

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

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TAB 1

Court File No.: CV-13-10000-00CL

**ONTARIO
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AFFIDAVIT OF MICHAEL SINGER

I, Michael Singer, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer in the City of Toronto and acted as solicitor for 1079268 Ontario Inc. ("Landlord") in negotiating the Lease of the property municipally known as 635 Danforth Avenue ("635") to Extreme Fitness Inc. ("Extreme Fitness") and as such have knowledge of the matters hereinafter disposed to. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I indicate that I have obtained the information from other sources, I verily believe those facts to be true.
2. I have read the Motion Record of the moving party and the affidavit contained therein as well as the Responding Motion Record of both Extreme Fitness and Goodlife Fitness Inc.
3. I swear this Affidavit solely for the purpose of describing direct knowledge of the facts relating to the outstanding issues in the above matter and by doing so do not waive any solicitor/client privilege I have with the Landlord.

4. Unfortunately, I was out of the country on vacation between March 26, 2013, the day before Justice Morawetz's Order and the deadline for the Landlord to file their materials for this Motion. As such, I was unable to swear an Affidavit or provide access to my files for the moving party prior to the deadline to file their materials in accordance with the schedule.
5. I was retained by the Landlord to assist with negotiations for the Lease at 635. I was retained as a leasing and real estate lawyer. Accordingly I assisted the Landlord with the Extreme Fitness tenancy.
6. Throughout the negotiations, I dealt with both Extreme Fitness' lawyer, David V. Westwood ("Westwood") and Morry Offman. Negotiations for the Lease for 635 commenced in or around the end of August 2006. Attached hereto and marked as **Exhibit "A"** is a copy of the Lease titled "draft version 02 for discussion purposes only" and the accompany letter written by me to Mr. Westwood regarding the Lease. Of note, Section 1.1(f) states,

"Rentable area of premises: approximately 30,000 square feet, of, subject to Section 2.2. The parties acknowledge that as of the Commencement Date the Premises shall only consist of approximately 24,000 sf, and the additional 6,000 sf shall be provided no later than the ____ day of ____, 2006. For the purpose of this Lease the 6,000 sf area is herein called the '6,000 Foot Space'." Further, Section 1.1(h) takes into account the approximate 6,000 square feet of the basement where it states "note this amount will increase by \$8,000.00 per month from when the additional 6,000 square feet of space is provided".

Westwood commented:

"1. WHAT IS TENANT'S REMEDY IS LANDLORD DOES NOT PROVIDE THIS 6,000 SF. BY THIS DATE. 2. PLEASE SPECIFY IF THIS IS ALL AT GRADE LEVEL OR IF THERE IS UPPER LEVEL AND/OR BASEMENT LEVEL PREMISES. IF YES, PLEASE SPECIFY THE SQUARE FOOTAGE ON EACH FLOOR." [original emphasis]

7. Furthermore, at the time Section 2.2 under the measurements stated,

“The Landlord shall at the Landlord’s sole cost arrange for the Rentable Area of the Premises to be measured by its arm’s length architect and within ninety (90) day of the Commencement Date the architect shall provide to the Landlord a certificate of such measurement complete with a drawing of the Premises showing all dimensions, and, if the area measured is different than that set out in Section 1.1(f), the Rent will be adjusted in accordance with the measured area. The Landlord will advise the Tenant in writing of the area measurement. If the Tenant does not receive such certificate within this ninety day period, then the Tenant may, but is not obligated, have an arm’s length architect measure the premises and upon such measurement the Tenant shall provide to the Landlord a certificate of such measurement complete with a drawing of the Premises showing all dimensions. The cost of such measurement shall be paid by the Tenant but the cost thereof may be set off against the next instalment of Rent. If the Landlord does not arrange for such measurement, the Rentable Area of the Premises shall be deemed to be the area set out in Section 1.1(f). The Landlord may recalculate the area of the Premises in the same manner which required as a result of a rearrangement of partitions or other changed conditions. The Landlord will advise the Tenant in writing of the revised certified area measurement, and the parties agree to be bound thereby. ”

8. As per the comments by Westwood on the Lease attached at Exhibit “A” (and copied above), we agreed that the basement was not included. A third version of the Lease was circulated between Westwood and I on October 6, 2006. I sent my comments on Westwood’s changes to the previous version on the same day. Attached hereto and marked as **Exhibit “B”** is the draft Lease version 3. As a note, in this version of the Lease, Section 1(d) and (e) states that the rentable area of the premises was changed to approximately 24,110 square feet subject to Section 2.2. This differs from version two attached above. On October 11, 2006, I wrote to Westwood to discuss some of the changes to the Lease which we had discussed previously via telephone. Attached hereto and marked as **Exhibit “C”** is a copy of my email to Westwood. As confirmed therein, Extreme had agreed to provide the schedules of the measured premises that were being leased.

9. As previously set out, in the measurement section set out in the October 6, 2006 version, the premises was now defined as consisting of **three floors** (emphasis added) being the ground floor, second floor and the rentable area of the premises is now approximately 24,011 square feet.
10. Attached hereto and marked as **Exhibit "D"** is the fifth draft version of the Lease dated October 18, 2006. As the measurement version was still included in the Lease at 2.2. The rent was based upon square footage. Section 2.2 was amended in this version so that the tenant would provide the measurements and "the tenant will advise the landlord in writing of the area measurement and if the area measured is different than set out in Section 1.1(e), the rent will be adjusted in accordance with the measured area."
11. Furthermore, in this version of the Lease, dated October 18, 2006, the measurements had already been completed by Extreme. Section 1.1(d) states:
- "The Premises consists of three floors, 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 and a platform area of 1,654 square feet."
12. Further, Westwood comments in the same sections (1.1(d)):
- "Mr. Offman, please: 1] confirm these areas, the areas shown on each drawing is difficult to read because of shading. 2] please send an electronic copy of the third floor and platform area drawings showing their respective measurements, 3] what is the platform area and is it to be included in the calculation of rentable area."

It is clear that as of October 18, 2006 all measurements had been completed and that the basement did not make up part of the measurement.

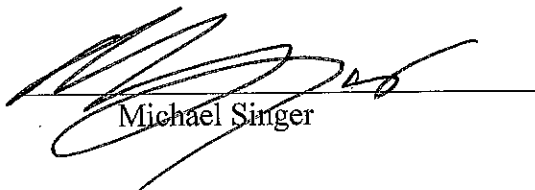
13. On October 23, 2006, I emailed Westwood draft 7 of the proposed Lease. Attached hereto and marked as **Exhibit "E"** is a copy of my email to Westwood dated October 23, 2006. At this point we had the schedules outlining the square footage and I recall that many of the issues had been resolved. It is clear from this version of the Lease that the premises would consist of three floors being the ground floor, second floor and third floor as well as a platform area. Clause 2.2 was removed as we believed that the schedules provided were honest and accurate and clause 2.2 at this point was redundant. The basement was not included. The premises is defined in this version of the Lease as "the entire property as shown outlined in hatch on the plan annexed as Schedule A". As stated previously, the tenant was to and did provide the diagrams for the leaseable space in Schedule "A". Those schedules are included in the final version of the Lease as seen in Exhibit "A" of Constantine Voidonicolas' Affidavit sworn April 5, 2013 and included in the Motion Record of the moving party. It was also consistent with the they comments Extreme and Westwood had from the outset.
14. On October 27, 2006, Westwood wrote to me and stated that Section 1.1(e) was confirmed that the rentable area is now 24,110 square feet and further Section 1.1(g) "the amount per square foot has only been adjusted to reflect the new square footage". Attached hereto and marked as **Exhibit "F"** is a copy of Mr. Westwood's letter to me as well as the attached Lease titled "Lease Version 10 Final and Complete".
15. I have reviewed the Affidavit of Alan Hutchens sworn April 18, 2013 and the exhibits

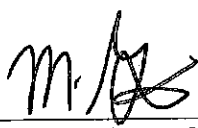
attached thereto. The "withdrawal of all alleged defaults" as set out in the October 2007 letter agreement attached at Exhibit "E" of the Hutchens Affidavit does not relate to the basement as at the time I was not aware that the basement was being used or that it had been renovated by Extreme.

16. Finally, despite being counsel for the Landlord, and despite the fact that Extreme was aware of same, I did not receive a copy of the "Landlord Consent Agreement" attached to Mr. Hutchens' Affidavit at Exhibit "H" prior to the Landlord signing same. I have reviewed my files and did not find a copy of the "Landlord Consent Agreement" nor do I recall ever receiving a copy of same. I never advised the Landlord or any of their representatives to sign that document nor was I ever asked to provide any legal advice relating to that document.

17. I swear this Affidavit in support of the Landlord's Motion and for no other or improper purpose.

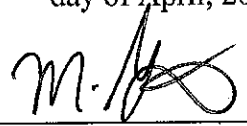
SWORN BEFORE ME)
at the City of Toronto,)
in the Province of Ontario)
this 30th day of April, 2013)
)


Michael Singer


A Commissioner for Taking Affidavits
Marc. H. Gertner

TAB A

This **Exhibit "A"** referred to
in the Affidavit of Michael Singer
sworn before me this
day of April, 2013.



A Commissioner for taking Affidavits
Marc H. Gertner



Michael Singer <michael.s.singer@gmail.com>

Extreme Fitness

Michael Singer <michael.s.singer@gmail.com>

12 September 2006 10:22

To: "David V. Westwood" <dvwestwood@ileaselawyer.com>

David,

I will reply to you after I meet with my client to meet to review your comments to the draft lease.

[Quoted text hidden]

--

Regards,

Michael S. Singer
4211 Yonge Street, Suite 200
Toronto, ON M2P 2A9

Tel 416.224.8383

Fax 416.224.2408

Email michael.s.singer@gmail.com

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Received August 31, 2006

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D. Westwood's comments September 1, 2006

FOR DISCUSSION PURPOSES ONLY – Draft v02

THIS LEASE made the 1st day of September, 2006,

BETWEEN:

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

(the "Landlord")

AND

~~EXTREME FITNESS XXX~~

(the "Tenant")

WITNESSETH AS FOLLOWS:

Article 1 — Basic Terms, Definitions

1.1 Basic Terms

- (a) Landlord: 1079268 Ontario Inc.
Address: _____
Toronto, ON _____
- (b) Tenant: _____
Address: 635 Danforth Avenue
Toronto, ON _____

Deleted: AND
FALCONHEAD
CAPITAL LLC

(the "Indemnifier")

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- (c) _____
- (d) 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 _____
- (e) Premises: that portion of the Property consisting of the entire Property save and except for the kitchen area in the basement, as shown outlined in hatch on the plan annexed as Schedule "A"

Deleted: [Indemnifier:

Address: _____

Indemnity Provisions: the Indemnifier agrees to execute and be bound by the Indemnity Agreement attached as Schedule "E"

- (f) Rentable Area of Premises: ~~approximately 30,000 square feet, of, subject to Section 2.2. The parties acknowledge that as of the Commencement Date the Premises shall only consist of approximately 24,000 sf, and the additional 6,000 sf shall be provided no later than the _____ day of _____, 2006. For the purpose of this Lease the 6,000 sf area is herein called the "6,000 Foot Space".~~ **1. WHAT IS TENANT'S REMEDY IS LANDLORD DOES NOT PROVIDE THIS 6,000 SF. BY THIS DATE. 2. PLEASE SPECIFY IF THIS IS ALL AT GRADE LEVEL OR IF THERE IS UPPER LEVEL AND / OR BASEMENT LEVEL PREMISES. IF YES, PLEASE SPECIFY THE SQUARE FOOTAGE ON EACH FLOOR.**

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(g) Term: five (5) years subject to Sections 2.3 and 2.4

Deleted: Commencement Date: September 1, 2006, subject to Sections 2.3 and 2.4
End of Term: August 31, 2011, subject to Sections 2.3 and 2.4

(h) Basic Rent (Section 4.1):

Period	Per Sq. Ft./Year	Per Year	Per Month
Term	\$ _____	\$597,600.00	\$49,800.00

[NOTE THIS AMOUNT WILL INCREASE BY \$8,000.00 PER MONTH, WHEN THE ADDITIONAL 6,000 S.F. OF SPACE IS PROVIDED]

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(i) Permitted Use (Section 8.1): gym, health, spa, fitness facility and club (with liquor license), and any other use permitted by the applicable zoning.

(j) Deposit: \$49,800.00, in accordance with Section 3.4
Rent Deposit: the sum of \$_____ shall be applied to Rent and Rental Taxes as they first come due hereunder in accordance with Section 3.4

~~Security Deposit: the sum of \$_____ shall be held as a security deposit in accordance with Section 3.4~~ **[NO TENANT IS SPENDING MORE THAN 1m TO PREPARE THE PREMISES]**

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(k) Fixturing Period: See Schedule "F", paragraph 14 (l) Renewal Rights, as set out in Schedule "E"

Deleted: maximum of _____ days commencing on _____ [date Tenant scheduled to take possession of the Premises] Landlord advises there is no fixturing period

(m) 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

Deleted: Extension

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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

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(k) 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, all athletic equipment and exercise equipment are trade fixtures;

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

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

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

Deleted: Landlord

Deleted: tenants of the Property

(n) **"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 fifteen percent (15%) 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;

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(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

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

(r) **"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;

(s) **"Proportionate Share"** means the fraction which has as its numerator the Rentable Area of the Premises and has as its denominator the total Rentable Area of the Property, whether rented or not; IS THE TENANT LEASING THE ENTIRE PROPERTY? THERE IS A P/S FOR THE 6,000 SF PORTION WHICH IS IN ANOTHER BUILDING. THEREFORE T NEEDS TO KNOW THE TOTAL GLA OF THE OTHER BUILDING TO DETERMINE TAX INCREASES AFTER YEAR ONE.

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(u) **"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;

(v) **"Rent"** means all Basic Rent and Additional Rent;

(w) **"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;

(x) **"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;

(y) "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;

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

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

(bb) "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

(cc) "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

(a) The Landlord shall at the Landlord's sole cost arrange for the Rentable Area of the Premises to be measured by its arm's length architect and within ninety (90) days of the Commencement Date the architect shall provide to the Landlord a certificate of such measurement complete with a drawing of the Premises showing all dimensions, and, if the area measured is different than that set out in Section 1.1(f), the Rent will be adjusted in accordance with the measured area. The Landlord will advise the Tenant in writing of the area measurement. If the Tenant does not receive such certificate within this ninety day period, then the Tenant may, but is not obligated, have an arm's length architect measure the Premises and upon such measurement the Tenant shall provide to the Landlord a certificate of such measurement complete with a drawing of the Premises showing all dimensions. The cost of such measurement shall be paid by the Tenant but the cost thereof may be set off against the next instalment of Rent. If the Landlord does not arrange for such measurement, the Rentable Area of the Premises shall be deemed to be the area set out in Section 1.1(f). The Landlord may recalculate the area of the Premises in the same manner whenever required as a result of a rearrangement of partitions or other changed conditions. The Landlord will advise the Tenant in writing of the revised certified area measurement, and the parties agree to be bound thereby.

(b) In no event will the area of the Premises be less than [] square feet on the ground floor. IF THERE ARE OTHER FLOORS, PUT IN MINIMUM

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2.3 Term

The Term shall commence on the date (the "Commencement Date") which is the Fixturing Period Commencement Date as provided in Schedule "F", § 14. and shall run for the period set out in Section 1.1(g), 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 fifth (5th) anniversary of the Commencement Date occurs, unless terminated earlier pursuant to the provisions of this Lease.

Deleted: that is the earlier to occur of: (a) the date set out in Section 1.1(g); and (b) the date that the Tenant opens for business in the Premises,

Deleted: and end on the date set out in Section 1.1(g)

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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 percent (100%) 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.

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2.6 Fixturing Period

During any Fixturing Period provided for herein, all terms and conditions of this Lease shall apply, except the Tenant shall not be responsible for the payment of Basic Rent, or Additional Rent other than for the cost of utilities.

Deleted: It is the intention of the parties that the Rent provided to be paid shall be net to the Landlord and clear of all taxes, costs and charges arising from or relating to the Premises and that the Tenant shall pay, as Additional Rent, all charges, impositions and expenses of every nature and kind relating to the Premises (except the Landlord's income taxes, and except as otherwise specifically provided) in the manner hereinafter provided, and the Tenant covenants with the Landlord accordingly.

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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; (b) ~~the Landlord;~~ and/or (c) 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.

