

**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**

**RESPONDING MOTION RECORD OF
EXTREME FITNESS, INC.
(motion returnable May 28, 2013)**

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Tab 1

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**AFFIDAVIT OF ALAN HUTCHENS
(sworn April 18, 2013)**

I, Alan Hutchens, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Interim Chief Financial Officer of Extreme Fitness, Inc. ("**Extreme**"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information, and believe it to be true.

I. THE LEASE ENTERED INTO BY EXTREME AND 1079268 ONTARIO INC.

2. Pursuant to a lease dated October 30, 2006 (the "**Lease**"), Extreme leased the property municipally known as 635 Danforth Avenue, Toronto, Ontario (the "**Property**") from 1079268 Ontario Inc. (the "**Landlord**") for the purpose of operating a fitness club. Attached hereto at **Exhibit A** is a copy of the Lease.

3. Contrary to the assertion made by the principal of the Landlord, Constantine Voidonicolas, in his affidavit sworn on April 5, 2013, it has been and continues to be Extreme's

position that the basement of the building (the "**Building**"), which is situate on the Property, has always been leased, and paid for, by Extreme pursuant to the Lease.

4. Extreme further disagrees with Mr. Voidonicolas' assertion at paragraphs 8, 12 and 17 of his affidavit that the "basement space" used by Extreme is "approximately 6,500 square feet".

i. ***The Operative Provisions of the Lease Demonstrating that the Basement was included, and being Paid for by Extreme, as Part of the Lease***

5. In his affidavit, Mr. Voidonicolas sets out, at paragraph 7, an incomplete definition of "Premises" as is set out in the Basic Terms of section 1.1 of the Lease. Mr. Voidonicolas omits the first three words of the definition. The Basic Terms at section 1.1 (d) of the Lease defines "Premises" as:

"(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"." [***Emphasis added***]

6. The Basic Terms at section 1.1 (c) of the Lease defines "Property" as:

"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."

7. And at section 1.2 (q) of the Lease, "Property" is further defined as:

"(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;"

8. While the definition of "Property" intentionally excludes Extreme's fixtures, improvement and chattels, the definition does not exclude any part of the space comprising the Building or the Property, including the basement of the Building.

9. "Lands", as defined in section 1.2 (i) of the Lease, is defined as meaning "the lands described in section 1.1 (d) and all rights and easements which are or may hereafter be appurtenant thereto". Again, the description of "Premises" at section 1.1 (d) first references "**the entire Property**". [*Emphasis added*]

II. ADDITIONAL MATERIAL AGREEMENTS AND CORRESPONDENCE WHICH MR. VOIDONICOLAS FAILS TO DISCLOSE IN HIS AFFIDAVIT CONCERNING EXTREME'S OCCUPANCY OF THE BASEMENT, AND THE ALLEGED PARKING AND EXCESS REALTY TAX ARREARS

10. At paragraphs 10 and 11 of his affidavit, Mr. Voidonicolas states that he discovered, in early 2008, that without his knowledge, Extreme had undertaken significant renovations to the basement, which "did not make up part of the leased premises". Then at paragraph 12 of his affidavit, Mr. Voidonicolas goes on to describe the email sent on April 4, 2008, by his solicitor, Michael Singer, to David Bell, the former Chief Financial Officer of Extreme, which email is attached at Exhibit B to Mr. Voidonicolas' affidavit. In that email, Mr. Singer informs Mr. Bell, as summarized by Mr. Voidonicolas at paragraph 12 of his affidavit, that "effective January 1, 2008, the Basic Rent was being increased to reflect the addition of the basement to the rentable area of [the Property]", which Mr. Singer states in his letter is an "additional 4,600 square feet".

11. However, Mr. Voidonicolas fails to mention anything in his affidavit concerning the response which was emailed to Mr. Singer on April 22, 2008 by Extreme's former solicitor, David Westwood, who negotiated the Lease on behalf of Extreme, with Mr. Singer. In his email of April 22, 2008, Mr. Westwood sets out Extreme's position to Mr. Singer, and among other things, advises Mr. Singer that:

