed, all notices or other instruments shall be delivered in person.

#### 10.7 Successors

The rights and liabilities created by this lease extend to and bind the successors and assigns of the Landlord and the heirs, executors, administrators and permitted successors and assigns of the Tenant. No rights, however, shall enure to the benefit of any Transferee unless the provisions of Article VII are complied with.

#### 10.8 Joint and Several Liability

If there is at any time more than one tenant or more than one Person constituting the Tenant, their covenants shall be considered to be joint and several and shall apply to each and every one of them. If the Tenant is or becomes a partnership, each person who is a member, or shall become a member, of such partnership or its successors shall be and continue to be jointly and severally liable for the performance of all covenants of the Tenant pursuant to this lease, whether or not such Person ceases to be a member of such partnership or its successor.

#### 10.9 Captions and Section Numbers

The captions, section numbers, article numbers and table of contents appearing in this lease are inserted only as a matter of convenience and in no way affect the substance of this lease.

#### 10.10 Extended Meanings

The words "hereof", "hereto", and "hereunder" and similar expressions used in this lease relate the whole of this lease and not only to the provisions in which such expressions appear. This lease shall be read with all the changes in number and gender as may be appropriate or required in the context. Any reference to the Tenant includes, where the context allows, the employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant might reasonably be expected to exercise control.

#### 10.11 Partial Invalidity

All of the provisions of this lease are to be construed as covenants even though not expressed as such. If any such provision is held or rendered illegal or unenforceable it shall be considered separate and severable from this lease and the remaining provisions of this lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this lease.

#### 10.12 Entire Agreement

This lease and the Schedules and riders, if any, attached hereto and the Offer to Lease, if any, set forth the entire agreement between the Landlord and Tenant concerning the Premises and there are no agreements or understandings between them other than as are herein set forth. This lease and its Schedules

and riders may not be modified except by agreement in writing executed by the Landlord and Tenant.

#### 10.13 Governing Law

This lease shall be construed in accordance with and governed by the laws of the Province of Ontario.

10.14 Time of the Essence Time is of the essence of this lease.

#### 10.15 Quiet Enjoyment

If the Tenant pays Rent, fully performs all of its obligations under this lease, and there has been no Event of Default, the Tenant shall be entitled to peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by the Landlord or any Person claiming through the Landlord.

#### 10.16 Options to Renew

Provided the Tenant is not in default, the Tenant shall have the right to rent the term of the Lease for five (5) further terms of three (3) years each. Each option to renew shall be deemed to be automatically exercised unless written notice to the contrary is given by the Tenant to the Landlord at least six (6) months prior to the expiry of the then current renewal term. The renewal of Lease shall be on the same terms and conditions as contained in the Lease except for any further options to renew beyond the five (5) renewal terms contemplated herein.

#### 10.17 Environmental Control

The Tenant acknowledges and agrees that it has leased the Premises in an "as is, where is" basis and that the Landlord has no responsibility or liability with respect to the state of repair or condition of the Premises or with respect to any defects or deficiencies therein or the compliance or non-compliance of the Premises with applicable environmental legislation. The Tenant assumes the sole responsibility for the contamination of the Premises created during the Term and any renewals thereof by any contaminant (for the purpose of this lease, a "contaminant" means any solid, liquid, gas, odour, heat, sound, vibration or radiation that results directly or indirectly from human activities that may cause an adverse effect) and shall wholly indemnify the Landlord with respect thereto. The Tenant shall be similarly liable for, and shall indemnify the Landlord with respect to, any claims, actions or demands of any kind whatsoever, with respect to any pollutant or toxic substance on or in the Premises created or caused during the Term and renewals thereof as a result of the activities of the Tenant or any other person. The Tenant shall bear sole responsibility for the clean-up and removal of any such contaminant, pollutant or toxic substance and shall be solely liable for any consequential damages claimed by anyone with respect thereto and shall wholly indemnify the Landlord with respect thereto. The Tenant shall comply with all environmental laws and regulations affecting the Premises; shall promptly advise the Landlord in writing of any orders or claims issued by any governmental authority or agency with respect to the state or condition of the Premises and their compliance or non-compliance with environmental laws and regulations; shall present to the Landlord for the Landlord's approval (not to be unreasonably withheld or delayed) any remedial plans which the Tenant elects or is required to initiate or perform with respect to causing the Premises to comply with all applicable environmental laws and regulations; shall promptly notify the Landlord in writing if any statutory or civil proceedings are commenced against the Tenant under any environmental law or regulation; shall disclose to any subtenants, licensees or other occupants of the Premises the existence of any known contaminants, pollutants, or toxic substances; shall permit the Landlord at any time on reasonable notice to the Tenant to enter the Premises to inspect same in connection with the compliance with environmental laws and regulations and to conduct such tests and procedures on the Premises as the Landlord may elect in connection with the existence of contaminants, pollutants or toxic substances and the compliance of the Premises with environmental laws and regulations, all such activities to be conducted so as to cause as little interference to the Tenant's business as possible in all circumstances; and shall clean up, provided such removal is permitted in accordance with all applicable governmental laws and regulations, and remove any contaminants, pollutants or toxic substances caused prior to or during the Term or any renewal of the Term,