Deleted: The Landlord may at any time, and from time to time, require the Tenant to provide to the Landlord either: (a) a series of monthly post-dated cheques, each cheque in the amount of the monthly instalment of Rent; or (b) authorization and documentation required to automatically debit the Tenant's bank account for such amounts. 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)

Deleted: Any deposit in the

3.3 Payment Method

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3.4 Deposit

The amount of any such rent deposit described in Section 1.1(j) shall be applied to Rent and Rental Taxes as they fall due under this Lease. The amount of any security deposit described in Section 1.1(k) 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

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.

Deleted: eighteen percent (18%) per annum (calculated monthly at the rate of one and one-half percent (1.5%))

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(h) of this Lease in equal monthly instalments in advance in the amounts set out in Section 1.1(h), 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) ~~the Tenant's Proportionate Share of Operating Costs;~~

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(c) all Excess Realty Taxes levied, rated, charged or assessed on or in relation to the Premises; 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 its failure to pay the same as if it were a

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

(i) any contribution on account of Operating Costs, and

(ii) Realty Taxes for the calendar year 2006 (the "Base Year").

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 calendar year 2006, 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:

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(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) for the purposes of determining the share of Realty Taxes payable by the Tenant pursuant to this Lease, Realty Taxes shall include such additional amounts as would have formed part of Realty Taxes had the Property been fully assessed during the whole of the relevant fiscal period as fully completed and fully occupied by tenants, with no special exemptions or reductions, and without taking into account any actual or potential reduction of Realty Taxes or change of assessment category or class of premises within the Property which are vacant or underutilized. 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.~~

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(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,~~

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5.4 Operating Costs

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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. If separate meters are or shall be installed, the Tenant shall contract with and pay the supplier directly. In the event that any of the utilities and services are not separately metered for the Premises, the costs thereof shall be included in Operating Costs or otherwise paid as Additional Rent based on a reasonable allocation by the Landlord.

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

Deleted: Prior to the commencement of each year, the Landlord shall estimate the amount of Operating Costs and other recurring Additional Rent payable by the Tenant for such year and notify the Tenant in writing of such estimate, providing reasonable details as to the breakdown and calculation thereof. The amount so estimated shall be payable in equal monthly instalments, in advance, on the first of each and every month over the year in question. 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, providing reasonable details as to the breakdown and calculation thereof, and fix monthly instalments for the remaining balance of the year such that, after giving credit for instalments paid by the Tenant on the basis of the previous estimate or estimates, all Operating Costs, based on the most recent estimate by the Landlord, will have been paid on the expiration of such year.

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Deleted: may be paid by the Landlord to the Tenant without interest, or credited to the Tenant's account and held by the Landlord without interest, to be applied to payments falling due under this Lease

Deleted: In the event of any dispute, the report of the Landlord's auditor or accountant as to the Operating Costs and Realty Taxes shall be conclusive as to the amount thereof for any period to which such report relates

Deleted: In computing Operating Costs: (a) if less than one hundred percent (100%) of the Rentable Area of the Property is completed or occupied during any period for which a computation must be made, the amount of Operating Costs will be increased by the amount of the additional costs determined by the Landlord, acting reasonably, that would have been incurred had one hundred percent (100%) of the Rentable Area of the Property been completed or occupied during that period ... [1]

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Deleted: any utilities and services

Deleted: The Tenant shall immediately advise the Landlord of any installations, appliances or machines used by the Tenant which consume or are likely to consume large amounts of electricity or other utilities and, on request, shall promptly provide ... [2]

Deleted: If there are special circumstances within the Premises causing utilization of any utilities or services in excess of that reasonably expected for the use of

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

The Tenant shall, throughout the Term, operate, maintain, 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 Building Systems shall be in good working order as of the date the Tenant takes possession of the Premises and for a period of at least two (2) years from the Commencement Date, or the expiration of any applicable warranty period, whichever is the later. Thereafter, the Tenant shall maintain such Building Systems. While the Tenant will undertake all necessary repairs and replacement, the Landlord agrees to reimburse the Tenant for the cost of all repairs or replacements to the Building Systems in excess of three thousand dollars during any year. The Landlord shall pay to the Tenant such amount within thirty (30) days of receipt of the Tenant's invoice therefore and reasonable substantiating documentation, failing which the Tenant may set off such amount against any Rent next falling due.

Deleted: repair, replace

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.

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

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

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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, 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(i), and for no other purpose.

8.2 Conduct of Business

(1) The Tenant shall open for business for at least one day.

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 use or occupation thereof including, without limitation, police, fire and health regulations and requirements of the fire insurance underwriters. 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

Deleted: (1) The Landlord reserves the right, at any time before or during the term of this Lease or any renewal term, on giving the Tenant not less than sixty (60) days' prior written notice, to relocate the Tenant to any other premises within the Property as the Landlord may deem advisable or necessary, provided, however, that the new premises shall be substantially similar to the Premises. ¶ (2) In the event of a relocation, the Landlord shall construct all leasehold improvements to a quality substantially equal to that of the Premises in the new premises and pay all reasonable moving costs incurred by the Tenant in transferring its property from the Premises to the new premises, including the costs of all utility, telephone and other communication hook-ups. ¶ (3) The Tenant agrees to execute, on the request of the Landlord, an amendment to this Lease documenting the change in location, but all other terms, covenants and conditions of the Lease shall remain in full force and effect.

Deleted: , throughout the Term, conduct continuously and actively the business set out in Section 1.1(i) 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 regulating the hours of business.

Deleted: (2) In the conduct by the Tenant of its business at the Premises, the Tenant shall: operate its business in a manner which is in keeping with the theme and nature of the entire Property; maintain at the Premises an adequate stock and an adequate sales force to serve properly all customers of its business; warehouse, store or stock in the Premises only such goods, wares and merchandise as the Tenant intends to offer for sale in the Premises; use for office, clerical or other non-selling purposes, only such reasonable minimum amount of space at the Premises as may be required for the conduct of the Tenant's business from time to time; supply and maintain, or cause to be installed and maintained, adequate water, gas, sewage and electrical services within the Premises where the same are required for the proper operation thereof; and keep ... [4]

Deleted: The Tenant shall not, during the Term, directly or indirectly, whether as an owner, partner, shareholder, principal, agent, employee or independent contractor or otherwise, engage in or participate in or be a holder of any security of any nature whatsoever of, or be a lender to or an owner of any debt of, or furnish any financial aid or other support or assistance of any nature whatsoever to, any business enterprise or undertaking w... [5]

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.

Deleted: and the insurance underwriters

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 the Landlord shall provide notice of such emergency entry as soon as reasonably possible, and otherwise on at least forty-eight 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 those for whom the Tenant is in law responsible.

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Deleted: the Tenant's agents, servants, contractors, invitees, employees or others for

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 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.

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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

(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, neither the Landlord's consent nor supervision is required, and drawings are not required for any non structural Alteration.

Deleted: whose labour union affiliations are not incompatible with those of any workers who may be employed in the Property by the Landlord, its contractors or subcontractors

9.5 Signs

The Tenant shall install exterior signage on the outside of the Premises as may be approved by the applicable governmental authority, d. s. 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.

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Deleted: such approval not to be unreasonably withheld

Deleted: The Landlord may, at any time, prescribe a uniform pattern of identification signs for tenants which shall be placed on the outside of the Premises and other premise

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.

Deleted: 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

9.7 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,

Deleted: or 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. [NO LEASEHOLD IMPROVEMENTS IS A DEFINED TERM, AND BUILDING SYSTEMS IS TOO GENERAL]

Deleted: 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, and at the end of the Term, the Tenant shall remove its trade fixtures; and¶

(b) the Tenant shall, at its sole cost, remove such of the Leasehold Improvements as the Landlord shall require to be removed, such removal to be completed on or before the end of the Term.

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.

Deleted: For greater certainty, the Tenant's trade fixtures shall not include any Building Systems serving the Premises or light fixtures. Notwithstanding anything in this Lease, the Landlord shall be under no obligation to repair or maintain the Tenant's installations

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:

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(a) "All Risks" insurance on property of every description and kind owned by the

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); and

(f) .

(2) All such insurance shall be with insurers licensed in the Province of Ontario s. The insurance described in Sections 10.1(a) and 10.1(c) shall add as an additional insured the Landlord 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 fifteen percent (15%), 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 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.

10.3 Increase of Landlord's Premiums

NO. THEY ARE ACTING FOR THE INTERESTS OF THE INSURER, NOT THE TENANT. FOR EXAMPLE, WHILE THE TENANT MAY HAVE BUILT THE PREMISES TO CODE, THE INSURER MAY WANT ADDITIONAL

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- Deleted:** or such higher limits as the Landlord may reasonably require from time to time
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- Deleted:** plate glass insurance with respect to all glass windows and glass doors in or on the Premises for the full replacement value thereof
- Deleted:** such other forms of insurance as may be reasonably required by the Landlord and any Mortgagee from time to time
- Deleted:** and shall be on such terms and conditions as the Landlord reasonably approve
- Deleted:** name as loss payee
- Deleted:** and anyone else with an interest in the Premises from time to time designated in writing by the Landlord, and shall provide that any proceeds recoverable in the event of damage to Leasehold Improvements shall be payable to the Landlord
- Deleted:** The insurance described in Sections 10.1(b) and 10.1(d) shall name as an additional insured the Landlord and anyone else with an interest in the Property from time to time designated in writing by the Landlord
- Deleted:** The Landlord agrees to make available such proceeds toward repair or replacement of the insured property if this Lease is not terminated pursuant to the terms of this Lease. All public liability insurance shall contain a provision for cross-liability or severability of interest as between the Landlord and the Tenant
- Deleted:** All of the foregoing property policies shall contain a waiver of any right of subrogation or recourse by the Tenant's insurers against the Landlord or the Landlord's mortgagees, their contractors, agents and employees, whether or not any loss is caused by the act, omission or negligence of the Landlord, its mortgagees, their contractors, agents or employees
- Deleted:** on the first day of the next month following payment by the Landlord
- Deleted:** a standard extended form of fire
- Deleted:** in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar building, having regard to the size, a (... [6]
- Deleted:** to be obtained shall be determined at the sole discretion of the Landlord
- Deleted:** The Tenant shall not be an insured under the policies with respect to the Landlord (... [7]

OBLIGATED TO UNDERTAKE THIS COST TO REDUCE THE INSURER'S RISK.]

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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:

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(i) arising out of any occurrence in or about the Premises;

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(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

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(iii) arising from any breach by the Tenant of any provision of this Lease.

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(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];

(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

(b)

Deleted: to the extent that both parties have insurance or are required to have insurance for any occurrence, the Tenant's insurance shall be primary

Deleted: (2) Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the willful act or the negligence of the Landlord, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Landlord be liable for:
(a) damage to property of the Tenant or others located on the Premises;
(b) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Property or from the water, steam or drainage pipes or plumbing works of the Property or from any other place or quarter;
(c) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring;
(d) any damage caused by anything done or omitted to be done by any other tenant of the

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

(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. 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).

Deleted: : (a)

Deleted: or (b) the Landlord elects to cancel and terminate this Lease if the request is to assign the Lease or to sublet or otherwise transfer all of the Premises or, if the request is to sublet or otherwise transfer a portion of the Premises only, to cancel and terminate this Lease with respect to such portion. If the Landlord elects to cancel this Lease as aforesaid and so advises the Tenant in writing, the Tenant shall then notify the Landlord in writing within fifteen (15) days thereafter of the Tenant's intention either to refrain from such Transfer or to accept the cancellation of the 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:

Deleted: Any cancellation of this Lease pursuant to this Section 11.2 shall be effective on the later of the date originally proposed by the Tenant as being the effective date of the Transfer and the last day of the month sixty (60) days following the date of the Landlord's notice to cancel this Lease

(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);

(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 or any other party in the Property;

Deleted: the Tenant having regularly and duly paid Rent and performed all the covenants contained in this Lease

(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);

(h) 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 franchise, license, legal or administration 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; and

Deleted: the Landlord being satisfied, acting reasonably, that the Transfer will not result in a reduction of Gross Revenue

(i) 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

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,

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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 Tenatn of which the Tenant or Landlord as the case may be notice.

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11.8 Subordination and Non-Disturbance

Subject to Section 15 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.

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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

(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~~

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- Deleted: such damage or destruction notice of termination

~~(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.~~

- Deleted: (b) if the Property shall, at any time, be wholly or partially destroyed or damaged (whether or not the Premises have been affected) to the extent that twenty-five percent (25%) or more of the gross floor area of the Property has become unfit for use, the Landlord may elect, within thirty (30) days from the date of such damage, to terminate this Lease on thirty (30) days' notice to the Tenant, in which event rent shall remain payable until the date of termination (unless it has abated under Section 14.1)

~~(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.~~

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~~(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.~~

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~~(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

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 fifteen (15) days after notice in writing from the Landlord to the Tenant;

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(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 twenty (20) days (or such shorter period as may be provided in this Lease); or

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(ii) if such breach cannot reasonably be remedied within twenty (20) days (or such shorter period), the Tenant fails to commence to remedy such breach within twenty (20) days of such breach, or thereafter fails to proceed diligently to remedy such breach;

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(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 days of its commencement;

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(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;

Deleted: or any Indemnifier

(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;

Deleted: or any Indemnifier

(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;

Deleted: the Tenant abandons or attempts to abandon the Premises or the Premises become vacant or substantially unoccupied for a period of five (5) consecutive days or more

(h);

(i); or

Deleted: the Tenant moves or commences, attempts or threatens to move its trade fixtures, chattels and equipment out of the Premises

(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

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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 after ten days written notice to the Tenant, 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

14.4 Costs

(a) The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a 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.

Deleted: 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 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

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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.

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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

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 (3rd) 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, [insert Falconhead address], or such other company as the Tenant designates, and the time period for the Tenant to remedy such default shall not commence until such notice has been received by Falconhead Capital LLC or such other designated company.

(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); and (d). 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.

Deleted: the Landlord gives its prior written approval to the notice or caveat
Deleted: the Tenant pays the Landlord's reasonable costs on account of the matter
Deleted: The Landlord may limit such registration to one or more parts of the Property
Deleted: If any part of the Property which, in the opinion of Landlord, is surplus is transferred, the Tenant shall forthwith, at the request of the Landlord, discharge or otherwise vacate any such notice or caveat as it relates to such part

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

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 assigns, subject to any requirement for consent by the Landlord hereunder.

15.10 Confidentiality and Personal Information

(1) 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 legal and financial advisors, any bona fide Transferee, and except as may be required by law.

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(2)

Deleted: Any Tenant or Indemnifier that is an individual person consents to the collection and use of their personal information, as provided directly or collected from third parties, for the purposes of the Landlord considering the Tenant's offer in respect of this Lease and determining the suitability of the Tenant or Indemnifier, as applicable, (both initially and on an on-going basis), including the disclosure of such information to existing and potential lenders, investors and purchasers

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD

1079268 ONTARIO INC.

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

c/s

Per: _____

Name:

Title:

TENANT

[NAME OF TENANT]

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

c/s

Per: _____

Name:

Title:

INDEMNIFIER

[NAME OF INDEMNIFIER]

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

c/s

Per: _____

Name:

Title:

[If the Tenant or Indemnifier is not a corporation, replace the signing line with the following:]

Witness _____ 1/s

Schedule "A"

Plan Showing Premises in hatch

Showing the Property in heavy black

Schedule "B"
Rules and Regulations

1. v

Deleted: The Tenant shall not permit any cooking or food preparation in the Premises, other than light refreshments and beverages for staff, without the prior written consent of the Landlord

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.

Deleted: The Tenant shall not place or cause to be placed any additional locks on any doors of the Premises without the approval of the Landlord. In addition, the placing of any additional locks on any doors of the Premises shall be subject to any conditions imposed by the Landlord

4. v

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.

Deleted: The Tenant shall, at its expense and at such reasonable intervals as the Landlord requires, exercise such pest control measures as directed by the Landlord using contractors designated by the Landlord, failing which the Landlord shall have the right, at its option, to exercise such pest control measures for the Premises, at the expense of the Tenant

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.