- (a) the definition of "Premises" contained in the Basic Terms of section 1.1 (d) of the Lease, which refers to 3 floors and a mezzanine, is an error as it is not consistent with the words "the entire Property" as is found in the definition of "Premises" at section 1.1 (d) of the Lease;
- (b) "'Property' is defined in [section] 1.2(q) as being comprised of the lands, plus 'improvements, buildings, fixtures and equipment...'. There is also a specific comment of what is not included in 'Property' but there is no reference to the basement in these exclusions.";
- (c) "In [section] 2.2 the requirement for measurement of the Premises has been deleted";
- (d) "If the intent was to exclude the basement, then there would have been a corresponding exclusion of the basement from the Tenant's Operating Costs and Taxes. As there is no such exclusion, the area of the basement is included in the Premises";
- (e) "in the initial drafts of the Lease, there was a reference to the basement as not being part of the Lease, but that was removed through negotiation and reference to the 'entire Premises' added". (Note: It is my belief that Mr. Westwood must have meant "entire Property", as opposed to "entire Premises", as that would be consistent with his points at paragraphs 1 and 3 of his email);
- (f) "The Basic Rent is not based on an actual dollar amount as the figure incorporates three digits to the right of the decimal point. The Basic Rent was based upon a lump sum figure, not an amount per square foot"; and

- (g) "You suggest that the change of the basement from storage to a 'functional area' was not made apparent to the Landlord. I respectfully disagree. In my letter (the "Letter") to you dated October 12, 2007 with regard to the Lease and the letter agreement for 627 Danforth Avenue, Toronto, Ontario, you will note in paragraph vi that the Landlord has acknowledged its approval of all of the plans for the alterations to the Premises. This included the basement. The Landlord would not have approved of these plans if the basement was not to be part of the Premises".

Mr. Westwood's email dated April 22, 2008 is attached hereto at **Exhibit B**.

12. Mr. Westwood reiterated Extreme's position in a further email to Mr. Singer dated August 20, 2008, which I have attached hereto at **Exhibit C**.

13. I am not aware that Extreme received any response to Mr. Westwood's email of August 20, 2008 from the Landlord or its lawyers, or any response whatsoever concerning Extreme's occupancy of the basement, until Extreme received a letter from Mr. Singer dated March 15, 2013 and Extreme's lawyers received a further email from a different lawyer for the Landlord on March 26, 2013 (more than 4 ½ years after the August 20, 2008 email from Mr. Westwood and the day before the motion for an order approving, among other things, the Asset Purchase Agreement between Extreme and GoodLife Fitness Centres Inc.), which email is attached at Exhibit H to Mr. Voidonicolas' affidavit.

14. The position taken by Mr. Westwood on behalf of Extreme in his April 22, 2008 email to Mr. Singer (attached hereto at Exhibit B) is consistent with Mr. Westwood's correspondence with Mr. Singer at all material times during which the Lease was being negotiated.

15. Specifically, in an email from Mr. Westwood to Mr. Singer dated September 20, 2006, which I have attached hereto at **Exhibit D** (the Lease was executed on October 30, 2006), Mr. Westwood states, among other things, "It is my understanding that the Landlord no longer requires the use of the kitchen in 635 The Danforth. This space will now become part of the Leased Premises. Consequently, the Tenant can use the drive way and all parking areas".

16. I am advised by Taso Pappas, the President of Extreme, and believe, that the kitchen, as referenced by Mr. Westwood in his email, was located in the basement of the Building prior to Extreme's occupation, and renovation, of the Building, which interior alteration and renovation, including of the basement, was completed on or around January 10, 2007.

17. The "Letter" of October 12, 2007 referred to by Mr. Westwood in his email to Mr. Singer dated April 22, 2008, is also of relevance to the basement issue, as explained below.

18. In a letter dated October 2, 2007 addressed to Mr. Westwood from Mr. Singer, which letter I have attached hereto at **Exhibit E**, Mr. Singer advised Mr. Westwood that it was the Landlord's position that Extreme had committed certain breaches of the Lease, including undertaking alterations and leasehold improvements of the interior of the Building, and that the Landlord would be willing to resolve the alleged breaches if Extreme agreed to extend the term of the Lease to October 31, 2016. Specifically, and among other things, Mr. Singer states in his letter on behalf of the Landlord:

- (a) "...I am providing you with details relating to [Extreme's] Breach of the Lease.";
- (b) "...It is hoped that this matter will be resolved amicably and without the necessity for the Landlord to give formal notice of the breach to [Extreme] and to its lender, Golub Capital.";

- (c) "Prior to entering into the Lease and during the negotiations between the Landlord and [Extreme] with respect to the business terms of a proposed lease of the premises...[Extreme] further informed the Landlord that it intended to make leasehold improvements to the interior of the building...Prior to entering into the Lease, [Extreme] did not deliver to the Landlord any drawings or other specifications relating to the Leasehold Improvements and Alterations that [Extreme] intended to make in or to the premises...";