prior to the expiration of the Term or any renewal of the Term (including the removal of any storage tanks, bins, plumbing, machinery, equipment or other facilities affected by same) all to the satisfaction of any governmental agencies with jurisdiction over same and in accordance with all applicable laws and regulations. The obligations of the Tenant, including its obligations to indemnify the Landlord, shall survive the expiration or termination of this lease and shall remain in full force and effect until fully complied with. If the Tenant fails to comply with any of the foregoing obligations, such failure shall constitute an event of default under this lease and shall entitle the Landlord to the same rights and remedies available with respect to any other default, including without limitation, the right of terminating this lease and re-entering the Premises, all without releasing the Tenant from its obligations. If the Tenant fails to comply with the foregoing obligations, the Landlord may, at its option, elect to comply with same at the cost and expense of the Tenant (including Landlord's legal fees on a solicitor on his own client basis) and the Tenant shall pay all such costs and expenses to the Landlord forthwith on demand.

#### 10.18 Site Plan Approval

The Tenant acknowledges having been advised that the Landlord is currently in the process of making application to the Town of Markham for site plan and other governmental approvals to enable to the Premises to be used in accordance with all Applicable Laws as a parking facility. The Landlord makes no representations or warranties concerning the ability of the Tenant to continue to be able to use the Premises for the permitted use, nor does it make any representation or warranty that the current use is a permitted use in accordance with Applicable Laws. On the contrary, the Tenant acknowledges having been advised that the current use does not comply with applicable zoning by-laws. The Landlord agrees to use is reasonable efforts to complete the process of making site plan and other applications to the Town of Markham and other local authorities and following receipt of site plan approval, to complete the improvements to the Premises in accordance with the site plan approval, which improvements shall be completed as expeditiously as possible at the sole cost and expense of the Tenant (and collectable as Additional Rent) in accordance with any approval granted by the Town of Markham (or other approval authority). The Tenant hereby remises, releases, and forever discharges the Landlord from any liability, action, cause of action or claim, including any penalties, work orders or other action by the Town of Markham or other party in the event that it is unable to secure the approvals necessary to permit the Premises to continue to be used as a parking facility.

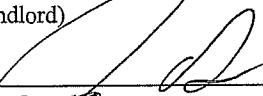
#### 10.19 New Lease


The Tenant acknowledges and agrees that a breach, default or event of default by Tenant under the terms and conditions of an Extension Agreement (the "Extension Agreement") dated January 10, 2006 between 2079843 Ontario Inc., as Landlord, and the Tenant, as Tenant or the Lease (as defined in the Extension Agreement for the purposes of this paragraph) in respect of the property municipally known as 8281 Yonge Street shall be considered an Event of Default for the purposes of this Lease. In the event that the landlord described in the Extension Agreement terminates the Extension Agreement (and the Lease, as defined in the Extension Agreement), the Landlord shall at its option be entitled to terminate this Lease. Upon merger of the title of the properties contemplated by this Lease and the Extension Agreement, at the option of the Landlord, the Tenant covenants and agrees to enter into a single lease covering both properties upon the Landlord's then standard form of net lease containing the same financial and business terms as herein contained and as set out in the Extension Agreement subject to such reasonable amendments requested by the Tenant (save and except for the financial and business terms which shall remain the same).



IN WITNESS WHEREOF the Landlord and Tenant have signed this lease under seal  
this Lease as of the            day of June, 2006.

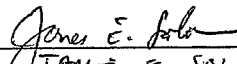
**2044922 ONTARIO LTD.**  
(Landlord)

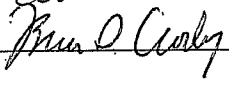
Per:   
Name: Steve da Costa  
Title: Secretary

Per:   
Name: Steve Colivas  
Title: President

We have authority to bind the corporation

**EXTREME FITNESS, INC.**  
(Tenant)

Per:   
Name: JAMES E SOLOMONS  
Title: CEO

Per:   
Name:  
Title:

We have authority to bind the corporation.