Deleted: The Tenant shall not misuse or damage the Premises or any of the improvements or facilities therein, or unreasonably deface or mark any walls or other parts of the Premises

9. No animals or birds shall be brought into the Property.

Deleted: The Tenant shall not: (a) install or use any radio, television or other similar device in the Premises which may in any manner constitute a disturbance or an annoyance to any other tenant in the Property; (b) install in the Premises or elsewhere in the Property any transmitting radio communications equipment without the Landlord's prior written consent; or (c) operate an electrical device from which may emanate electrical waves that may interfere with or impair radio or television broadcasting or reception from or in the Property. The Tenant shall not in any case erect or cause to be erected any aerial anywhere in the Property

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11. v

12. v

13. v

14. v

Deleted: The Tenant shall not use or permit use of the Premises in such manner as to create any noises or odours objectionable or offensive to the Landlord or any other tenant of the Property or other nuisance or hazard or to breach the provisions of applicable laws or any requirement of the insurers of the Property

Deleted: If required by the Landlord, bicycles or other vehicles shall not be brought or left in or on any part of the

Schedule "C"

Landlord's and Tenant's Work

Landlord's Work

None – as is where is condition.

Tenant's Work

to be discussed

Schedule "D"
Indemnity Agreement

Schedule "E"

Renewal Rights

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[terms of extension to be provided by Landlord and subject to Tenant's approval]

Basic Rent during extension periods (Section 4.1):

Period	Per Sq. Ft./Year	Per Year	Per Month
Yrs 6 - 10	\$ _____	\$624,000.00	\$52,000.00
Yrs 11 - 15	\$ _____	\$648,000.00	\$54,000.00

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It is agreed that these amounts are based on the Premises consisting of at least 30,000 s.f.

Schedule "F"

Additional Provisions

1. Save for the environmental audit as provided in paragraph 5 below, the Tenant shall have a period of thirty (30) days from the date of the execution of the Lease by both parties thereto to have the Property inspected by its professional consultants' and the Landlord agrees to meet with each professional consultant at the Property on not less than 24 hours written notice and to permit such consultant to access all portions of the Property and if necessary take samples from the Property. The Tenant may terminate the Lease if in the Tenant's sole discretion the reports from all professional consultants are not satisfactory to the Tenant, provided such notice of termination is received by the Landlord within thirty-five (35) days from the date of the execution of the Lease by both parties thereto.

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2. If the Tenant wishes to register a caveat or notice of the Lease, the Landlord agrees to execute an acknowledgment or short form of lease sufficient for such purpose.

3. The Landlord represents and acknowledges the Tenant's reliance thereon, that the Tenant need not take possession of the Property to commence its Tenant's Work until the Landlord has advised the Tenant in writing that the Property is zoned for the Tenant's use of a health club.

4.(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 Property and/or 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 franchisee of the Tenant, or a 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 Property 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 Property are located and operating under the same name as that which the Property is being operated at the date of such sale, transfer or disposition.

(b) In all other circumstances the Tenant or a Non Consent Transferee shall have the right upon written notice to the Landlord, to Transfer this Lease or the Property upon receipt of the Landlord's consent, which consent shall not be unreasonably withheld.

(c) 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;

- (d) 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.
- (e) If the Transferee has a net worth or financial condition equal or better than the Tenant, upon the Transfer and the Transferee assuming the obligations of the Tenant and agreeing in writing to be bound by the terms of this Lease, the Landlord shall discharge the Tenant from its obligations hereunder and such obligations accruing thereafter shall be borne solely by the Transferee excepting any Transfer contemplated by the paragraphs above.
- (f) There are no fees or charges payable by either the Tenant or any Transferee in connection with a Transfer or a request to Transfer, or arising from the preparation and/or execution of any document pertaining to a Transfer where the Landlord's consent is not required.

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5. The Landlord, at its sole cost shall complete a phase 1 and, if necessary, a phase 2 environmental site assessment of the Property in accordance with the current CSA standards (the "Audit"). The Landlord shall retain in the name of the Landlord and Tenant a professional environmental assessment company acceptable to the Tenant to complete the Audit. The Tenant shall receive the Audit no later than sixty (60) from the date of the execution of the Lease by both parties thereto, failing which the Tenant may, at the Landlord's cost, retain in the name of the Landlord and Tenant a professional environmental assessment company to complete the Audit. Within fifteen (15) days of receipt of the Audit, the Tenant shall advise the Landlord in writing whether or not the Tenant accepts the Audit and if it is not acceptable, the Tenant may either terminate this Lease or require the Landlord at its sole cost to complete the required remediation. If the Landlord has not completed the required remediation within ninety (90) days of the Tenant's receipt of the Audit, then the Tenant may at any time thereafter terminate this Lease, or complete the remediation, the cost of which plus an administration fee of fifteen percent thereon, shall be set off against the first installments of Rent becoming due.

6. The Landlord warrants that upon completion of the Landlord's Work, the Landlord's Work and the Property will comply with all federal, provincial, municipal or other governmental statutes, laws, by-laws, rules and regulations (individually and collectively the "Laws"), including zoning for that use as provided in this Lease. If at any time the Property do not meet with all Laws, then, except for work that is specifically required by Tenant's use and occupancy, the Landlord will undertake such work at the Landlord's sole cost.

7. 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.

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8. 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. 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.

9. Notwithstanding any other provision contained in the Lease, in the event that

excess of two (2) business days (including where the Landlord undertakes any work within the Premises, or where the Premises are not heated or cooled to a temperature acceptable to the Tenant acting reasonably), then for that period (the "Abatement Period"), which Abatement Period shall be for that period commencing on the day immediately following the end of the second business day up to and including the day that such use or access ceases to be adversely affected, the Tenant's obligation to contribute to Basic Rent, and Additional Rent shall abate in its entirety and shall not accrue during the Abatement Period. In the event the Landlord has not remedied the defect or fault which substantially interferes with the Tenant's ability to carry on business within ten (10) of the Tenant advising the Landlord of same, then the Tenant may at any time thereafter undertake such remedy and the cost thereof, plus an administration fee equal to fifteen percent thereon shall be paid by the Landlord to the Tenant within thirty days of receipt of the Tenant's invoice therefore, failing which the Tenant may set off such amount against Rent, or alternatively the Tenant may terminate this Lease.

10. Notwithstanding any provision contained in this agreement or 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 levy, impost fee, development fee, and or local improvement charge, (collectively a "Development Fee") arising from the site plan agreement and or building permit for the Property and such costs shall be paid by the Landlord without recharge to the Tenant, and for greater certainty if such Development Fee is included in Taxes or improvement charges the Tenant is not obligated to pay such portion of the Taxes or local improvement charges applicable to the Development Fee and the Landlord shall pay such portion;
- (d) 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.

11. The Landlord shall provide to the Tenant within 90 days after the end of each lease year, a statement in reasonable detail and certified by the chief financial officer 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 ninety (90) 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 received.

12. 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.

13. The Tenant shall be permitted to renew this Lease for four (4) periods each of five (5) years, which renewal shall be on the same terms and conditions as contained in this Lease save for the Minimum Rent. The Minimum Rent for the first and second renewal term shall be as hereinbefore provided and for the third and fourth renewal terms, shall be agreed upon by the Landlord and Tenant and based upon the then [as of the commencement of the renewal term for which such renewal was exercised] 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 Leased Property, but without taking into consideration the value of the Tenant's leasehold improvements. If the Landlord and Tenant can not agree upon such Minimum Rent prior to commencement of the renewal term for which such renewal was exercised, then the Minimum 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 Leased Property, but without taking into consideration the value of the Tenant's leasehold improvements..

- 14.(a) The Tenant's fixturing period shall commence on that date (the "Fixturing Period Commencement Date") which is thirty-five (35) days from the date of the execution of the Lease by both parties thereto. The Tenant shall have a period (the "Fixturing Period") of one hundred and fifty-three (153) days to complete the Tenant's Work to ready the Premises and the 6,000 Foot Space for the Tenant's use. The parties acknowledge that the Fixturing Period for the 6000 Foot Space, will occur subsequent to the Fixturing Period applicable to the balance of the Premises.
- (b) During the Fixturing Period, the Tenant shall perform the Tenant's Work and be bound by all of the terms, covenants and conditions of this Lease excluding the payment of Rent, save however that the Tenant shall be responsible for all utilities consumed in the Property during the Fixturing Period and any Excess Realty Taxes.
- (c) Within thirty days of the Fixturing Period Commencement Date, the Landlord's architect at the Landlord's sole cost shall provide to the Tenant a certificate of the area of the Property, complete with dimensions, failing which the Tenant at the Landlord's cost may have its own architect determine the area of the Property which determination shall be binding on the Landlord.

15. The Landlord shall, obtain at the Landlord's sole cost from any holder of any security (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. The Landlord acknowledges and agrees that no Rent is payable nor shall such Rent accrue until the Tenant receives the aforesaid non disturbance agreement executed by the Lender in a form acceptable to the Tenant (the "NDA"). If the Tenant has not received the NDA by [complete], then the Tenant need not take occupancy of the Property nor will the Fixturing Period commence until Tenant the NDA has been received. If the Tenant has not received the NDA by [complete], then the Tenant may at any time thereafter terminate this Lease.

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16. 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.

17. In the event of a conflict between the provisions contained in this Schedule "F" and any other provision contained in this Lease, the provision contained in this Schedule "F" shall prevail.

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In computing Operating Costs:

(a) if less than one hundred percent (100%) of the Rentable Area of the Property is completed or occupied during any period for which a computation must be made, the amount of Operating Costs will be increased by the amount of the additional costs determined by the Landlord, acting reasonably, that would have been incurred had one hundred percent (100%) of the Rentable Area of the Property been completed or occupied during that period, provided that, for greater certainty, it is confirmed that in no event shall the Tenant's Proportionate Share of Operating Costs be increased pursuant to this Section 5.6(a) beyond the amount that would be payable if the Property had been fully rented;

(b) when and if any service which is normally provided by the Landlord to some tenants of the Property:

(i) is not provided to the Tenant under the specific terms of this Lease, in determining Operating Costs for the calculation of the Tenant's Proportionate Share, the Landlord shall exclude the costs of that service, except as any such costs relate to the Common Areas; or

(ii) is not provided in a significant portion of the Property, then in determining the Tenant's Proportionate Share, the Landlord may divide the cost of that service by the difference between the Rentable Area of the Property and the number of square feet of the Property to which the Landlord does not provide the service;

(c) if the Property is comprised of different categories of leaseable premises, the Landlord shall be entitled, but not obligated, to allocate Operating Costs among the various categories on the basis of such factors as the Landlord reasonably determines to be relevant, such as, by way of example, the relative uses of each such category and the benefits derived by them. In such event, the Landlord shall be entitled to adjust the Tenant's Proportionate Share of Operating Costs having regard to the category in which the Premises are included; and

(d) if any facilities, services or utilities:

(i) for the operation, administration, management, repair and maintenance of the Property are provided from another building or other buildings owned or operated by Landlord or its manager;

(ii) for the operation, administration, management, repair and maintenance of another building or other buildings owned or operated by Landlord or its manager are provided from the Property; or

(iii) are otherwise shared between the Property and another building or other buildings,

the net costs, charges and expenses of such items shall be allocated by the Landlord, acting reasonably, between the Property and the other building or buildings on a reasonable basis

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David Westwood

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The Tenant shall immediately advise the Landlord of any installations, appliances or machines used by the Tenant which consume or are likely to consume large amounts of electricity or other utilities and, on request, shall promptly provide the Landlord with a list of all installations, appliances and machines used in the Premises

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If there are special circumstances within the Premises causing utilization of any utilities or services in excess of that reasonably expected for the use of the Premises (including, without limitation, requirements outside of Normal Business Hours), the Landlord may, in its sole discretion, designate a professional engineer or other consultant to review such above-normal utilization and determine the extent thereof and, on such determination and delivery of a copy of the engineer's report to the Tenant, the Landlord may, if such report so indicates, increase the Tenant's payments on account of such Additional Rent by an amount equal to such above-normal utilization as long as such utilization shall continue. The Tenant shall pay to the Landlord, as long as such utilization shall continue, the amount determined by the Landlord, in its sole opinion and in accordance with the engineer's report, to be attributable to such above-normal utilization. The Tenant shall also pay to the Landlord, as Additional Rent, any extra insurance costs resulting from such above-normal utilization.

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David Westwood

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(2) In the conduct by the Tenant of its business at the Premises, the Tenant shall: operate its business in a manner which is in keeping with the theme and nature of the entire Property; maintain at the Premises an adequate stock and an adequate sales force to serve properly all customers of its business; warehouse, store or stock in the Premises only such goods, wares and merchandise as the Tenant intends to offer for sale in the Premises; use for office, clerical or other non-selling purposes, only such reasonable minimum amount of space at the Premises as may be required for the conduct of the Tenant's business from time to time; supply and maintain, or cause to be installed and maintained, adequate water, gas, sewage and electrical services within the Premises where the same are required for the proper operation thereof; and keep any show windows lighted and properly furnished with displays of a first-rate quality and arrangement during such hours as the Landlord may reasonably require.

(3) Without limiting the generality of the foregoing or any other provision of this Lease, the Tenant shall neither use nor permit any part of the Premises to be used for or in connection with any of the following: the sale of second-hand goods, surplus articles, insurance salvage stock, fire sale stock, any damaged or defective merchandise, liquidation stock, bankruptcy stock or other distress or "end-of-line" stock; the sale of

out-of-style, job lot, low quality or any inferior merchandise; any auction; a liquidation sale, bankruptcy sale, "going-out-of-business" sale, "moving" sale, "lease expiry" sale or any other similar sale; any "fire" sale, "smoke damage" sale or any other type of sale following or referring to any type of damage; an order office, a mail order office, or a store for the sale of merchandise through catalogues; or any vending machines or other coin-operated machines, entertainment or games machines or any other mechanical or electrical serving or dispensing machines or devices whatsoever unless expressly permitted in writing by the Landlord, in its sole discretion

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David Westwood

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The Tenant shall not, during the Term, directly or indirectly, whether as an owner, partner, shareholder, principal, agent, employee or independent contractor or otherwise, engage in or participate in or be a holder of any security of any nature whatsoever of, or be a lender to or an owner of any debt of, or furnish any financial aid or other support or assistance of any nature whatsoever to, any business enterprise or undertaking which in any manner or degree is competitive with the use of the Premises permitted by Section 8.1, if such competitive business enterprise or undertaking is in whole or in part conducted from premises situate within a distance of ten (10) kilometres from any part of the Property. This restriction shall not apply, however, to any business enterprise of the Tenant which is in operation as of the date of this Lease. If the Tenant breaches the covenant contained in this Section 8.3, then, in addition to any other rights and remedies of the Landlord under this Lease, the Landlord may, at its option, terminate this Lease on thirty (30) days' written notice to the Tenant.

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in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar building, having regard to the size, age and location of the Property

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David Westwood

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The Tenant shall not be an insured under the policies with respect to the Landlord's insurance, nor shall it be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or their proceeds

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David Westwood

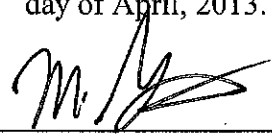
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If the occupancy of the Premises, the conduct of business in the Premises, or any acts or omissions of the Tenant in the Property or any part thereof causes or results in any increase in premiums for the insurance carried from time to time by the Landlord with respect to the Property, the Tenant shall pay any such increase in premiums as Additional Rent forthwith after invoices for such additional premiums are rendered by the Landlord. In determining whether increased premiums are caused by or result from the use and occupancy of the Premises, a schedule issued by the organization computing the insurance rate on the Property showing the various components of such rate shall be conclusive evidence of the several items and charges which make up such rate. The

Tenant shall comply promptly with all requirements and recommendations of the Insurer's Advisory Organization of Canada (or any successor thereof), or of any insurer now or hereafter in effect, pertaining to or affecting the Premises

TAB B

This Exhibit "B" referred to
in the Affidavit of Michael Singer
sworn before me this
day of April, 2013.



A Commissioner for taking Affidavits
Marc H. Gertner



Michael Singer <michael.s.singer@gmail.com>

1079268 Ontario Inc. and Extreme Fitness - 635 Danforth, Toronto -draft lease #3

Michael Singer <michael.s.singer@gmail.com>

06 October 2006 18:50

To: "David V. Westwood" <dvwestwood@ileaselawyer.com>

David:

I am providing you with my comments and changes to your comments and changes - draft lease #2. Please note that the attached Draft lease #3 has not been reviewed in detail by my client and is subject to any further changes that may be required by my client.

I will check my email over the holiday for your reply. I will be meeting my client during the weekend and provide you with any additional changes that my client may require.