- (d) "...The Landlord Agreed that the initial term of the Lease is two years and two days, commencing October 30, 2006 and ending October 31, 2008, provided [Extreme] immediately exercised the first renewal term of three years, thereby extending the term of the Lease to October 31, 2011.";

- (e) "The Landlord agreed to enter into the Lease of the premises for essentially a five year term. However, the Landlord would not have agreed to lease the premises for a five year term if [Extreme] had disclosed to the Landlord during the negotiations and prior to the execution of the Lease that [Extreme] intended to or would make material Alterations to the interior of the building, and specifically, some of the Alterations, structural and otherwise, that have been made by [Extreme] on the first floor of the building. If this information had been disclosed to the Landlord during the negotiations and prior to the entering into the Lease, the Landlord would have required [Extreme] to commit to a term of at least ten years [ending on October 31, 2016]. The substantial and material Alteration made by [Extreme] to the building, without the Landlord's consent, have resulted in a material adverse effect on the use and value of the building for future leasing or resale purposes that can only be economically viable to the Landlord if the term of the Lease is at least ten years..."; and

(f) "...In the spirit of co-operation and without any contractual obligation, the Landlord assisted [Extreme] in obtaining a building permit and in its successful application to the Committee of Adjustments for a minor variance by providing [Extreme] with off-site ancillary parking spaces for its members and thereby enabled [Extreme] to carry on its business at the premises. The Landlord will withdraw the ancillary parking and formally give notice of [Extreme's] breach of the Lease unless this matter is amicably resolved by [Extreme] exercising, at this time, its second right of renewal and thereby extending the term of the Lease from October 31, 2011 to October 31, 2016..."

19. Shortly after receiving Mr. Singer's letter, Extreme and the Landlord executed the letter agreement of October 12, 2007 (the "**October 2007 Letter Agreement**"), as referred to by Mr. Westwood in his email to Mr. Singer dated April 22, 2008. Among other provisions, the October 2007 Letter Agreement, which I have attached hereto at **Exhibit F**, provides as follows:

Re: A lease (the "Lease") made the 30th day of October, 2006 between [the Landlord] ("Landlord # 1") and [Extreme] (the "Tenant") for certain premises ("Premises # 1) in that building municipally known as 635 Danforth Avenue, Toronto Ontario

...

By this letter, Landlord # 1, Landlord # 2, and the Tenant agree as follows:

...

iii. Landlord # 1 withdraws all of the alleged defaults of the Tenant outlined in the letter of the Landlord's solicitor Mr. Michael S. Singer dated October 2, 2007 to David V. Westwood.

iv. Landlord # 1 confirms to the Tenant and acknowledges the Tenant's reliance thereon that as of the date that Landlord # 1 signs this letter, the Tenant is not then in default and has not been in default of any of its obligations contained in the Lease.

...

vi. Landlord # 1 hereby confirms to the Tenant and acknowledges the Tenant's reliance thereon that the Landlord # 1 has approved all of the Tenant's proposed alterations to Premises # 1.

...

viii. Provided each of Landlord # 1 and Landlord # 2 signs this letter on or before 5:00 p.m. on Friday October 19, 2007 and returns at least one copy of this letter and a copy of the Storefront Plans initialed by each of Landlord # 1 and Landlord # 2, then the Tenant will within seven (7) days thereafter exercise its right of renewal as provided in the Lease and the Agreement respectively such that the Lease and Agreement would then terminate on October 31, 2016.

20. The October 2007 Letter Agreement is executed by Mr. Voidonicolas on behalf of the Landlord, and by Mr. Bell on behalf of Extreme.

21. In accordance with the October 2007 Letter Agreement, Extreme delivered to the Landlord a letter dated October 12, 2007, which is attached hereto at **Exhibit G**, confirming that it was exercising its second right of renewal extending the term of the Lease to October 31, 2016.

III. THE MAY 2011 LANDLORD CONSENT AGREEMENT

22. On May 20, 2011, the Landlord and Extreme's lender, National Bank of Canada (the "Lender"), each executed a Landlord Consent Agreement (the "**May 2011 Landlord Consent Agreement**"). Extreme executed an Agreement of Tenant on May 20, 2011, which was incorporated into the May 2011 Landlord Consent Agreement. A copy of the Landlord Consent Agreement, which includes the Agreement of Tenant executed by Extreme, is attached hereto at **Exhibit H**.