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

Lot 5 Plan 4184 Markham, Lot 6, Plan 4184 Markham, Lot 7, Plan 4184 Markham, except Parts 2 and 3, Please 64R-3143; Part Lane Lying east of Lots 5, 6, 7 Plan 4184 Markham as Closed by By-Law R478788, Part 1, Plan 65R-12007; Subject to R494985E, Markham.

**SCHEDULE "B"**  
**DEFINITIONS**

In this lease and in the Schedules to this lease:


1. "Additional Rent" means all sums of money required to be paid by the Tenant under this lease (except Net Rent) whether or not the same are designated "Additional Rent" or are payable to the Landlord or otherwise.
2. "Alterations" means all repairs, replacements, improvements or alterations to the Premises by the Tenant.
3. "Architect" means the architect from time to time named by the Landlord.
4. "Capital Tax" means the amount of tax payable by the Landlord under the Corporations Tax Act of Ontario and amended or replaced from time to time or any other legislation imposing taxes on account of capital, calculated as if the Lands and Building were the only property of the Landlord.
5. "Change of Control" means, in the case of any corporation or partnership, the transfer or issue by sale, assignment, subscription, transmission on death, mortgage, charge, security interest, operation of law or otherwise, of any shares, voting rights or interest which would result in any change in the effective control of such corporation or partnership unless such change occurs as a result of trading in the shares of a corporation listed on a recognized stock exchange in Canada or the United States and then only so long as the Landlord receives assurance reasonably satisfactory to it that there will be a continuity of management and of the business practices of such corporation notwithstanding such Change of Control.
6. "Commencement Date" means the date on which the Term commences under Section 1.2.
7. An "Event of Default" shall occur whenever: (a) any Net Rent is in arrears, whether or not any demand for payment has been made by the Landlord; (b) any Additional Rent is in arrears and is not paid within 5 days after written demand by the Landlord; (c) the Tenant has breached any of its obligations in this lease (other than the payment of Rent) and: (i) fails to remedy such breach within 15 days (or such shorter period as may be provided in this lease); or (ii) if such breach cannot reasonably be remedied within 15 days or shorter period, the Tenant fails to commence to remedy such breach within such 15 days or shorter period or thereafter fails to proceed diligently to remedy such breach; in either case after notice in writing from the Landlord; (d) the Tenant or any Indemnifier becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its winding-up or other termination of the Tenant's existence or the liquidation of its assets; (e) a trustee, receiver, receiver/manager or like Person is appointed with respect to the business or assets of the Tenant or any Indemnifier; (f) the Tenant makes a sale in bulk of all or substantial portion of its assets other than in conjunction with a Transfer approved by the Landlord; (g) this lease or any of the Tenant's assets are taken under a writ of execution; (h) the Tenant purports to make a Transfer other than in compliance with the provisions of this lease; (i) the Tenant abandons or attempts to abandon the Premises, or the Premises become vacant and unoccupied for a period of ten (10) consecutive days or more without the consent of the Landlord; (j) any insurance policies covering any part of the Premises or any occupant thereof are actually or threatened to be canceled or adversely changed as a result of any use or occupancy of the Premises; or (k) if an Event of Default as defined in this paragraph occurs with respect to any lease or agreement under which the Tenant has with the Landlord.
8. "GST" means all goods and services, business transfer, value-added, national sales, multi-stage sales, sales, use or consumption taxes or other similar taxes imposed by any lawful taxing authority in Canada upon the Landlord or the Tenant, or in respect of this Lease, or the payments made by the Tenant hereunder, including without limitation, the rental of the Leased Premises and the provision of services to the Tenant hereunder, if any;