--


Regards,

Michael S. Singer
4211 Yonge Street, Suite 200
Toronto, ON M2P 2A9

Tel 416.224.8383
Fax 416.224.2408
Email michael.s.singer@gmail.com

This transmission, including any attachments hereto, is intended only for the addressee(s) and may contain confidential, proprietary and/or legally privileged information.

If you are not the intended recipient of the e-mail transmission, you are hereby notified that any unauthorized dissemination, distribution, or copying of this e-mail or the attachments hereto or other use of or the taking of any action in reliance upon this information is strictly prohibited. If you received this e-mail in error, please contact the sender immediately by e-mail or phone and permanently delete the original and all copies of this e-mail and any attachments hereto and destroy any printout thereof.

 Lease 3 Oct 6, 2006.doc
253K

M. Singer comments October 6, 2006.

FOR DISCUSSION PURPOSES ONLY - Draft v03

THIS LEASE made the ___ day of October, 2006,

BETWEEN:

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

(the "Landlord")

AND

EXTREME FITNESS XXX

(the "Tenant")

WITNESSETH AS FOLLOWS:

Article 1 - Basic Terms, Definitions

1.1 Basic Terms

(a) Landlord: 1079268 Ontario Inc. Address: Toronto, ON

(b) Tenant: EXTREME FITNESS XXX 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: that portion of the Property consisting of the entire Property, as shown outlined in hatch on the plan annexed as Schedule "A"

(e) Rentable Area of Premises: approximately 24,011 square feet, subject to Section 2.2.

(f) Term: five (5) years subject to Sections 2.3 and 2.4 Commencement Date: October XXX, 2006, subject to Sections 2.3 and 2.4 End of Term: XXXXXXXX, 2011, subject to Sections 2.3 and 2.4

(g) Basic Rent (Section 4.1):

Period	Per Sq. Ft./Year	Per Year	Per Month
Term	\$	\$597,600.00	\$49,800.00

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 Deleted: The parties acknowledge that as of the Commencement Date the Premises shall only consist of approximately 24,000 sf, and the additional 6,000 sf shall be provided no later than the ___ day of ___, 2006. For the purpose of this Lease the 6,000 sf area is herein called the "6,000 Foot Space". [1. WHAT IS TENANT'S REMEDY IS LANDLORD DOES NOT PROVIDE THIS 6,000 SF. BY THIS DATE. 2. PLEASE SPECIFY IF THIS IS ALL AT GRADE LEVEL OR IF THERE IS UPPER LEVEL AND / OR BASEMENT LEVEL ... [1]
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- (h) Permitted Use (Section 8.1): gym, health, spa, fitness facility and club (with liquor license). Deleted: i
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- (j) Deposit: \$49,800.00 plus GST, in accordance with Section 3.4
Rent Deposit: the sum of \$ shall be applied to Rent as it first come due hereunder in accordance with Section 3.4
Security Deposit: the sum of \$ shall be held as a security deposit in accordance with Section 3.4. Deleted: and Rental Taxes
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- (i) Fixturing Period: [not applicable] Deleted: NO TENANT IS SPENDING MORE THAN 1m TO PREPARE THE PREMISES
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- (k) Renewal Rights, as set out in Schedule "E". Deleted: See Schedule "F", paragraph 14
- (l) Schedules forming part of this Lease:
 - Schedule "A" Plan Deleted: maximum of _____ days commencing on _____ [date Tenant scheduled to take possession of the Premises] ~~Landlord advises there is no fixturing period~~
 - Schedule "B" Rules and Regulations Deleted: l .
 - Schedule "C" Landlord's and Tenant's Work Deleted: Extension
 - Schedule "D" Indemnity Agreement Deleted: if any;
 - Schedule "E" Renewal Rights Deleted: ,
 - Schedule "F" Additional Provisions Deleted: if applicable
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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(k) 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 athletic equipment and exercise equipment are trade fixtures;~~

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

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

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

Deleted: Landlord

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(n) "**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 fifteen percent (15%) 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;

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(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

(q) "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);

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(r) "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;

(s) "**Proportionate Share**"—~~INTENTIONALLY DELETED~~

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Deleted: "Proportionate Share" means the fraction which has as its numerator the Rentable Area of the Premises and has as its denominator the total Rentable Area of the Property, whether rented or not; [IS THE TENANT LEASING THE ENTIRE PROPERTY? THERE IS A P/S FOR THE 6,000 SF PORTION WHICH IS IN ANOTHER BUILDING. THEREFORE T NEEDS TO KNOW THE TOTAL GLA OF THE OTHER BUILDING TO DETERMINE TAX INCREASES AFTER YEAR ONE.]

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(u) "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;

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

(w) "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;

(x) "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;

(y) "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;

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

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

(bb) "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

(cc) "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

(a) The Landlord may, at the Landlord's sole cost, arrange for the Rentable Area of the Premises to be measured by its arm's length architect, and, if the area measured is different than that set out in Section 1.1(e), the Rent will be adjusted in accordance with the measured area. The Landlord will advise the Tenant in writing of the area measurement. If the Landlord does not arrange for such measurement, the Rentable Area of the Premises shall be deemed to be the area set out in Section 1.1(g). The Landlord may recalculate the area of the Premises in the same manner whenever required as a result of a rearrangement of partitions or other changed conditions. The Landlord will advise the Tenant in writing of the revised certified area measurement, and the parties agree to be bound thereby.

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 fifth (5th) 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

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Deleted: If the Tenant does not receive such certificate within this ninety day period, then the Tenant may, but is not obligated, have an arm's length architect measure the Premises and upon such measurement the Tenant shall provide to the Landlord a certificate of such measurement complete with a drawing of the Premises showing all dimensions. The cost of such measurement shall be paid by the Tenant but the cost thereof may be set off against the next instalment of Rent.
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Deleted: (b) In no event will the area of the Premises be less than _____ square feet on the ground floor [IF THERE ARE OTHER FLOORS, PUT IN MINIMUM AREAS]. If the ground floor area of the Premises is less than _____ square feet, then the Tenant may terminate this Lease.
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The Tenant covenants to pay Rent as provided in this Lease.

Deleted: It is the intention of the parties that the Rent provided to be paid shall be net to the Landlord and clear of all taxes, costs and charges arising from or relating to the Premises and that the Tenant shall pay, as Additional Rent, all charges, impositions and expenses of every nature and kind relating to the Premises (except the Landlord's income taxes, and except as otherwise specifically provided) in the manner hereinafter provided, and the Tenant covenants with the Landlord accordingly.

3.2 Rental Taxes

The Tenant will pay to the Landlord the Rental Taxes assessed on: (a) the Rent; ~~the Landlord;~~ 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.

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3.3 Payment Method

The Landlord may at any time, and from time to time, require the Tenant to provide to the Landlord either: (a) a series of monthly post-dated cheques, each cheque in the amount of the monthly instalment of Rent; or (b) authorization and documentation required to automatically debit the Tenant's bank account for such amounts. 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).

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3.4 Deposit

The amount of any such rent deposit described in Section 1.1(j) shall be applied to Rent and Rental Taxes as they fall due under this Lease. The amount of any security deposit described in Section 1.1(j) 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.

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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.

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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(h), on the first day of each and every month during the Term.

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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;~~

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

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

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(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~~

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~~(ii) Realty Taxes for the calendar year 2006 (the "Base Year").~~

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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:

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(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) for the purposes of determining the share of Realty Taxes payable by the Tenant pursuant to this Lease, Realty Taxes shall include such additional amounts as would have formed part of Realty Taxes had the Property been fully assessed during the whole of the relevant fiscal period as fully completed and fully occupied by tenants, with no special exemptions or reductions, and without taking into account any actual or potential reduction of Realty Taxes or change of assessment category or class of premises within the Property which are vacant or~~

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~~underutilized. 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

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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

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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

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~~Deleted: may be paid by the Landlord to the Tenant without interest, or credited to the Tenant's account and held by the Landlord without interest, to be applied to payments falling due under this Lease~~
~~Deleted: In the event of any dispute, the report of the Landlord's auditor or accountant as to the Operating Costs and Realty Taxes shall be conclusive as to the amount thereof for any period to which such report relates~~
~~Deleted: In computing Operating Costs: (a) If less than one hundred percent (100%) of the Rentable Area of the Property is completed or occupied during any period for which a computation must be made, the amount of Operating Costs will be increased by the amount of the additional costs determined by the Landlord, acting reasonably, that would have been incurred had one hundred p[ercent] ... [5]~~
~~Deleted: Tenant at its option may, and on request of the~~
~~Deleted: any utilities and services~~
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~~Deleted: If separate meters are or shall be installed,~~
~~Deleted: In the event that any of the utilities and services are not separately metered for the Premises, the costs thereof shall be included in Operating Cost[...]. [6]~~
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~~Deleted: The Tenant shall immediately advise the Landlord of any installations, appliances or machines used by the Tenant which consume or are likely to ... [7]~~

If there are special circumstances within the Premises causing utilization of any utilities or services in excess of that reasonably expected for the use of the Premises (including, without limitation, requirements outside of Normal Business Hours), the Landlord may, in its sole discretion, designate a professional engineer or other consultant to review such above-normal utilization and determine the extent thereof and, on such determination and delivery of a copy of the engineer's report to the Tenant, the landlord may, if such report so indicates, increase the Tenant's payments on account of such Additional Rent by an amount equal to such above-normal utilization as long as such utilization shall continue. The Tenant Shall pay to the Landlord as long as such utilization shall continue, the amount determined by the Landlord, in its sole opinion and in accordance with the engineer's report, to be attributable to such above-normal utilization. The Tenant shall also pay to the Landlord, as Additional Rent, any extra insurance costs resulting from such above-normal utilization.

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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.

Deleted: , 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

The Tenant shall, throughout the Term, operate, maintain, repair 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 Building Systems 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, reasonable wear and tear excepted.

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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.

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

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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.

Deleted: (1) The Landlord reserves the right, at any time before or during the term of this Lease or any renewal term, on giving the Tenant not less than sixty (60) days' prior written notice, to relocate the Tenant to any other premises within the Property as the Landlord may deem advisable or necessary, provided, however, that the new premises shall be substantially similar to the Premises. ¶
(2) In the event of a relocation, the Landlord shall construct all leasehold improvements to a quality substantially equal to that of the Premises in the new premises and pay all reasonable moving costs incurred by the Tenant in transferring its property from the Premises to the new premises, including the costs of all utility, telephone and other communication hook-ups. ¶
(3) The Tenant agrees to execute, on the request of the Landlord, an amendment to this Lease documenting the change in location, but all other terms, covenants and conditions of the Lease shall remain in full force and effect.

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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.

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8.3 Radius Restriction

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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, and requirements of the fire insurance underwriters. 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.

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Deleted: (2) In the conduct by the Tenant of its business at the Premises, the Tenant shall: operate its business in a manner which is in keeping with the theme and nature of the entire Property; maintain at the Premises an adequate stock and an adequate sales force to serve properly all customers of its business; warehouse, store or stock in the Premises only such goods, wares and merchandise as the Tenant intends to offer for sale in the Premises; use for office, clerical or other non-selling purposes, only such reasonable minimum amount of space at the Premises as may be required for the conduct of the Tenant's business from time to time; supply and maintain, or cause to be installed and maintained, adequate water, gas, sewage and electrical services within the Premises where the same are required for the proper operation thereof; and keep any show windows lighted and properly furnished with displays of a first-rate quality and arrangement during such hours as the Landlord may reasonably require.
(3) Without limiting the generality of the foregoing or any other provision of this Lease, the Tenant shall neither use nor permit any part of the Premises to be used for or in connection with any of the following: the sale of second-hand goods, surplus articles, insurance salvage stock, fire sale stock, any damaged or defective merchandise, liquidation stock, bankruptcy stock or other distress or "end-of-line" stock; the sale of out-of-style, job lot, low quality or any inferior merchandise; any auction; a liquidation sale, bankruptcy sale, "going-out-of-business" sale, "moving" sale, "lease expiry" sale or any of ... (8)

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 the Landlord shall provide notice of such emergency entry as soon as reasonably possible, and otherwise on at least four (4) 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

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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 the Tenant's agents, servants, contractors, invitees, employees or others for whom the Tenant is in law responsible.

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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 shall be borne by the Tenant and paid to the Landlord within five days of receipt of the Landlord's invoice and reasonable substantiating documentation.

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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.

Deleted: whose labour union affiliations are not incompatible with those of any workers who may be employed in the Property by the Landlord, its contractors or subcontractors

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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.

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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, or trade fixtures 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, and at the end of the Term, the Tenant shall remove its trade fixtures; and

(b) the Tenant shall, at its sole cost, remove such of the Leasehold Improvements as the Landlord shall require to be removed, such removal to be completed on or before the end of the Term.

(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 installations.

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Deleted: For greater certainty, the Tenant's trade fixtures shall not include any Building Systems serving the Premises or light fixtures. Notwithstanding anything in this Lease, the Landlord shall be under no obligation to repair or maintain the Tenant's installations
Deleted: [NO LEASEHOLD IMPROVEMENTS IS A DEFINED TERM, AND BUILDING SYSTEMS IS TOO GENERAL]
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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

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comprehensive basis with coverage for any one occurrence or claim of ~~three million dollars (\$3,000,000);~~

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(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;

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

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(e) plate glass insurance with respect to all glass windows and glass doors in or on the Premises for the full replacement value thereof; and

~~Deleted: and anyone else with an interest in the Premises from time to time designated in writing by the Landlord, and shall provide that any proceeds recoverable in the event of damage to Leasehold Improvements shall be payable to the Landlord~~

(f) such other forms of insurance as may be reasonably required by the Landlord and any Mortgagee from time to time.

(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 but solely with regard to the Landlord's interest in the Premises.

~~Deleted: The insurance described in Sections 10.1(b) and 10.1(d) shall name as an additional insured the Landlord and anyone else with an interest in the Property from time to time designated in writing by the Landlord~~

(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 fifteen percent (15%), which payment shall be deemed to be Additional Rent payable within thirty days of receipt of the Landlord's invoice and reasonable substantiating documentation.

~~Deleted: The Landlord agrees to make available such proceeds toward repair or replacement of the insured property if this Lease is not terminated pursuant to the terms of this Lease. All public liability insurance shall contain a provision for cross-liability or severability of interest as between the Landlord and the Tenant~~

10.2 Landlord's Insurance

The Landlord shall, at the expense of the Tenant, 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.

~~Deleted: All of the foregoing property policies shall contain a waiver of any right of subrogation or recourse by the Tenant's insurers against the Landlord or the Landlord's mortgagees, their contractors, agents and employees, whether or not any loss is caused by the act, omission or negligence of the Landlord, its mortgagees, their contractors, agents or employees~~

10.3 Increase of Landlord's Premiums

~~[NO, THEY ARE ACTING FOR THE INTERESTS OF THE INSURER, NOT THE TENANT. FOR EXAMPLE, WHILE THE TENANT MAY HAVE BUILT THE PREMISES TO CODE, THE INSURER MAY WANT ADDITIONAL FIREPROOFING OR SPRINKLERS. THE TENANT SHOULD NOT BE OBLIGATED TO UNDERTAKE THIS COST TO REDUCE THE INSURER'S RISK.]~~

~~Deleted: on the first day of the next month following payment by the Landlord~~

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~~Deleted: to be obtained shall be determined at the sole discretion of the Landlord~~

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:

~~Deleted: The Tenant shall not be an insured under the policies with respect to the Landlord's insurance, nor shall it be deemed to have any insurable interest. [10]~~

~~Deleted: If the occupancy of the Premises, the conduct of business in the Premises, or any act ... [11]~~

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(i) arising out of any occurrence in or about the Premises;

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(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

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(iii) arising from any breach by the Tenant of any provision of this Lease.

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~~(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];~~

~~(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

(b) to the extent that both parties have insurance or are required to have insurance for any occurrence, the Tenant's insurance shall be primary.

(2) Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of the Landlord, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Landlord be liable for:

(a) damage to property of the Tenant or others located on the Premises;

(b) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Property or from the water, steam or drainage pipes or plumbing works of the Property or from any other place or quarter;

(c) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring;

(d) any damage caused by anything done or omitted to be done by any other tenant of the Property; or

(e) any indirect or consequential damages suffered by the Tenant.