23. In the May 2011 Landlord Consent, the Landlord certifies that no default exists under the Lease, and that to the best of its knowledge, all rent and other charges have been paid to the extent payable. Mr. Voidonicolas executed the Landlord Consent Agreement on behalf of the Landlord.

24. The express terms of the Landlord Consent Agreement include the following recital and provision:

...

RECITALS

A. The Landlord is the owner of real property municipally known as 635 Danforth Avenue, Toronto, Ontario, and more particularly described in the attached Schedule A (the "**Premises**"). The Landlord has leased to Extreme Fitness, Inc. by a lease dated October 30, 2006 and a letter from Extreme Fitness, Inc. exercising its second right of renewal dated October 12, 2007 (collectively, the "**Lease**") the whole of the Premises.

...

AGREEMENT

...

6. **Status of the Lease.**

(1) **Status:** The Landlord certifies that: it has the authority to enter into this Agreement; the Lease is in full force and effect; the Lease has not been amended or modified; no default exists under the Lease; and, to the best of its knowledge, all rent and other charges have been paid to the extent payable and have not been prepaid by more than two months in advance.

IV. THE LANDLORD'S CLAIM FOR ALLEGED PARKING ARREARS AND EXCESS REALTY TAX

i. The Landlord's Claim for Alleged Parking Arrears

25. At paragraphs 22 and 23 of his affidavit, Mr. Voidonicolas asserts that Extreme agreed to pay him an additional \$1,200 per month plus applicable HST/GST for parking spaces commencing in August 2007, which spaces Mr. Voidonicolas asserts he obtained for Extreme "so that they would be able to comply with the requirements of the Committee of Adjustments".

26. I am aware of no such agreement which was entered into by Extreme. Extreme has, however, paid the Landlord \$1,356 (incl. HST) per month for parking since May 2011. Attached hereto at **Exhibit I** is the invoice which Extreme received from the Landlord on May 13, 2011 in

the amount of \$1,356 (incl. HST) for "Parking for the Month of May 2011". As is the case with each such invoice which Extreme has received since May 2011, the invoice specifically states "Parking Tenant's Share Effective May 1, 2011 RE: 635 Danforth Ave". I understand that prior to May 13, 2011, Extreme did not receive any such invoices.

27. In fact, Mr. Singer's letter to Mr. Westwood dated October 2, 2007 (Exhibit E) and the October 2007 Letter Agreement (Exhibit F) both demonstrate that there was no such agreement prior to May 2011. As mentioned, Mr. Singer stated in his October 2, 2007 letter that:

.... In the spirit of co-operation and without any contractual obligation, the Landlord assisted [Extreme] in obtaining a building permit and in its successful application to the Committee of Adjustments for a minor variance by providing [Extreme] with off-site ancillary parking spaces for its members and thereby enabled [Extreme] to carry on its business at the premises. The Landlord will withdraw the ancillary parking and formally give notice of [Extreme's] breach of the Lease unless this matter is amicably resolved by [Extreme] exercising, at this time, its second right of renewal and thereby extending the term of the Lease from October 31, 2011 to October 31, 2016...".

28. Extreme proceeded to exercise its second right of renewal (by delivering the letter dated October 12, 2007 attached at Exhibit G), and therefore, the ancillary parking was never withdrawn by the Landlord. Similarly, if there were arrears alleged to have been owing for the additional parking, the Landlord would presumably not have certified in the May 2011 Landlord Consent Agreement that no default exists under the Lease, and that to the best of its knowledge, all rent and other charges had been paid to the extent payable.

ii. The Landlord's Claim for Alleged Excess Realty Taxes

29. As is acknowledged by Mr. Voidonicolas at paragraphs 30 and 31 of his affidavit, at no time did the Landlord, or its agents: (i) produce to Extreme a notice making the final determination of Realty Taxes and other estimated Additional Rent based on the actual costs incurred, as required by section 5.5 of the Lease; or (ii) make any demands for payment relating to Excess Realty Taxes prior to March 25, 2013.

30. Additionally, the Landlord or its agents did not:

- (a) prior to the commencement of each year since the inception of the Lease, estimate the amount of the Excess Realty Taxes and notify Extreme in writing of such estimate, as is required by section 5.2 (a) of the Lease; or
- (b) within one hundred and twenty (120) days of each calendar year, provide Extreme 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 the calendar year, as required by section 5.2 (b) of the Lease.

31. As is acknowledged by Mr. Voidonicolas, Extreme has accordingly paid to the Landlord \$92,927.30 in Realty Taxes from each of the years 2007 to 2012, inclusive.