9. "Landlord" means the party of the first part and includes the Landlord and its duly authorized representatives and agents. "Lands" means the lands situated in the Town of Markham in the Province of Ontario, as more particularly described in Schedule "A", or as such lands may be explained or reduced from time to time.
10. "Mortgage" means any and all mortgages, charges, debentures, security agreements, trust deeds, hypothecs or like instruments resulting from any financing, refinancing or collateral financing (including renewals or extensions thereof) made or arranged by the Landlord of its interest in all or any part of the Lands.
11. "Mortgagee" means the holder of, or secured party under, any Mortgage and includes any trustee for bondholders.
12. "Net Rent" means the annual rent payable by the Tenant under Section 2.2..
13. "Person" means any person, firm, partnership or corporation, or any group or combination of persons, firms, partnerships or corporations.
14. "Premises" means the Land and improvements thereon collectively.
15. "Rent" means the aggregate of Net Rent and Additional Rent.
16. "Rental Year" means: (a) in the case of the first Rental Year, the period from the Commencement Date to the end of the fiscal year for the Development as designated by the Landlord next occurring; (b) in the case of following Rental Years, consecutive 12 calendar month periods commencing one day after the end of the first Rental Year. However, the last Rental Year shall end on the expiry or earlier termination of this lease.
17. "Rules and Regulations" means the rules and regulations adopted and promulgated by the Landlord from time to time pursuant to Section 10.1. The Rules and Regulations existing as at the Commencement Date are those set out in Schedule "C".
18. "Taxes" means all taxes, levies, charges, local improvement rates and assessments whatsoever assessed or charged against the Premises or any part thereof by any lawful taxing authority and including any amounts assessed or charged in substitution for or in lieu of any such taxes, and including Capital Tax, but excluding only such taxes as capital gains taxes, corporate, income, profit or excess profit taxes to the extent such taxes are not levied in lieu of any of the foregoing against the Premises or the Landlord in respect thereof.
19. "Tenant" means the party of the second part and is deemed to include the word "lessee" and includes every person mentioned as Tenant in this lease.
20. "Term" means the period set out in Section 1.2.
21. "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, any transaction by which any right of use or occupancy of all or any part of the Premises is conferred upon anyone, any mortgage, charge or encumbrance of this lease or the Premises or any part thereof or other arrangement under which either this lease or the Premises become security for any indebtedness or other obligations and includes any transaction or occurrence whatsoever (including, but not limited to, expropriation, receivership proceedings, seizure by legal process and transfer by operation of law), which has changed or might change the identity of the Persons having lawful use or occupancy of any part of the Premises.
22. "Transferee" means the Person or Persons to whom a Transfer is or is to be made.

**SCHEDULE "C"****RULES AND REGULATIONS**

- (a) The Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything thereon which will in any way increase the risk of fire or the rate of fire insurance on the Premises or on property kept thereon, or violate or act at variance with the laws relating to fires or with the regulations of the fire department or any governmental authority, or with any insurance upon the Premises, or violate or act in conflict with any statutes, rules and ordinances governing health standards or with any other statute or municipal by-law.
- (b) The parking shall be used only for the parking of passenger automobiles and no part of the parking areas or driveways shall be used for the parking or storage of trucks, trailers, vans or vehicles.
- (c) The Tenant shall not allow any accumulation of debris, garbage, trash or refuse on the Lands and all of the same shall be kept in appropriate vermin-proof containers until removed. All garbage, trash, rubbish and refuse shall be removed by the Tenant at its expense on a regular basis.
- (d) The Tenant shall not use or permit the use of any objectionable advertising medium such as, but without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio broadcast or television apparatus on the Premises.
- (e) The Tenant shall not cause or permit objectionable odours to emanate or be dispelled from the Premises.
- (f) The Tenant shall not mount or place an antenna of any nature on the Lands.
- (g) The Tenant shall not paint, affix, display or cause to be painted, affixed or displayed any sign, picture, advertisement, notice, lettering, decoration on any part of the Lands without the prior written consent of the Landlord. All such signs shall remain the property of the Tenant and shall be maintained at the Tenant's sole cost and expense. At the expiration of the Term or the earlier termination of this lease, the Tenant shall remove any such sign, picture, advertisement, notice, lettering or decoration from the Premises at the Tenant's expense and shall promptly repair any damage caused by either the installation or removal of same. The Tenant's obligation to perform this covenant shall survive the expiration of the Term or earlier termination of this lease.
- (h) When required by any governmental authority having jurisdiction the Tenant will provide facilities or accommodation for garbage and waste and its disposal and pick up in accordance with such requirements.
- (i) Any reference in these rules and regulations to the Tenant shall include, where the context allows or requires, the servants, employees, agents, invitees, concessionaires and licensees of the Tenant and all others over whom the Tenant might be reasonably expected to exercise control.



Soft   
June 1, 2006

**2044922 ONTARIO LIMITED**  
**8281 Yonge Street, Markham, Ontario**

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

Dear Sir/Madam:

**RE: Parking Lot Lease dated as of the 1<sup>st</sup> day of June, 2006 entered into between 2044922 Ontario Ltd., as landlord, and Extreme Fitness, Inc., as tenant**

We refer to a parking lot lease (the "Lease") dated as of the 1<sup>st</sup> day of June, 2006 between 2044922 Ontario Ltd. (the "Landlord"), as landlord, and Extreme Fitness, Inc. (the "Tenant"), as tenant, in respect of the premises located at 8275 Yonge Street, Markham, Ontario (the "Premises"). The undersigned hereby confirms that the Landlord has made an application to the Town of Markham for site plan and other governmental approvals to enable the Premises to be used as a parking facility. To date, the undersigned has been given no reason to believe that such approvals will not be issued by the relevant authorities and fully expects that same will be delivered shortly.