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: (a) the Landlord consents or does not consent, as the case may be; or (b) the Landlord elects to cancel and terminate this Lease if the request is to assign the Lease or to sublet or otherwise transfer all of the Premises or, if the request is to sublet or otherwise transfer a portion of the Premises only, to cancel and terminate this Lease with respect to such portion. If the Landlord elects to cancel this Lease as aforesaid and so advises the Tenant in writing, the Tenant shall then notify the Landlord in writing within fifteen (15) days thereafter of the Tenant's intention either to refrain from such Transfer or to accept the cancellation of the Lease (in whole or in part, as the case may be). 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). Any cancellation of this Lease pursuant to this Section 11.2 shall be effective on the later of the date originally proposed by the Tenant as being the effective date of the Transfer and the last day of the month sixty (60) days following the date of the Landlord's notice to cancel this Lease.

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) the Tenant having regularly and duly paid Rent and performed all the covenants contained in this Lease;
- (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 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

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(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.

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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.

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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.

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11.8 Subordination and Non-Disturbance

Subject to Section 15 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.

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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

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(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.

Deleted: (b) if the Property shall, at any time, be wholly or partially destroyed or damaged (whether or not the Premises have been affected) to the extent that twenty-five percent (25%) or more of the gross floor area of the Property has become unfit for use, the Landlord may elect, within thirty (30) days from the date of such damage, to terminate this Lease on thirty (30) days' notice to the Tenant, in which event rent shall remain payable until the date of termination (unless it has abated under Section 14.1

(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.

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(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

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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;

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(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 ten (10) days (or such shorter period as may be provided in this Lease); or

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(ii) if such breach cannot reasonably be remedied within ten (10) days (or such shorter period), the Tenant fails to commence to remedy such breach within ten (10) days of such breach, or thereafter fails to proceed diligently to remedy such breach;

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(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

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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;~~

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(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;~~

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(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) the Tenant abandons or attempts to abandon the Premises or the Premises become vacant or substantially unoccupied for a period of five (5) consecutive days or more;

(i) the Tenant moves or commences, attempts or threatens to move 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.~~

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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 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;~~

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(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

The Landlord may only exercise its right of distraint as permitted by law.

14.4 Costs

(a) The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a ~~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.

Deleted: 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 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

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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:

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(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 (3rd) 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, [insert Falconhead address], 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.

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(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; 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.

Deleted: The Landlord may limit such registration to one or more parts of the Property
Deleted: If any part of the Property which, in the opinion of Landlord, is surplus is transferred, the Tenant shall forthwith, at the request of the Landlord, discharge or otherwise vacate any such notice or caveat as it relates to such part

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

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Deleted: Any Tenant or Indemnifier that is an individual person consents to the collection and use of their personal information, as provided directly or collected from third parties, for the purposes of the Landlord considering the Tenant's offer in respect of this Lease and determining the suitability of the Tenant or Indemnifier, as applicable, (both initially and on an on-going basis), including the disclosure of such information to existing and potential lenders, investors and purchasers

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD

1079268 ONTARIO INC.

Per: _____

Name:

Title:

c/s

I/We have the authority
to bind the Corporation

Per: _____

Name:

Title:

TENANT

[NAME OF TENANT]

Per: _____

Name:

Title:

c/s

I/We have the authority
to bind the Corporation

Per: _____

Name:

Title:

~~Deleted: INDEMNIFIER [NA
ME OF INDEMNIFIER]
Per: _____
Name: _____
I/We have the authority Title:
to bind the Corporation c/s]
Per: _____
Name: _____
Title: _____~~

~~Deleted: [If the Tenant or
Indemnifier is not a corporation,
replace the signing line with the
following:]

Witness]~~

Schedule "A"

Plan Showing Premises in hatch

Showing the Property in heavy black

Schedule "B"

Rules and Regulations

1. ~~The Tenant shall have the non-exclusive use of the parking area and the driveway in the rear of the Property for delivery, emergency and for ingress to and from the Property only.~~

Deleted: The Tenant shall not permit any cooking or food preparation in the Premises, other than light refreshments and beverages for staff, without the prior written consent of the Landlord

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.

Deleted: The Tenant shall not place or cause to be placed any additional locks on any doors of the Premises without the approval of the Landlord. In addition, the placing of any additional locks on any doors of the Premises shall be subject to any conditions imposed by the Landlord

4. ~~_____~~
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.

Deleted: The Tenant shall, at its expense and at such reasonable intervals as the Landlord requires, exercise such pest control measures as directed by the Landlord using contractors designated by the Landlord, failing which the Landlord shall have the right, at its option, to exercise such pest control measures for the Premises, at the expense of the Tenant

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.

Deleted: The Tenant shall not misuse or damage the Premises or any of the improvements or facilities therein, or unreasonably deface or mark any walls or other parts of the Premises

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.

Deleted: The Tenant shall not: (a) install or use any radio, television or other similar device in the Premises which may in any manner constitute a disturbance or an annoyance to any other tenant in the Property; (b) install in the Premises or elsewhere in the Property any transmitting radio communications equipment without the Landlord's prior written consent; or (c) operate an electrical device from which may emanate electrical waves that may interfere with or impair radio or television broadcasting or reception from or in the Property. The Tenant shall not in any case erect or cause to be erected any aerial anywhere in the Property

9. No animals or birds shall be brought into the Property.

10. ~~_____~~

11. ~~_____~~

12. ~~The Tenant shall not in any case erect or cause to be erected any aerial anywhere in the Property.~~

Deleted: The Tenant shall not use or permit use of the Premises in such manner as to create any noises or odors objectionable or offensive to the Landlord or any other tenant of the Property or other nuisance or hazard or to breach the provisions of applicable laws or any requirement of the insurers of the Property

13. ~~_____~~

14. ~~_____~~

Deleted: If required by the Landlord, bicycles or other vehicles shall not be brought or left in or on any part of the Property except in such area or areas as are designated by the Landlord from time to time

Schedule "C"

Landlord's and Tenant's Work

Landlord's Work

None – as is where is condition.

Tenant's Work

[to be discussed]

Schedule "D"
Indemnity Agreement

Schedule "E"

Basic Rent during extension periods (Section 4.1):

Period	Per Sq. Ft./Year	Per Year	Per Month
Yrs 6 - 10	\$	\$624,000.00	\$52,000.00
Yrs 11 - 15	\$	\$648,000.00	\$54,000.00

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[Terms of extension to be provided by Landlord and subject to Tenant's approval]

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Deleted: It is agreed that these amounts are based on the Premises consisting of at least 30,000 s.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") subject to the prior written consent of the Landlord, which consent shall not be unreasonably withheld, 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;

(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. 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.

Deleted: 1. Save for the environmental audit as provided in paragraph 5 below, the Tenant shall have a period of thirty (30) days from the date of the execution of the Lease by both parties thereto to have the Property inspected by its professional consultants' and the Landlord agrees to meet with each professional consultant at the Property on not less than 24 hours written notice and to permit such consultant to access all portions of the Property and if necessary take samples from the Property. The Tenant may terminate the Lease if in the Tenant's sole discretion the reports from all professional consultants are not satisfactory to the Tenant, provided such notice of termination is received by the Landlord within thirty-five (35) days from the date of the execution of the Lease by both parties thereto.

2. If the Tenant wishes to register a caveat or notice of the Lease, the Landlord agrees to execute an acknowledgment or short form of lease sufficient for such purpose.

3. The Landlord represents and acknowledges the Tenant's reliance thereon, that the Tenant need not take possession of the Property to commence its Tenant's Work until the Landlord has advised the Tenant in writ (... [12]

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Deleted: (iv) any third party where the Property are included in the sale, transfer or other (... [14]

Deleted: (b) In all other circumstances the Tenant or a Non Consent Transferee shall (... [15]

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Deleted: (e) If the Transferee has a net worth or financial condition equal or better (... [16]

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5. Notwithstanding any provision contained in this agreement or 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.

6. 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 chief financial officer 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.

7. 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. [no -- each party to be responsible to pay its agent. Landlord has no knowledge as to Tenant's obligation to pay commission to any broker or agent.]

8. The Tenant shall be permitted to renew this Lease for two (2) periods each of five (5) years, which 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.

11s. In the event of a conflict between the provisions contained in this Schedule "F" and any other provision contained in this Lease, the provision contained in this Schedule "F" shall prevail.

Deleted: 9. Notwithstanding any other provision contained in the Lease, in the event that access to or the use of the Property and/or Premises is adversely affected for a period in excess of two (2) business days (including where the Landlord undertakes any work within the Premises, or where the Premises are not heated or cooled to a temperature acceptable to the Tenant acting reasonably), then for that period (the "Abatement Period"), which Abatement Period shall be for that period commencing on the day immediately following the end of the second business day up to and including the day that such use or access ceases to be adversely affected, the Tenant's obligation to contribute to Basic Rent, and Additional Rent shall abate in its entirety and shall not accrue during the Abatement Period. In the event the Landlord has not remedied the defect or fault which substantially interferes with the Tenant's ability to carry on business within ten (10) of the Tenant advising the Landlord of same, then the Tenant may at any time thereafter undertake such remedy and the cost thereof, plus an administration fee equal to fifteen percent thereon shall be paid by the Landlord to the Tenant within thirty days of receipt of the Tenant's invoice therefore, failing which the Tenant may set off such amount against Rent, or alternatively the Tenant in ... [20]

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The parties acknowledge that as of the Commencement Date the Premises shall only consist of approximately 24,000 sf, and the additional 6,000 sf shall be provided no later than the ____ day of _____, 2006. For the purpose of this Lease the 6,000 sf area is herein called the "6,000 Foot Space". [1. **WHAT IS TENANT'S REMEDY IS LANDLORD DOES NOT PROVIDE THIS 6,000 SF. BY THIS DATE. 2. PLEASE SPECIFY IF THIS IS ALL AT GRADE LEVEL OR IF THERE IS UPPER LEVEL AND / OR BASEMENT LEVEL PREMISES. IF YES, PLEASE SPECIFY THE SQUARE FOOTAGE ON EACH FLOOR]**

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[NOTE THIS AMOUNT WILL INCREASE BY \$8,000.00 PER MONTH, WHEN THE ADDITIONAL 6,000 S.F. OF SPACE IS PROVIDED]

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that is the earlier to occur of: (a) the date set out in Section 1.1(g); and (b) the date that the Tenant opens for business in the Premises,

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2.6 Fixturing Period

During any Fixturing Period provided for herein, all terms and conditions of this Lease shall apply, except the Tenant shall not be responsible for the payment of Basic Rent, or Additional Rent other than for the cost of utilities.

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In computing Operating Costs:

(a) if less than one hundred percent (100%) of the Rentable Area of the Property is completed or occupied during any period for which a computation must be made, the amount of Operating Costs will be increased by the amount of the additional costs determined by the Landlord, acting reasonably, that would have been incurred had one hundred percent (100%) of the Rentable Area of the Property been completed or occupied during that period, provided that, for greater certainty, it is confirmed that in no event shall the Tenant's Proportionate Share of Operating Costs be increased pursuant to this Section 5.6(a) beyond the amount that would be payable if the Property had been fully rented;

(b) when and if any service which is normally provided by the Landlord to some tenants of the Property:

(i) is not provided to the Tenant under the specific terms of this Lease, in determining Operating Costs for the calculation of the Tenant's Proportionate Share, the Landlord shall exclude the costs of that service, except as any such costs relate to the Common Areas; or

(ii) is not provided in a significant portion of the Property, then in determining the Tenant's Proportionate Share, the Landlord may divide the cost of that service by the difference between the Rentable Area of the Property and the number of square feet of the Property to which the Landlord does not provide the service;

(c) if the Property is comprised of different categories of leaseable premises, the Landlord shall be entitled, but not obligated, to allocate Operating Costs among the various categories on the basis of such factors as the Landlord reasonably determines to be relevant, such as, by way of example, the relative uses of each such category and the benefits derived by them. In such event, the Landlord shall be entitled to adjust the Tenant's Proportionate Share of Operating Costs having regard to the category in which the Premises are included; and

(d) if any facilities, services or utilities:

(i) for the operation, administration, management, repair and maintenance of the Property are provided from another building or other buildings owned or operated by Landlord or its manager;

(ii) for the operation, administration, management, repair and maintenance of another building or other buildings owned or operated by Landlord or its manager are provided from the Property; or

(iii) are otherwise shared between the Property and another building or other buildings,

the net costs, charges and expenses of such items shall be allocated by the Landlord, acting reasonably, between the Property and the other building or buildings on a reasonable basis

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In the event that any of the utilities and services are not separately metered for the Premises, the costs thereof shall be included in Operating Costs or otherwise paid as Additional Rent based on a reasonable allocation by the Landlord.

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The Tenant shall immediately advise the Landlord of any installations, appliances or machines used by the Tenant which consume or are likely to consume large amounts of electricity or other utilities and, on request, shall promptly provide the Landlord with a list of all installations, appliances and machines used in the Premises

(2) In the conduct by the Tenant of its business at the Premises, the Tenant shall: operate its business in a manner which is in keeping with the theme and nature of the entire Property; maintain at the Premises an adequate stock and an adequate sales force to serve properly all customers of its business; warehouse, store or stock in the Premises only such goods, wares and merchandise as the Tenant intends to offer for sale in the Premises; use for office, clerical or other non-selling purposes, only such reasonable minimum amount of space at the Premises as may be required for the conduct of the Tenant's business from time to time; supply and maintain, or cause to be installed and maintained, adequate water, gas, sewage and electrical services within the Premises where the same are required for the proper operation thereof; and keep any show windows lighted and properly furnished with displays of a first-rate quality and arrangement during such hours as the Landlord may reasonably require.

(3) Without limiting the generality of the foregoing or any other provision of this Lease, the Tenant shall neither use nor permit any part of the Premises to be used for or in connection with any of the following: the sale of second-hand goods, surplus articles, insurance salvage stock, fire sale stock, any damaged or defective merchandise, liquidation stock, bankruptcy stock or other distress or "end-of-line" stock; the sale of out-of-style, job lot, low quality or any inferior merchandise; any auction; a liquidation sale, bankruptcy sale, "going-out-of-business" sale, "moving" sale, "lease expiry" sale or any other similar sale; any "fire" sale, "smoke damage" sale or any other type of sale following or referring to any type of damage; an order office, a mail order office, or a store for the sale of merchandise through catalogues; or any vending machines or other coin-operated machines, entertainment or games machines or any other mechanical or electrical serving or dispensing machines or devices whatsoever unless expressly permitted in writing by the Landlord, in its sole discretion

The Tenant shall not, during the Term, directly or indirectly, whether as an owner, partner, shareholder, principal, agent, employee or independent contractor or otherwise, engage in or participate in or be a holder of any security of any nature whatsoever of, or be a lender to or an owner of any debt of, or furnish any financial aid or other support or assistance of any nature whatsoever to, any business enterprise or undertaking which in any manner or degree is competitive with the use of the Premises permitted by Section 8.1, if such competitive business enterprise or undertaking is in whole or in part conducted from premises situate within a distance of ten (10) kilometres from any part of the Property. This restriction shall not apply, however, to any business enterprise of the Tenant which is in operation as of the date of this Lease. If the Tenant breaches the covenant contained in this Section 8.3, then, in addition to any other rights and remedies of the Landlord under this Lease, the Landlord may, at its option, terminate this Lease on thirty (30) days' written notice to the Tenant.

The Tenant shall not be an insured under the policies with respect to the Landlord's insurance, nor shall it be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or their proceeds

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If the occupancy of the Premises, the conduct of business in the Premises, or any acts or omissions of the Tenant in the Property or any part thereof causes or results in any increase in premiums for the insurance carried from time to time by the Landlord with respect to the Property, the Tenant shall pay any such increase in premiums as Additional Rent forthwith after invoices for such additional premiums are rendered by the Landlord. In determining whether increased premiums are caused by or result from the use and occupancy of the Premises, a schedule issued by the organization computing the insurance rate on the Property showing the various components of such rate shall be conclusive evidence of the several items and charges which make up such rate. The Tenant shall comply promptly with all requirements and recommendations of the Insurer's Advisory Organization of Canada (or any successor thereof), or of any insurer now or hereafter in effect, pertaining to or affecting the Premises

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1. Save for the environmental audit as provided in paragraph 5 below, the Tenant shall have a period of thirty (30) days from the date of the execution of the Lease by both parties thereto to have the Property inspected by its professional consultants' and the Landlord agrees to meet with each professional consultant at the Property on not less than 24 hours written notice and to permit such consultant to access all portions of the Property and if necessary take samples from the Property. The Tenant may terminate the Lease if in the Tenant's sole discretion the reports from all professional consultants are not satisfactory to the Tenant, provided such notice of termination is received by the Landlord within thirty-five (35) days from the date of the execution of the Lease by both parties thereto.