SWORN BEFORE ME at the City of Toronto,)
in the Province of Ontario,)
this 18th day of April, 2013.)

_____)
A commissioner of oaths, etc.)

IAN AVERSA

Alan Hutchens
_____)
ALAN HUTCHENS

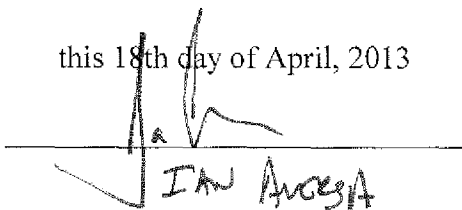
Tab A

Attached is Exhibit "A"

Referred to in the
Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013



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

Commissioner for taking Affidavits, etc

THIS LEASE made the 30th day of October, 2006,

BETWEEN:

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

(the "Landlord")

AND

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

(the "Tenant")

WITNESSETH AS FOLLOWS:

Article 1 — Basic Terms, Definitions

1.1 Basic Terms

- (a) Landlord: 1079268 ONTARIO INC.
Address: 4211 Yonge Street, Suite 200
Toronto, ON M2P 2A9
- (b) Tenant: EXTREME FITNESS, INC.
Address: 635 Danforth Avenue
Toronto, ON M4K 1R2
- (c) Property: the development situate on the Lands legally described as Part Lot 7-8, Plan 200 Toronto and Part Lot 24-27, Plan 306E Toronto as in CT782043, City of Toronto (being PIN 21062-0414 LT) and municipally known as 635 Danforth Avenue, Toronto, Ontario M4K 1R2.
- (d) Premises: the entire Property. The Premises consist of three floors plus mezzanine, and the floors have the following areas: ground floor 11,461 square feet, second floor 5,526 square feet, third floor 1,026 square feet, a platform area of 1,654 square feet and a mezzanine of 4,443 square feet, which floors are shown on the plans annexed as Schedule "A".
- (e) Rentable Area of Premises: approximately 24,110 square feet, subject to Section 2.2.
- (f) Term: two (2) years and two (2) days, subject to Sections 2.3 and 2.
Commencement Date: October 30, 2006, subject to Sections 2.3 and 2.4
End of Term: October 31, 2008, subject to Sections 2.3 and 2.4

(g) Basic Rent (Section 4.1):

Period	Per Sq. Ft./Year	Per Year	Per Month
Term 1-2	\$24.786	\$597,600.00	\$49,800.00
Renewal 1: 3-5	\$24.786	\$597,600.00	\$49,800.00
Renewal 2: 6-10	\$25.881	\$624,000.00	\$52,000.00
Renewal 3: 11-15	\$26.768	\$648,000.00	\$54,000.00

- (h) Permitted Use (Section 8.1): Primarily a gym, health, spa, fitness facility and club (with liquor license), and any ancillary use related to this primary business of a fitness club as permitted by the applicable zoning, such as but not limited to a snack bar, a juice bar, sale of health foods, chiropractic,

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

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

1.2 Definitions

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

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

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

(g) "Event of Default" is defined in Section 14.1;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provided that Operating Costs shall exclude:

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

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

(C) taxes on the income of the Landlord;

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

(E) Capital Taxes

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

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

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

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

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

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

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

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

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

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

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

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

Article 2 — Demise and Term

2.1 Demise

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

2.2 Measurement

[Intentionally Deleted]

2.3 Term

The Term shall commence on the date set out in Section 1.1 (f) (the "Commencement Date") and shall run for the period set out in Section 1.1(f), save that if the Commencement Date is not the first day of a month, then the initial Term shall expire on the last day of that month in which the second (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(i) shall be applied to the first and second month Rent and Rental Taxes as they fall due under this Lease. The amount of any security deposit described in Section 1.1(i) shall be held by the Landlord as security for the due performance by the Tenant of its obligations under this Lease and may be applied, in the Landlord's discretion, to remedy any default by the Tenant hereunder and, in the absence of such default, the deposit shall be applied to the Rent and Rental Taxes for the last month of the Term. If the Landlord draws moneys from the deposit for the purpose of remedying any default of the Tenant, the Tenant shall, at the request of the Landlord, pay forthwith to the Landlord the amount of money required to replace the moneys so drawn by the Landlord. The Landlord agrees that the deposit will be placed in a guaranteed income certificate of a recognized national Canadian bank and the interest shall accrue to the benefit of the Tenant, but which interest may be realized upon by the Landlord if the Tenant is in default.