However, and notwithstanding section 10.18 of the Lease, should the required approvals for use of the Premises as a parking facility not be obtained by the Landlord, the undersigned hereby covenants and agrees as follows:

1. The Landlord shall withdraw its application to have the Premises merge with the adjoining lands owned by the Landlord and shall ensure that the Premises continue to remain legally severed from the lands leased to the Tenant by 2079843 Ontario Inc. under a lease (the "Adjacent Lease") dated as of the 8<sup>th</sup> day of July, 1996, as amended and extended. The Landlord shall erect on the Premises a structure (the "Structure") which may be leased out by the Landlord and which Structure shall permit under the existing zoning for the Premises the addition of a parking facility on the Premises. The Landlord shall make application to obtain the necessary permits and governmental approvals (other than re-zoning) for parking facilities (the "New Parking Facilities") on the Premises associated with the Structure and shall attend to any paving, landscaping, installations and other matters required in accordance with the governmental approvals (collectively, the "Improvements").
2. The Landlord hereby covenants and agrees to use its commercially reasonable best efforts to erect the Structure, obtain the required permits and governmental approvals and install the Improvements as quickly as possible so as to minimize the disruption to the Tenant's business through lack of access to parking facilities.
3. Upon erection of the Structure and approval of the New Parking Facilities, the parties shall then enter into a lease amending agreement (the "Amendment") which shall amend any terms of the existing Lease, if any, as are required due to the Structure and any

reconfiguration of the Premises in a form acceptable to both parties, acting reasonably. The Amendment shall reflect a rental rate not to exceed \$180,000.00 per annum.

4. The costs and expenses associated with the erection of the Structure, the leasing out of the Structure, obtaining the required approvals from the government and the Improvements shall be the sole responsibility of the Landlord. The Tenant shall, however, contribute an amount of \$240,000.00 plus goods and services tax thereon (collectively, the "Contribution Amount") towards the construction costs of the Improvements (the "Construction Costs"). Subject to the Tenant's approval rights under Section 5 hereof, the Landlord shall submit all accounts in connection with the Construction Costs to the Tenant and the Tenant shall pay same directly to the party issuing the account within thirty (30) days of receipt of same up to the Contribution Amount. Any costs and expenses above the Contribution Amount shall be the sole responsibility of the Landlord. Should the costs and expenses associated with the Improvements be less than the Contribution Amount, the Tenant shall only be required to pay the amount of the actual costs and expenses incurred by the Landlord in connection with the Improvements.
5. The Tenant shall have the right to approve all plans and specifications for the New Parking Facilities and the Landlord shall submit same for the Tenant's approval. The Tenant shall also have the right to approve the contractor used for the construction of the New Parking Facilities and the Improvements. The Landlord shall submit to the Tenant at least three (3) quotations from different contractors for consideration and settlement by the Tenant. Without limiting the generality of the foregoing, the Tenant shall have the right to approve the number of parking spaces (not to be less than that provided under the Lease), configuration and design of the New Parking Facilities and the New Parking Facilities shall provide suitable access to the premises leased under the Adjacent Lease in the Tenant's sole discretion; all such matters being in conformity with and subject to compliance with the applicable zoning by-laws and any development or site plan agreement with municipal authorities; and of a nature, design and type that can be constructed within the Contribution budget of \$240,000. The Tenant's rights of approval must be reasonably exercised and be given within twenty (20) business days of request for approval from the Landlord.
6. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Lease.

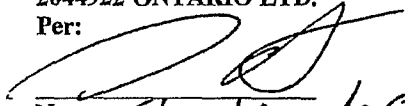
Please indicate your agreement to the foregoing by signing and returning a copy of this letter to the undersigned.

*(Signatures on next page)*



2044922 ONTARIO LTD.

Per:



Name: Stephen daCosta

Title:

We hereby agree to the foregoing as of this 15<sup>th</sup> day of Sept, 2006.

EXTREME FITNESS, INC.

Per:



Name:

Title:

**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-13-10000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF ALAN HUTCHENS**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
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181 Bay Street, Suite 1800  
Toronto, Ontario M5J 2T9

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*Lawyers for Extreme Fitness, 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-13-10000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD  
(returnable March 27, 2013)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
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*Lawyers for Extreme Fitness, Inc.*