2. If the Tenant wishes to register a caveat or notice of the Lease, the Landlord agrees to execute an acknowledgment or short form of lease sufficient for such purpose.

3. The Landlord represents and acknowledges the Tenant's reliance thereon, that the Tenant need not take possession of the Property to commence its Tenant's Work until the Landlord has advised the Tenant in writing that the Property is zoned for the Tenant's use of a health club.

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(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

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(iv) any third party where the Property 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 Property are located and operating under the same name as that which the Property is being operated at the date of such sale, transfer or disposition.

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- (b) In all other circumstances the Tenant or a Non Consent Transferee shall have the right upon written notice to the Landlord, to Transfer this Lease or the Property upon receipt of the Landlord's consent, which consent shall not be unreasonably withheld.

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- (e) If the Transferee has a net worth or financial condition equal or better than the Tenant, upon the Transfer and the Transferee assuming the obligations of the Tenant and agreeing in writing to be bound by the terms of this Lease, the Landlord shall discharge the Tenant from its obligations hereunder and such obligations accruing thereafter shall be borne solely by the Transferee excepting any Transfer contemplated by the paragraphs above.

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- (f) There are no fees or charges payable by either the Tenant or any Transferee in connection with a Transfer or a request to Transfer, or arising from the preparation and/or execution of any document pertaining to a Transfer where the Landlord's consent is not required

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The Landlord, at its sole cost shall complete a phase 1 and, if necessary, a phase 2 environmental site assessment of the Property in accordance with the current CSA standards (the "Audit"). The Landlord shall retain in the name of the Landlord and Tenant a professional environmental assessment company acceptable to the Tenant to complete the Audit. The Tenant shall receive the Audit no later than sixty (60) from the date of the execution of the Lease by both parties thereto, failing which the Tenant may, at the Landlord's cost, retain in the name of the Landlord and Tenant a professional environmental assessment company to complete the Audit. Within fifteen (15) days of receipt of the Audit, the Tenant shall advise the Landlord in writing whether or not the Tenant accepts the Audit and if it is not acceptable, the Tenant may either terminate this Lease or require the Landlord at its sole cost to complete the required remediation. If the Landlord has not completed the required remediation within ninety (90) days of the Tenant's receipt of the Audit, then the Tenant may at any time thereafter terminate this Lease, or complete the remediation, the cost of which plus an administration fee of fifteen percent thereon, shall be set off against the first installments of Rent becoming due.

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6. The Landlord warrants that upon completion of the Landlord's Work, the Landlord's Work and the Property will comply with all federal, provincial, municipal or other governmental statutes, laws, by-laws, rules and regulations (individually and collectively the "Laws"), including zoning for that use as provided in this Lease. If at any time the Property do not meet with all Laws, then, except for work that is specifically

required by Tenant's use and occupancy, the Landlord will undertake such work at the Landlord's sole cost.

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9. Notwithstanding any other provision contained in the Lease, in the event that access to or the use of the Property and/or Premises is adversely affected for a period in excess of two (2) business days (including where the Landlord undertakes any work within the Premises, or where the Premises are not heated or cooled to a temperature acceptable to the Tenant acting reasonably), then for that period (the "Abatement Period"), which Abatement Period shall be for that period commencing on the day immediately following the end of the second business day up to and including the day that such use or access ceases to be adversely affected, the Tenant's obligation to contribute to Basic Rent, and Additional Rent shall abate in its entirety and shall not accrue during the Abatement Period. In the event the Landlord has not remedied the defect or fault which substantially interferes with the Tenant's ability to carry on business within ten (10) of the Tenant advising the Landlord of same, then the Tenant may at any time thereafter undertake such remedy and the cost thereof, plus an administration fee equal to fifteen percent thereon shall be paid by the Landlord to the Tenant within thirty days of receipt of the Tenant's invoice therefore, failing which the Tenant may set off such amount against Rent, or alternatively the Tenant may terminate this Lease.

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Any levy, impost fee, development fee, and or local improvement charge (collectively a "Development Fee") arising from the site plan agreement and or building permit for the Property and such costs shall be paid by the Landlord without recharge to the Tenant, and for greater certainty if such Development Fee is included in Taxes or improvement charges the Tenant is not obligated to pay such portion of the Taxes or local improvement charges applicable to the Development Fee and the Landlord shall pay such portion;

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Minimum Rent. The Minimum Rent for the first and second renewal term shall be as hereinbefore provided and for the third and fourth renewal terms, shall be agreed upon by the Landlord and Tenant and based upon the then [as of the commencement of the renewal term for which such renewal was exercised] 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 Leased Property, but without taking into consideration the value of the Tenant's leasehold improvements. If the Landlord and Tenant can not agree upon such Minimum Rent prior to commencement of the renewal term for which such renewal was exercised, then the Minimum 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 Leased Property, but without taking into consideration the value of the Tenant's leasehold improvements..

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14.(a) The Tenant's fixturing period shall commence on that date (the "Fixturing Period Commencement Date") which is thirty-five (35) days from the date of the execution of the Lease by both parties thereto. The Tenant shall have a period (the "Fixturing Period") of one hundred and fifty-three (153) days to complete the Tenant's Work to ready the Premises and the 6,000 Foot Space for the Tenant's use. The parties acknowledge that the Fixturing Period for the 6000 Foot Space, will occur subsequent to the Fixturing Period applicable to the balance of the Premises.

- (b) During the Fixturing Period, the Tenant shall perform the Tenant's Work and be bound by all of the terms, covenants and conditions of this Lease excluding the payment of Rent, save however that the Tenant shall be responsible for all utilities consumed in the Property during the Fixturing Period and any Excess Realty Taxes.
- (c) Within thirty days of the Fixturing Period Commencement Date, the Landlord's architect at the Landlord's sole cost shall provide to the Tenant a certificate of the area of the Property, complete with dimensions, failing which the Tenant at the Landlord's cost may have its own architect determine the area of the Property which determination shall be binding on the Landlord.

15.

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The Landlord shall, obtain at the Landlord's sole cost from any holder of any security (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. The Landlord acknowledges and agrees that no Rent is payable nor shall such Rent accrue until the Tenant receives the aforesaid non disturbance agreement executed by the Lender in a form acceptable to the Tenant (the "NDA"). If the Tenant has not received the NDA by _____ [complete], then the Tenant need not take occupancy of the Property nor will the Fixturing Period commence until Tenant the NDA has been received. If the Tenant has not received the NDA by _____ [complete], then the Tenant may at any time thereafter terminate this Lease.

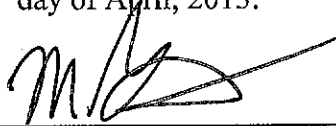
Page 32: [25] Deleted 10/6/2006 5:04:00 PM

16. 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.

17

TAB C

This Exhibit "C" referred to
in the Affidavit of Michael Singer
sworn before me this
day of April, 2013.



A Commissioner for taking Affidavits
Marc H. Gertner



Michael Singer <michael.s.singer@gmail.com>

1079268 Ontario Inc. - Extreme Fitness - proposed lease - 635 Danforth

Michael Singer <michael.s.singer@gmail.com>
To: "David V. Westwood" <dvwestwood@ileaselawyer.com>

11 October 2006 16:07

Dear David:

Further to our telephone discussion of yesterday, I wish to provide you with the following response to your email of October 20, 2006, each of which is numbered to correspond to the number in your email message:

1. The Term of 2 years and the first renewal of 3 years to be exercised concurrent with the execution and delivery of a lease agreement (satisfactory to our respective clients) is acceptable to the Landlord. However, the amendment made by you to create an additional 5 year renewal term is unacceptable to the Landlord. The Landlord is prepared to grant an two additional 5 year renewals. The term of the lease and the renewals is a total of 15 years if the tenant exercises all 3 renewals (term of 2 years, first renewal of 3 years, second renewal of 5 years and third renewal of 5 years).
2. The Tenant may have exclusive use of the parking and access in the rear of the Building, subject to the Landlord's right of use and access for the purpose of any repairs, maintenance and/or additions and improvements to 635 Danforth and/or 627 Danforth, the rights of the tenants of 627 Danforth for access to 627 Danforth and the rights of the abutting property owners and their tenants to the easements or rights-of way, if any. Tenant shall be prohibited from granting a license or any other rights right to any other person relating to the use or occupation of the parking area or access lane ways.
3. the lease provisions for 627 will be set out in a separate document.

With respect to the amendments made by you to the draft lease, the following is a summary of the Landlord's comments:

9
2
7
2
6
Section 1.1(d) - your client to provide square feet for the ground floor, second floor and third floor.

Section 1.1(f) Commencement Date: date of execution of lease. There is no fixing period for 635 Danforth

Section 1.1(h) permitted use - delete "(with liquor license), or any other use permitted by the applicable zoning.

Section 1.1(i) Deposit - \$99,600 plus GST for the first and second month Rent.

Section 1.1(l) Delete Schedule "G" - there is no exterior renovations to be completed by Landlord.

Section 2.2 Reference to Paragraph 17 of Schedule "F" is incorrect. Schedule "F" does not have Paragraph 17.

Section 3.3 Landlord requires Tenant to provide post-dated cheques.

Section 5.1(3) The base year for Realty Taxes is 2006.

Section 6.6 I confirm my previous advice to you that my amendment was an error and that the Landlord will warrant the HVAC (and not the Building Systems) to be in good working order as of the commencement date and for a period of 3 years from the Commencement Date or the expiration of any applicable warranty period, whichever is the later. Thereafter Tenant shall maintain, repair and replace the Building Systems at its sole cost and expense.

Section 9.4 Delete the last sentence. Landlord consent is required for any Alteration whether or not structural in nature.

Section 9.7 The Tenant requires the provision that was deleted by you relating to removal of its trade fixtures etc., to be reinserted.

Section 10.2 Landlord Insurance to be at the Tenant's expense.

Section 14.1(a) The period for curing default of rent is 5 days after notice.

Section 15.5 Reinsert the deletions that you made with respect to the registration of Notice of Lease by the Tenant.

Page 24 The Tenant is "Extreme Fitness, Inc." Please confirm if this is the correct legal name of the Tenant. Please provide copy of Articles of Incorporation.

Schedule "B"

1. To be amended as per discussion above.
12. The deleted text to be reinserted - Tenant shall not in any case erect or cause to be erected any aerial anywhere in the Property.

Schedule "F"

1. Delete this paragraph - Tenant to satisfy itself prior to execution of Lease.
2. Delete this paragraph - Tenant to satisfy itself prior to execution of Lease.
- 3(a) The Transfer requires prior written consent of Landlord, which consent shall not be unreasonably withheld, and the Tenant shall not be released from the Lease Agreement.
9. The renewal to be as discussed above.
11. To be deleted - There is no fixturing period for 635 Danforth.
13. Delete this paragraph. Tenant to satisfy itself prior to execution of Lease.
16. Delete this paragraph.

—
Regards,

Michael S. Singer
4211 Yonge Street, Suite 200
Toronto, ON M2P 2A9

Tel 416.224.8383
Fax 416.224.2408
Email michael.s.singer@gmail.com

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TAB D

This **Exhibit "D"** referred to
in the Affidavit of Michael Singer
sworn before me this
day of April, 2013.



A Commissioner for taking Affidavits
Marc H. Gertner

M. Singer comments October 18, 2006 Lease 5 Oct 18, 2006

Need NDA from Meridian

NOTE: A. This is the Lease for 635 Danforth, where is the Lease for 627 Danforth? This will be covered in a separate letter agreement (the "627 Letter Agreement").

B. For 627 The Danforth, the Landlord has 7 months to get city approval and permits for the new space as per layout and specifications attached to that lease. which is approx 5000-6000 sq ft. If city approvals and permits have not been obtained at the end of the 7 month period, it is the tenants option to extend the deadline or decide to forego the additional new space. OK to extend up to further 3 months. The 627 Danforth Landlord will change, at its expense, the front of the building at 627 Danforth as per drawing attached to the 627 Letter Agreement, subject to approval of National Bank of Canada, the ground floor tenant at 627 Danforth. ATTACH AS A SCHEDULE THE PHOTOGRAPHS FROM M. OFFMAN FOR THE PROPOSED STORE FRONTS.

C. For 635 Danforth, the Tenant will change, at its sole cost and expense, the front of the building at 635 Danforth as per drawing attached to this Lease. Tenat to obtain all permits, at its sole cost and expense. Mr. Offman, is this correct?

FOR DISCUSSION PURPOSES ONLY – Draft Lease 5 Oct 18, 2006

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THIS LEASE made the day of October, 2006,

BETWEEN:

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

(the "Landlord")

AND

EXTREME FITNESS, INC. , a corporation incorporated under the 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 306B 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, as shown outlined in hatch on the plan annexed as Schedule "A". The Premises consist of three floors, 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 and a platform area of 1,654 square feet. Mr. Offman please: 1] confirm these areas, the areas shown on each drawing is difficult to read because of shading. 2] please send an electronic copy of the third floor and platform area drawings showing their respective measurements. 3] what is the platform area and is it to be included in the calculation of rentable area?

Deleted: _____
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 Deleted: [to be completed - Extreme to provide area as per its floor specs - copy to be delivered by Extreme and attached as schedule]

(e) Rentable Area of Premises: approximately 24,011 square feet, subject to Section 2.2.

(f) Term: two (2) years, subject to Sections 2.3 and 2.4.
 Commencement Date: October _____, 2006, subject to Sections 2.3 and 2.4

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End of Term: October 31, 2008, subject to Sections 2.3 and 2.4

Deleted: September XXX'

(g) Basic Rent (Section 4.1):

Period	Per Sq. Ft./Year	Per Year	Per Month
Year 1-2	\$21.34 gross	\$512,394.74	\$42,699.56
Year 3-5	\$21.34 gross	\$512,394.74	\$42,699.56
Year 6-10	\$21.85 gross	\$524,640.35	\$43,720.03
Year 11-15	\$22.92 gross	\$550,332.12	\$45,861.01

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(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) Deposit: \$Nil, in accordance with Section 3.4
 Rent Deposit: the sum of \$90,523.07, which includes GST shall be applied to Rent as it first come due hereunder in accordance with Section 3.4

Deleted: 99,600.00 plus

Deleted: Security Deposit-the sum of \$- shall be held as a security deposit-in accordance with Section 3.4

(j) Fixturing Period: Not applicable

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(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 Tenant
[Mr. Offman, is this correct?]

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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;

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(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;

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

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

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

(n) **"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%) ~~IS A FEE AS PAYABLE BY TENANT~~ of the aggregate of all Operating Costs;

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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

(g) "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);

(r) "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;

(s) "Proportionate Share" –[INTENTIONALLY DELETED]

(u) "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;

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

(w) "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;

(x) "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;

(y) "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;

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

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

(bb) "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

(cc) "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

The Tenant may, at the Tenant's sole cost, arrange for the Rentable Area of the Premises to be measured by its arm's length architect, and, if the area measured is different than that set out in Section 1.1(e), the Rent will be adjusted in accordance with the measured area. The Tenant will advise the Landlord in writing of the area measurement. If the Tenant does not arrange for such measurement, the Rentable Area of the Premises shall be deemed to be the area set out in Section 1.1(e). The Landlord may recalculate the area

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of the Premises in the same manner whenever required as a result of a rearrangement of partitions or other changed conditions. The Landlord will advise the Tenant in writing of the revised certified area measurement, and provide to the Tenant a copy of such certificate complete with dimensions, and the parties agree to be bound thereby.

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 (2nd) 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). Provided the Tenant is Extreme Fitness Inc. or a Non Consent Transferee, the Tenant is not obligated to provide the post dated cheques.

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.

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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

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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

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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

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 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, 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. In the event the Building Systems or a major component requires repair or replacement after the third year of the Term, then the Tenant shall undertake such repair or replacement and provided:

- (a) the cost of such repair or replacement (the "Repair Cost") is in excess of three thousand dollars, (exclusive of gst),
- (b) the repair was not occasioned by the wilful act, omission and/or negligence of the Tenant and/or those in law for whom the Tenant is responsible;
- (c) the Tenant provides to the Landlord a copy of the invoice substantiating the Repair Cost, and the Tenant is not then in default of any of its obligations as contained in the Lease;
- (d) 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.