3.5 Rent Past Due

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

3.6 Partial Periods

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

Article 4 --- Basic Rent

4.1 Basic Rent

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

Article 5 --- Additional Rent

5.1 Additional Rent

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

- (a) any and all costs relating to the Premises that would otherwise be included in Operating Costs but are determined by separate metering or assessment of the Premises [provided such assessment is made by a governmental official] or otherwise incurred for the exclusive benefit of the Premises;
- (b) all Excess Realty Taxes levied, rated, charged or assessed on or in relation to the Premises;

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

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

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

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

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

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

5.2 Realty Taxes Escalation - Base Year 2006

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

(a) payment shall be due in equal monthly instalments over each such calendar year or such shorter period as required such that the Landlord will have in its hands an amount sufficient to pay such Excess Realty Taxes for each instalment of Realty Taxes when due to the taxing authorities. Prior to the commencement of each year, the Landlord shall estimate the amount of the Excess Realty Taxes for each 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 willful misconduct or the negligence or willful 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 installments 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 Leaschold 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 or 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, 430 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: *C. Voidoni Colas*
Name: C. VOIDONI COLAS
Title: PRESIDENT c/s

I/We have the authority to bind the Corporation

Per: _____
Name:
Title:

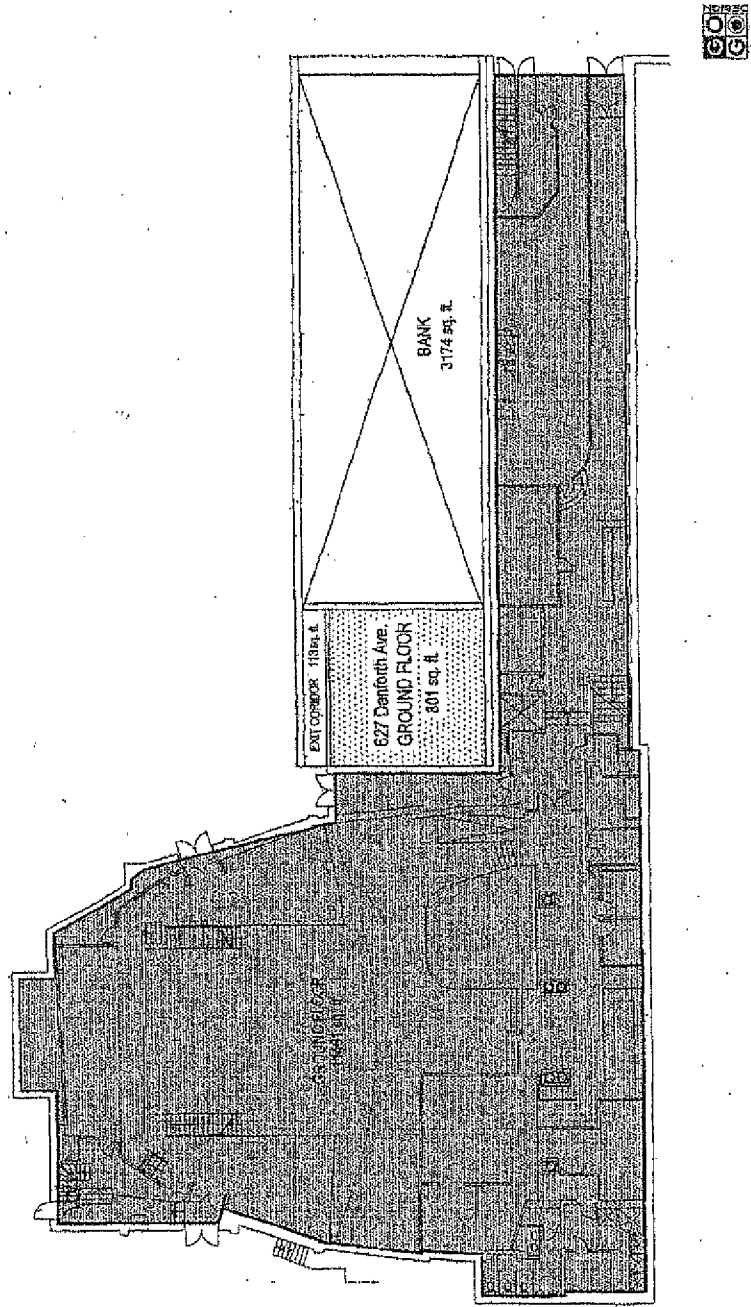
TENANT

EXTREME FITNESS, INC.