Article 7 — Control and Operation by Landlord

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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.

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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

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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. ~~Mr. Offinan, have you agreed to continuously occupy?~~

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8.3 Radius Restriction

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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~~

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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, neither the Landlord's consent or 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.

Comment [MS1]: This (a) was re-inserted.
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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.~~

Comment [MS2]: This (e) has been re-inserted

(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.~~

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(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 .

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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. Mr. Offinan, note this payment obligation of the Tenant.

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10.3 Increase of Landlord's Premiums

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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
 - (b).
 - (2)

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).

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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 15 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.

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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 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

The Landlord may only exercise its right of distress as permitted by law.

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 (3rd) 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, [Mr. Offman, please provide this insert Falconhead address], 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..

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(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.

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

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD

1079268 ONTARIO INC.

Per: _____

Name:

Title:

I/We have the authority
to bind the Corporation

c/s

Per: _____

Name:

Title:

TENANT

Extreme Fitness, Inc.

Per: _____

Name:

Title:

I/We have the authority
to bind the Corporation

c/s

Per: _____
Name:
Title:

Schedule "A"

Plan Showing Premises in hatch

Showing the Property in heavy black

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.

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Schedule "C"

Landlord's and Tenant's Work

Landlord's Work

None -- as is where is condition.

Tenant's Work

~~[to be discussed]~~ PLEASE ADVISE Mr. Offman. This needs to be
completed.

Schedule "D"
Indemnity Agreement

Schedule "E"

Intentionally deleted

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Deleted: \$25,988 . \$624,000.00 \$52,000.00 . Yrs 11 - 15 .
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Deleted: \$26,988 . \$648,000.00 \$54,000.00see Schedule "F", Section 7

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.

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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, **[[MR SINGER, THE TENANT MUST BE ABLE TO FINANCE ITSELF]]** 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.

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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.

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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. Mr. Offman - is this correct

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 five (5) periods (individually the "Renewal"), the first Renewal being for a period of three (3) years, and the remaining four 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, third and fourth Renewal term shall be as set out in the Basic Provisions, Section 1.1(g). The Basic Rent for the fifth Renewal term shall be the Basic Rent agreed upon by the Landlord and Tenant and based upon the then [as of the commencement of the fifth 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 fifth 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 Leased Property, but without taking into consideration the value of the Tenant's leasehold improvements.

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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. ~~Mr. Singer The Tenant needs a remedy~~].

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~~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. Mr. Offman - Do you agree with this deletion.~~

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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, pillates 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.~~

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(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 any previous occupant (individually and collectively the "Previous Occupant") of the Property and the property of such Previous Occupant. 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.~~

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10. The Tenant 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. ~~Mr. Offman - Is this correct~~

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Schedule "G"

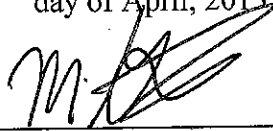
Attach exterior renovation plans

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TAB E

This **Exhibit "E"** referred to
in the Affidavit of Michael Singer
sworn before me this
day of April, 2013.



A Commissioner for taking Affidavits
Marc H. Gertner



Michael Singer <michael.s.singer@gmail.com>

1079268 Ontario Inc. - Extreme Fitness - Proposed Lease Agreement for 635 Danforth Avenue, Toronto - draft 7

Michael Singer <michael.s.singer@gmail.com>

23 October 2006 15:40

To: "David V. Westwood" <dwestwood@ileaselawyer.com>

I am providing you with the attached revised draft lease agreement 7. Please discuss your comments with me as soon as possible.

The Landlord requires the Lease Agreement to be settled this afternoon and signed by 12:00 noon tomorrow.

In regards to the arrangements to be made for the additional space on the third floor of 627 Danforth, I am waiting for Morry to provide the specs of what work the Tenant expects the Landlord to complete for delivery to the Tenant. I suggest that the material terms of the arrangements for the space at 627 Danforth be set out in a letter agreement to be signed by the Landlord (2010999 Ontario Inc.) and the Tenant.

--


Regards,

Michael S. Singer
4211 Yonge Street, Suite 200
Toronto, ON M2P 2A9

Tel 416.224.8383
Fax 416.224.2408
Email michael.s.singer@gmail.com

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 Lease 7 Oct 23, 2006.doc
205K

M. Singer comments October 23, 2006 Lease 6 Oct 19, 2006

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NOTE: A. This is the Lease for 635 Danforth, where is the Lease for 627 Danforth? This will be covered in a separate letter agreement (the "627 Letter Agreement").

B. For 627 The Danforth, the Landlord has 7 months to get city approval and permits for the new space as per layout and specifications attached to that lease. which is approx 5000-6000 sq ft. If city approvals and permits have not been obtained at the end of the 7 month period, it is the tenant's option to extend the deadline or decide to forego the additional new space. OK to extend up to further 5 months. The 627 Danforth Landlord will change, at its expense, the front of the building at 627 Danforth as per drawing attached to the 627 Letter Agreement, subject to approval of National Bank of Canada, the ground floor tenant at 627 Danforth. ATTACH AS A SCHEDULE THE PHOTOGRAPHS FROM M. OFFMAN FOR THE PROPOSED STORE FRONTS.

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C. For 635 Danforth, the Landlord will change, at its sole cost and expense, the front of the building at 635 Danforth as per drawing attached to this Lease.

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FOR DISCUSSION PURPOSES ONLY - Draft Lease 7 Oct 23, 2006

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THIS LEASE made the _____ day of October, 2006,

BETWEEN:

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

(the "Landlord")

AND

EXTREME FITNESS, INC. , a corporation incorporated under the 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, as shown outlined in hatch on the plan annexed as Schedule "A". The Premises consist of three floors, 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 and a platform area of 1,654 square feet. Mr. Offman, please: 1] confirm these areas, the areas shown on each drawing is difficult to read because of shading. 2] please send an electronic copy of the third floor and platform area drawings showing their respective measurements. 3] what is the platform area and is it to be included in the calculation of rentable area? Confirmed with Morry that the Rent has now been agreed as revised in 1.1(g) below, i.e. for years 1 to 5 Rent is \$597,600.00 per annum, payable \$49,800.00 plus GST per month.

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(e) Rentable Area of Premises: approximately 24,011 square feet, subject to Section 2.2.

(f) Term: two (2) years, subject to Sections 2.3 and 2.4.
 Commencement Date: October _____, 2006, subject to Sections 2.3 and 2.4

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 . \$24,889 . \$597,600.00 . \$49,800.00
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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	\$24.889	\$597,600.00	\$49,800.00
Renewal 1 3-5	\$24.889	\$597,600.00	\$49,800.00
Renewal 2 6-10	\$25.988	\$624,000.00	\$52,000.00
Renewal 3 11-15	\$26.988	\$648,000.00	\$54,000.00

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 \$512,394.74
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(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.

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 \$524,640.35 \$43,720.83
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(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 \$90,523.07 which includes GST shall be applied to Rent as it first come due hereunder in accordance with Section 3.4

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 \$45,861.01
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(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

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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

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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;

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(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;

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

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

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

(n) **"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;

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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

(q) "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);

(r) "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;

(s) "Proportionate Share" –[INTENTIONALLY DELETED]

(u) "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;

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

(w) "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;

(x) "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;

(y) "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;

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

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

(bb) "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

(cc) "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

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2.3 Term

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Deleted: Landlord
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Deleted: Landlord in writing of the area measurement. If the
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Deleted: Tenant does not arrange for such measurement, the Rentable Area of the Premises shall be deemed to be the area set out in Section 1.1(c). The Landlord may recalculate the area of the Premises in the same manner whenever required as a result of a rearrangement of partitions or other changed conditions. The Landlord will advise the Tenant in writing of the revised certified area measurement, and provide to the Tenant a copy of such certificate complete with dimensions, and the parties agree to be bound thereby.
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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 (2nd) 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).

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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.

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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

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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.

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5.6 Calculation of Operating Costs

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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

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 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, 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. ~~In the event the Building Systems or a major component requires repair or replacement after the third year of the Lease, then the Tenant shall undertake such repair provided:~~

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(a) ~~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 Building Systems, and~~

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(b) ~~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;~~

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~~In the event the Repair Cost for such major component of the Building Systems after the third year of the Lease is in excess of sixty percent (60%) of the cost to replace such major component of the Building Systems, then the Tenant shall undertake such repair, provided:~~

Deleted: (c) . the Tenant provides to the Landlord a copy of the invoice substantiating the Repair Cost, and the Tenant is not then in default of any of its obligations as contained in the Lease; ¶

¶ (d) . 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;

(a) ~~the repair was not occasioned by the wilful act, omission and/or negligence of the Tenant and/or those in law for whom the Tenant is responsible;~~

(b) ~~the Tenant provides to the Landlord with a copy of the estimate for the Repair Cost and the Landlord approves such repair, and the Tenant is not then in default of any of its obligations as contained in the Lease;~~

(c) ~~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.~~

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Article 7 — Control and Operation by Landlord

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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.

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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

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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. Mr. Offman, have you agreed to continuously occupy? Deleted:

8.3 Radius Restriction

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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.

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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.

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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.~~

Comment [MS1]: This (a) was re-inserted.

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(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.~~

Comment [MS2]: This (e) has been re-inserted.

(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.

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(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.

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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. Mr. Offinan, note this payment obligation of the Tenant.

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10.3 Increase of Landlord's Premiums

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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).

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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 15 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.

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is no Section 15 of Schedule F.
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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 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

The Landlord may only exercise its right of distraint as permitted by law.

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 (3rd) 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, [Mr. Offman, please provide this insert Falconhead address], 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.

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(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.

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15.6 Number, Gender, Effect of Headings

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

15.7 Severability, Subdivision Control

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

15.8 Entire Agreement

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

15.9 Successors and Assigns

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

15.10 Confidentiality and Personal Information

The contents, terms and conditions of this Lease shall be kept strictly confidential by the Tenant and Landlord. Neither the Landlord nor the Tenant shall under any circumstances, discuss or reveal the details of this Lease with any arm's-length parties including, but not limited to, any other tenants in the Property, prospective tenants, real estate agents or others except the Tenant's or Landlord's existing and potential lenders, bankers, investors, purchasers, legal and financial advisors, any *bona fide* transferee, and except as may be required by law.

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD

1079268 ONTARIO INC.

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

c/s

Per: _____

Name:

Title:

TENANT

Extreme Fitness, Inc.

I/We have the authority
to bind the Corporation

Per: _____
Name:
Title: c/s

Per: _____
Name:
Title:

Schedule "A"

Plan Showing Premises in hatch

Showing the Property in heavy black

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.

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Schedule "C"

Landlord's and Tenant's Work

Landlord's Work

None -- as is where is condition.

Tenant's Work

completed. ~~[to be discussed]~~ PLEASE ADVISE Mr. Offman. This needs to be

Schedule "D"
Indemnity Agreement

Schedule "E"

Intentionally deleted

Deleted: Basic Rent during extension periods (Section 4.1); Period . Per Sq. Ft./Year . Per Year . Per Month . 24.889 . Yrs 6 - 10 .
Deleted: \$ _____
Deleted: \$25,988 . \$624,000.00 . \$52,000.00 . Yrs 11 - 15 .
Deleted: \$ _____
Deleted: \$26,988 . \$648,000.00 . \$54,000.00see Schedule "F", Section 7 ¶

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.

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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.

Deleted: [[MR SINGER. THE TENANT MUST BE ABLE TO FINANCE ITSELF]]

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.

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¶
¶
¶

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.

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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. Mr. Offman – is this correct

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 five (5) periods (individually the "Renewal"), the first Renewal being for a period of three (3) years, and the remaining four 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, third and fourth Renewal term shall be as set out in the Basic Provisions, Section 1.1(g). The Basic Rent for the fifth Renewal term shall be ~~the greater of (a) the Basic Rent for the fourth 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 fifth 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 fifth 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 Leased Property, but without taking into consideration the value of the Tenant's leasehold improvements.~~

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Comment [MSOffice4]: This was what was agreed to by Morry Offman

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. [Mr. Singer The Tenant needs a remedy].

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~~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. Mr. Offman - Do you agree with this deletion.~~

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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, pillates 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.

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(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 any previous occupant (individually and collectively the "Previous Occupant") of the Property and the property of such Previous Occupant. 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.~~

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10. 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. Mr. Offman - Is this correct

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Schedule "G"

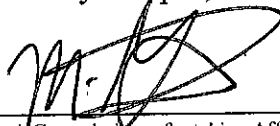
Attach exterior renovation plans

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TAB F

This Exhibit "F" referred to
in the Affidavit of Michael Singer
sworn before me this
day of April, 2013.



A Commissioner for taking Affidavits

Marc H. Gertner



Michael Singer <michael.s.singer@gmail.com>

(no subject)

David V. Westwood <dvwestwood@ileaselawyer.com>

27 October 2006 14:56

To: Michael Singer <michael.s.singer@gmail.com>, morryoffman@msn.com, Brian Crosby <brianc@falconheadcapital.com>, Jim Solomon <jsolomon@falconheadcapital.com>

Cc: cmcneill@airdberlis.com, Yossie.Horwitz@weil.com, Mark.McLaughlin@weil.com, Jo Ann Citro <joannc@extremefitness.info>

Michael:

With regard to the final form I have amended this as follows:

§ 1.1(d): I have referenced the mezzanine of 4,443 s.f.

Schedule "A" will now reflect all floors.

§ 1.1(e): The area is now 24,110 square feet.

§ 1.1(f): The Commencement Date is October 30, 2006.

§ 1.1(g): The amount per square foot only has been adjusted to reflect this new square footage.

Attached is a pdf copy complete with Schedules.

I confirm our (M. Singer/D. Westwood) agreement of today that the Lease can be signed in counterparts, with original copies to follow.

I understand that Messrs Crosby and / or Solomon will be executing the Lease on behalf of the Tenant. Please make three execution copies and attend to their execution.

Please initial and execute, scan one copy and return to Mr. Singer electronically. If you need to reach Mr. Michael Singer he can be reached at 416.224.8383

Thereafter all copies should be returned to the Landlord's solicitor as follows:

Michael S. Singer

Barrister and Solicitor

4211 Yonge Street

Suite 200

Toronto, Ontario, M2P 2A9

Please copy me on your transmission to Mr. Singer.

Regards,

David Westwood

<<...>>

David V. Westwood (Commercial Lease Law) Professional Corporation

David V. Westwood, Barrister & Solicitor

4 King Street West, Suite 920

Toronto, Ontario, M5H 1B6

Tel: 416-640-4212

Fax: 416-640-4218

HYPERLINK "<http://www.ileaselawyer.com>" www.ileaselawyer.com

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No virus found in this outgoing message.

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Version: 7.1.408 / Virus Database: 268.13.16/504 - Release Date: 10/27/2006



Lease 10 FINAL COMPLETE.pdf

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THIS LEASE made the 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 306B 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, 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(i) 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 (2nd) 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(f) 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 (3rd) 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, 3rd Floor, New York, NY 10022, or such other company as the Tenant designates, by notice in writing to the Landlord, and the time period for the Tenant to remedy such default shall not commence until such notice has been given to Falconhead Capital LLC or such other designated company to which notice has been given to the Landlord more than ten (10) days prior thereto.

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

15.5 Registration

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

15.6 Number, Gender, Effect of Headings

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

15.7 Severability, Subdivision Control

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

15.8 Entire Agreement

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

15.9 Successors and Assigns

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

15.10 Confidentiality and Personal Information

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

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

IN WITNESS WHEREOF the parties have duly executed this Lease.

LANDLORD

1079268 ONTARIO INC.

Per: _____

Name:

Title:

c/s

I/We have the authority to bind the Corporation

Per: _____

Name:

Title:

TENANT

EXTREME FITNESS, INC.