Per: *James E. Sullivan*
Name: James E. Sullivan
Title: CEO

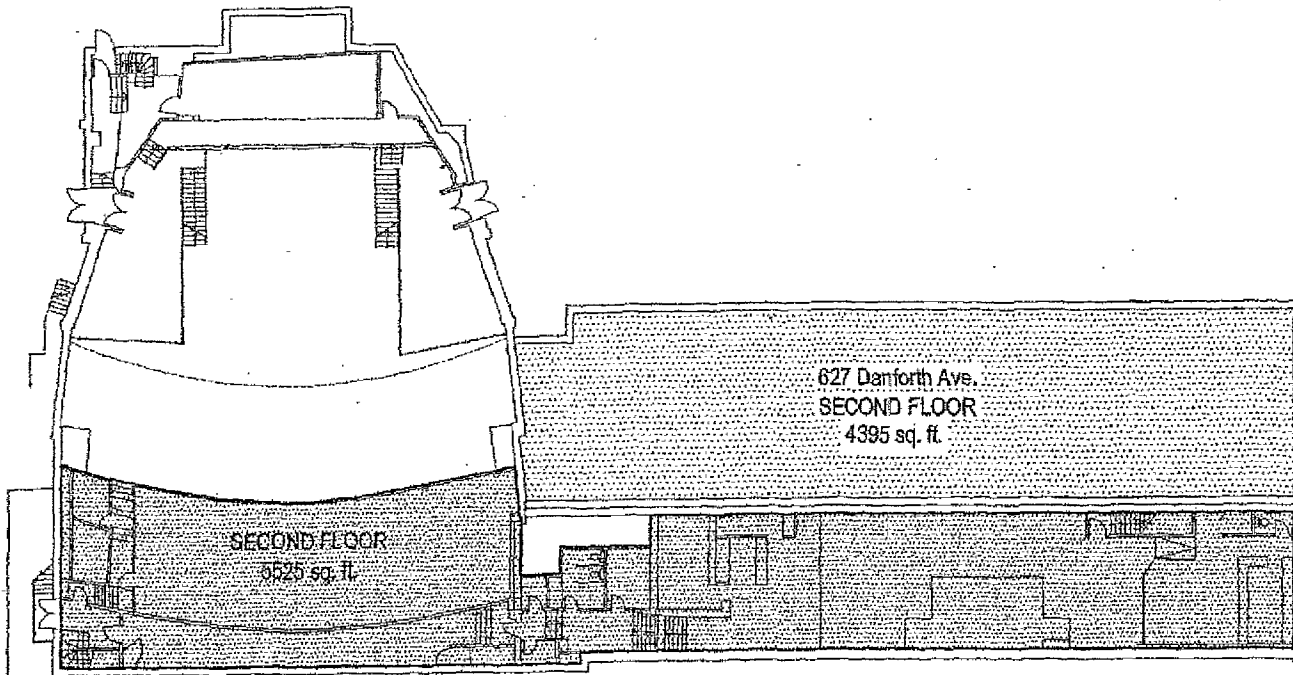
I/We have the authority to bind the Corporation