Per: _____

Name:

Title:

c/s

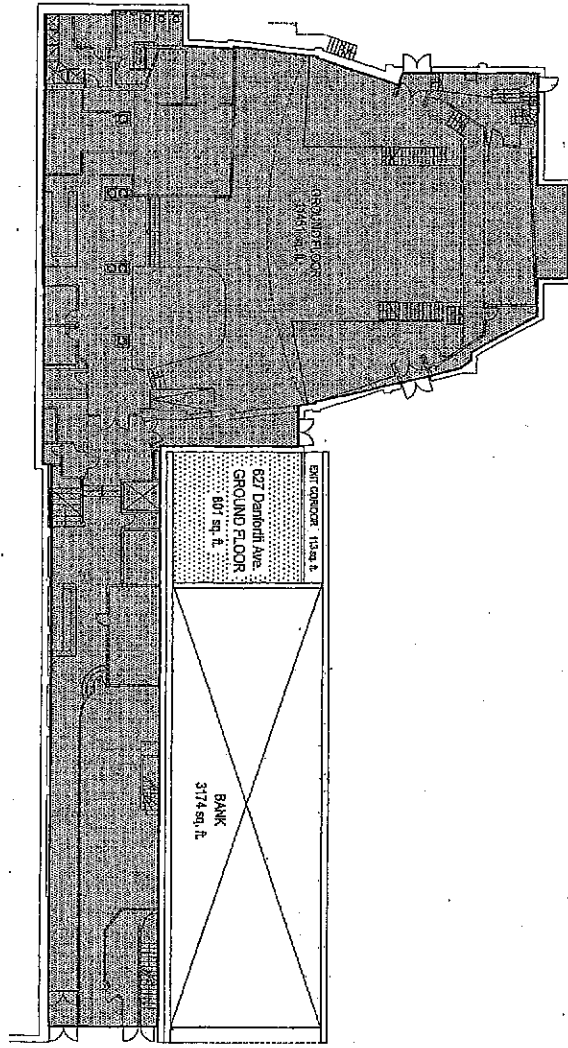
I/We have the authority to bind the Corporation

Per: _____

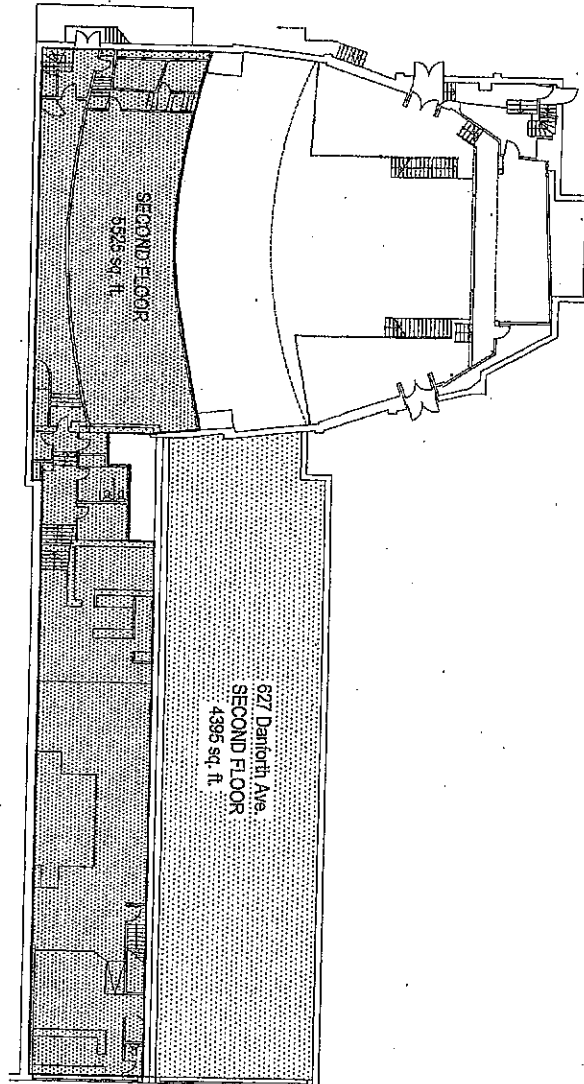
Name:

Title:

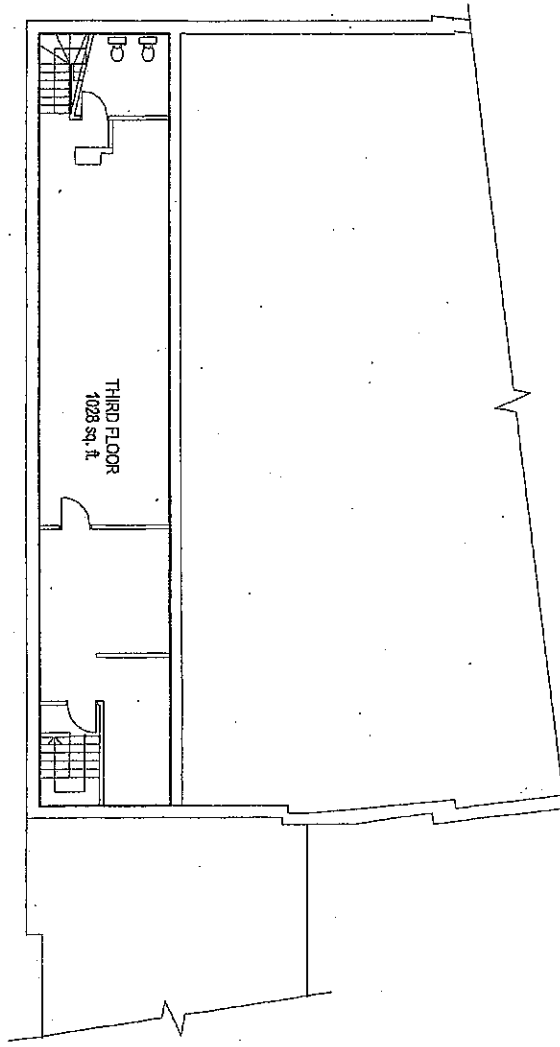
Schedule "A"



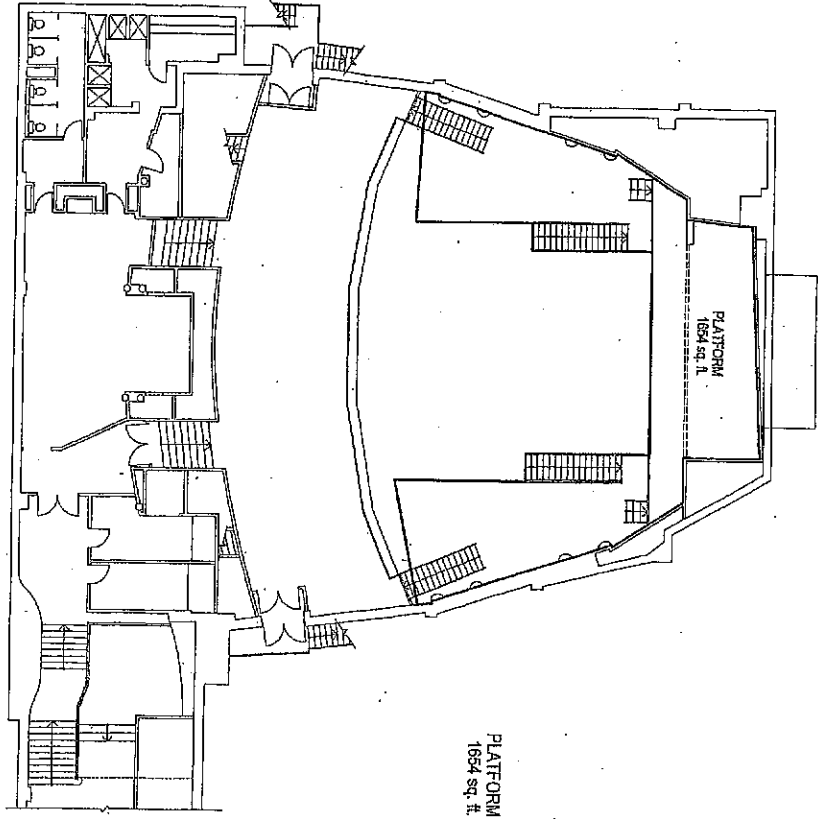
Schedule "A"



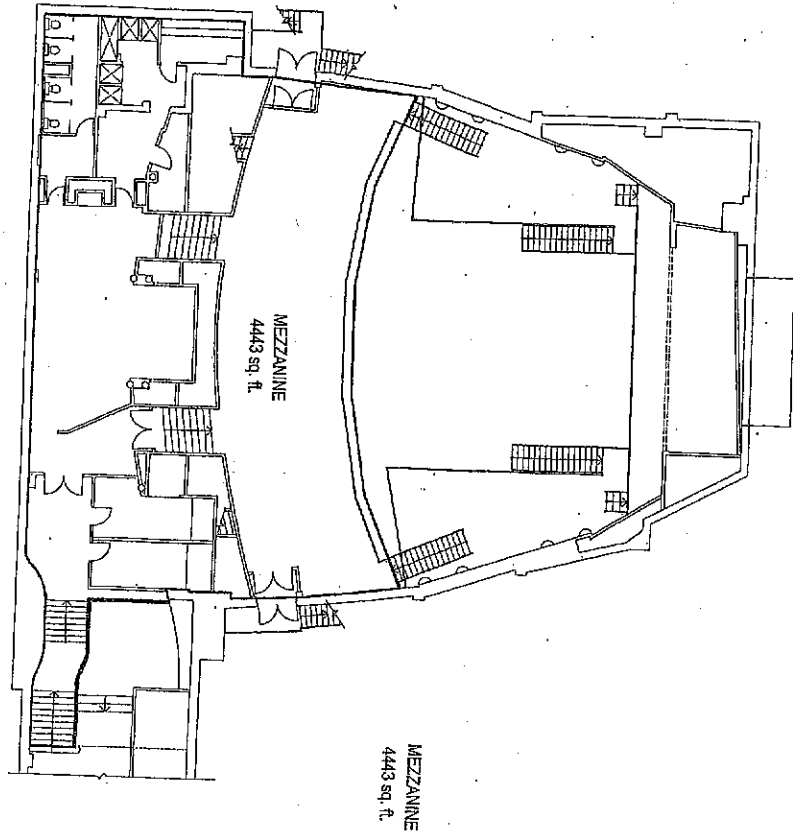
Schedule "A"



Schedule "A"



Schedule "A"



30

Schedule "B"

Rules and Regulations

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

Schedule "C"

Landlord's and Tenant's Work

Landlord's Work

None - as is where is condition.

Tenant's Work

As per Section 9.4 above.

Schedule "D"
Indemnity Agreement

[Intentionally deleted]

Schedule "E"
[Intentionally deleted]

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

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL SINGER

LEVINE, SHERKIN, BOUSSIDAN

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Email: marc@lsblaw.com

Lawyers for the Moving Party, 1079268 Ontario Inc.

TAB 2

Court File No.: CV-13-10000-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

AFFIDAVIT OF CONSTANTINE VOIDONICOLAS

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

1. I am the President of the moving party, 1079268 Ontario Inc. (the "Landlord") and as such have knowledge of the matters hereinafter disposed to. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I indicate that I have obtained the information from other sources, I verily believe those facts to be true.
2. I have read the Responding Motion Record of GoodLife Fitness Centres Inc. ("GoodLife"), the Responding Motion Record of Extreme Fitness, Inc. ("Extreme"), and the Affidavits contained therein. I make the following statements in reply to said Responding Motion Records and in support of the Landlord's motion.
3. I repeat and rely on the statements made by me in my Affidavit sworn April 5, 2013 and will use the same defining terms as in said Affidavit.

4. The Affidavit sworn by Alan Hutchens sworn April 18, 2013 (“Hutchens Affidavit”) makes a number of references to the definition of “premises” as is set out in the basic terms of section 1.1 of the Lease. It is clear, despite the statements made by Mr. Hutchens, that the Lease never included the basement. During the negotiations for the Lease (as referred to in Michael Singer’s Affidavit sworn April 30, 2013), it was contemplated that the basement would be included in the Lease. However, the entered into Lease specifically lays out that the property consists of three floors along with a platform area and mezzanine area. The floors are then annexed as Schedule A to the Lease further showing that the basement was not included.
5. The purpose of Schedule A was for the sake of clarity so that both parties knew what the Leased Premises encompassed.
6. Paragraphs 10 through 13 of the Hutchens Affidavit do not show that the basement was not included in the Premises. As stated in my previous Affidavit, the reason that I did not continue to “hound” Extreme about the basement was because I had been continually promised by them that they were going to Lease the Premises at 627-629 and wanted to continue our business relationship on good terms.
7. In fact, an Agreement to Lease was entered into with Extreme and one of my other companies, 999, for 627-629. Had Extreme followed through with said Agreement to Lease, the issue relating to the basement would not have been as significant to me. In paragraph 19 of the Hutchens Affidavit he refers to an October 12, 2007 letter agreement. I confirm that

this letter withdrew all of the alleged defaults of Extreme up to the time of signing said letter.

As stated in my previous Affidavit, it was not until January of 2008 that I became aware that Extreme had undertaken significant renovations to the basement of 635 and that they were in fact using it as a crucial part of their business as it was their change rooms and locker rooms. The October 2007 letter agreement attached as Exhibit "F" of the Hutchens Affidavit was executed prior to me having any knowledge that Extreme was using the basement.

8. Further, as evidenced by the May 2011 Landlord Consent Agreement discussed below, Extreme was aware that Mr. Singer acted as my solicitor for all Lease related issues and forwarded him a copy of the October 2007 letter agreement.

The May 2011 Landlord Consent Agreement

9. Paragraphs 22 through 24 of the Hutchens Affidavit, speak of an executed Landlord Consent Agreement executed by me on May 20, 2011.
10. I distinctively remember being approached by a senior director of Extreme, whose name I cannot recall as of this date, on the street in front of 635. I was asked to sign the Landlord Consent Agreement as it would assist Extreme with their "financing". I was told that they needed it signed right away. From what I recall, I was given only the signing page and none of the other pages of the documents. I do not recall if the signatures of Jeffrey Weber or Russell A. Garrard (the representatives from National Bank of Canada) were on the page when I was asked to sign.

11. I do not believe that I was ever shown the "Agreement of Tenant" page of the Landlord Consent Agreement until I received the Responding Motion Record of Extreme.
12. I was never given a copy of the Landlord Consent Agreement following me signing it and was never given the opportunity to review the document with my counsel, Mr. Singer, despite Extreme knowing that I had counsel at the time.
13. I do not know if National Bank of Canada ever received a copy of the Landlord Consent Agreement nor do I know if they ever relied on same.
14. To the best of my knowledge Mr. Singer was never sent a copy of the Landlord Consent Agreement.
15. I signed the Landlord Consent Agreement in an effort to assist Extreme with their financing. I did not, however, intend to waive any rights as to the defaults of the tenant and of the Lease.
16. Finally, I read the Affidavit of Phil Sorrell ("Sorrell Affidavit") sworn April 19, 2013 and the exhibits attached thereto. Exhibit "B" of the Sorrell Affidavit is an email from Jeff Van Haeren to Phil Sorrell which encloses the calculation of the area of 635. It is clear that the square footage of the property greatly differs from the amount included in the Lease. The total square footage as set out in the email of Mr. Van Haeren is 33,076 square feet where the executed Lease only provides for 24,110 square feet.

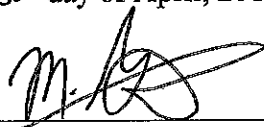
17. As stated in my previous Affidavit, at all material times during the negotiation of the Lease I relied upon the measurements supplied to me by Extreme for the areas attached in Schedule A. After receiving the Responding Motion materials of GoodLife, I became extremely concerned that throughout the term of the Lease Extreme, and now GoodLife, are using significantly more area than they are paying for.

18. I attempted to have the Premises measured by a certified surveyor on Friday, April 26, 2013, however, I was denied access by GoodLife despite having consent from their counsel the previous day.

19. As of the day of this writing, I am told that GoodLife will give access to our surveyor to attend at the Premises on April 30, 2013 to measure the Premises of 635 and should have a report as to the proper square footage of the Premises shortly thereafter.

20. I make this Affidavit in support of the Landlord's motion and for no other or improper purpose.

SWORN BEFORE ME)
 at the City of Toronto,)
 in the Province of Ontario)
 this 30th day of April, 2013)



A Commissioner for Taking Affidavits
 Marc H. Gertner



CONSTANTINE VOIDONICOLAS

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.-

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF CONSTANTINE
VOIDONICOLAS**

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Lawyers for the Moving Party, 1079268 Ontario Inc.

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

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

LEVINE, SHERKIN, BOUSSIDAN
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Lawyers for the Moving Party, 1079268 Ontario Inc.