Per: *Brian De Gaudy*
Name:
Title: c/s

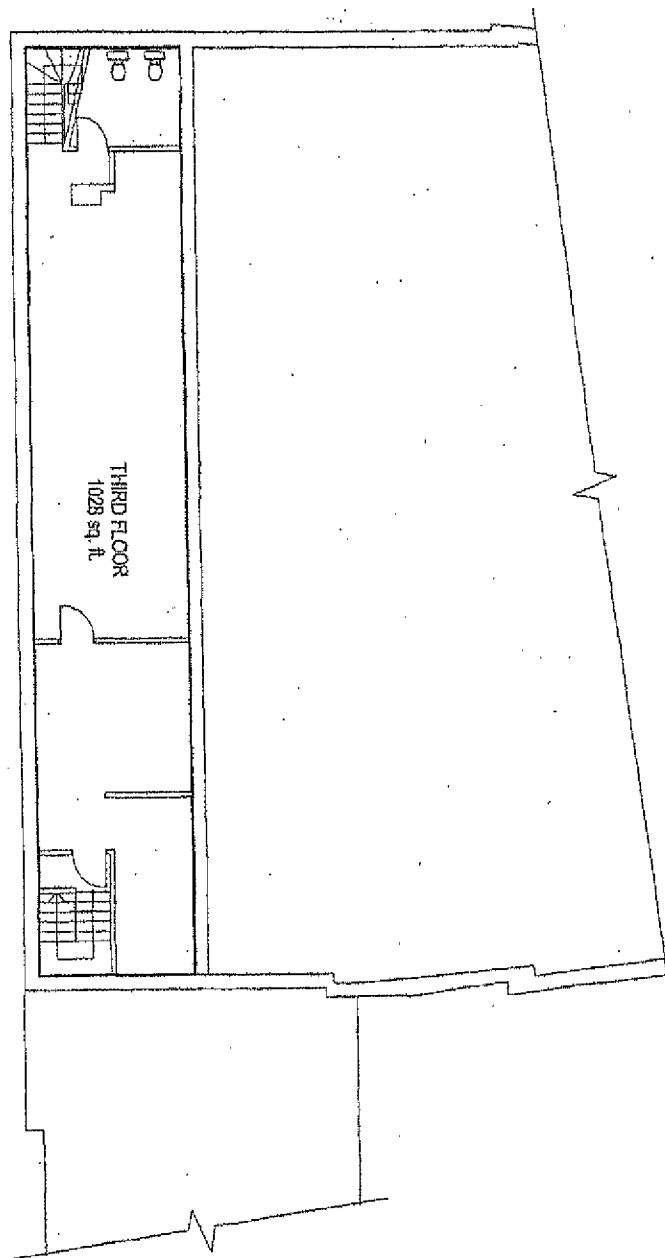


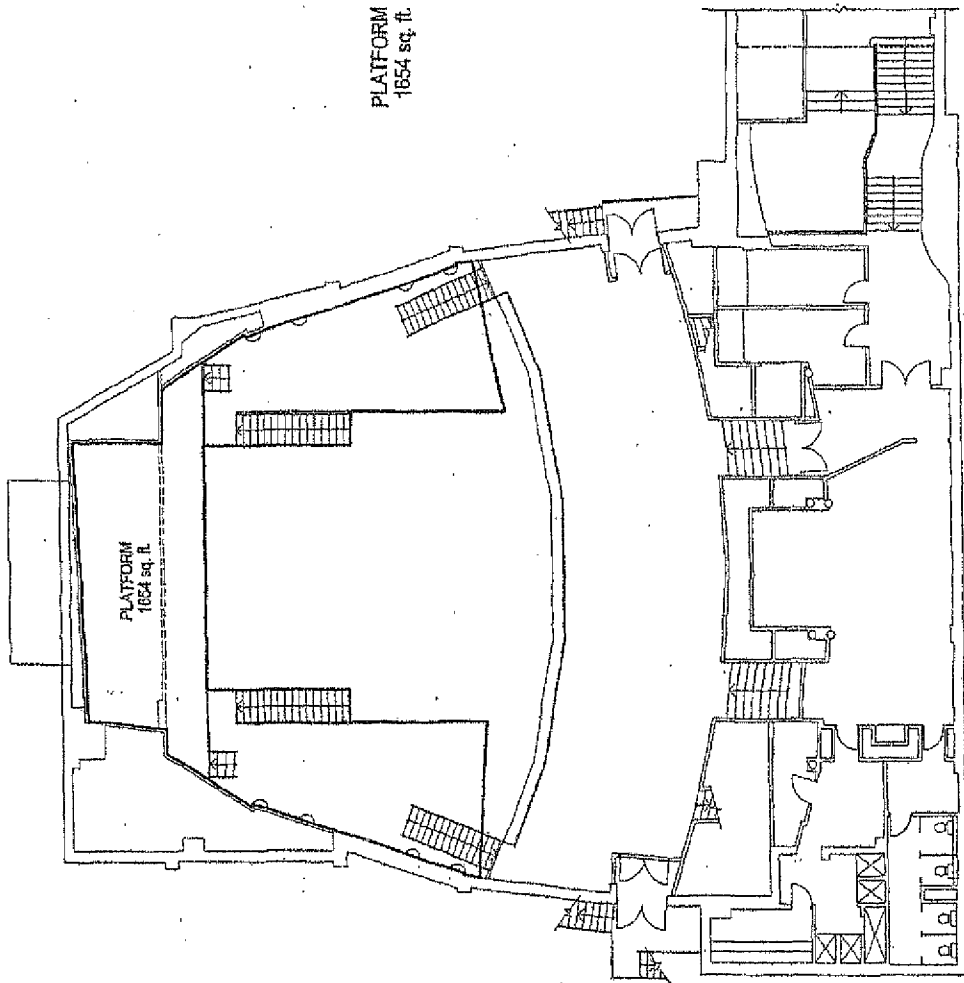
Schedule "A"

Schedule "A"

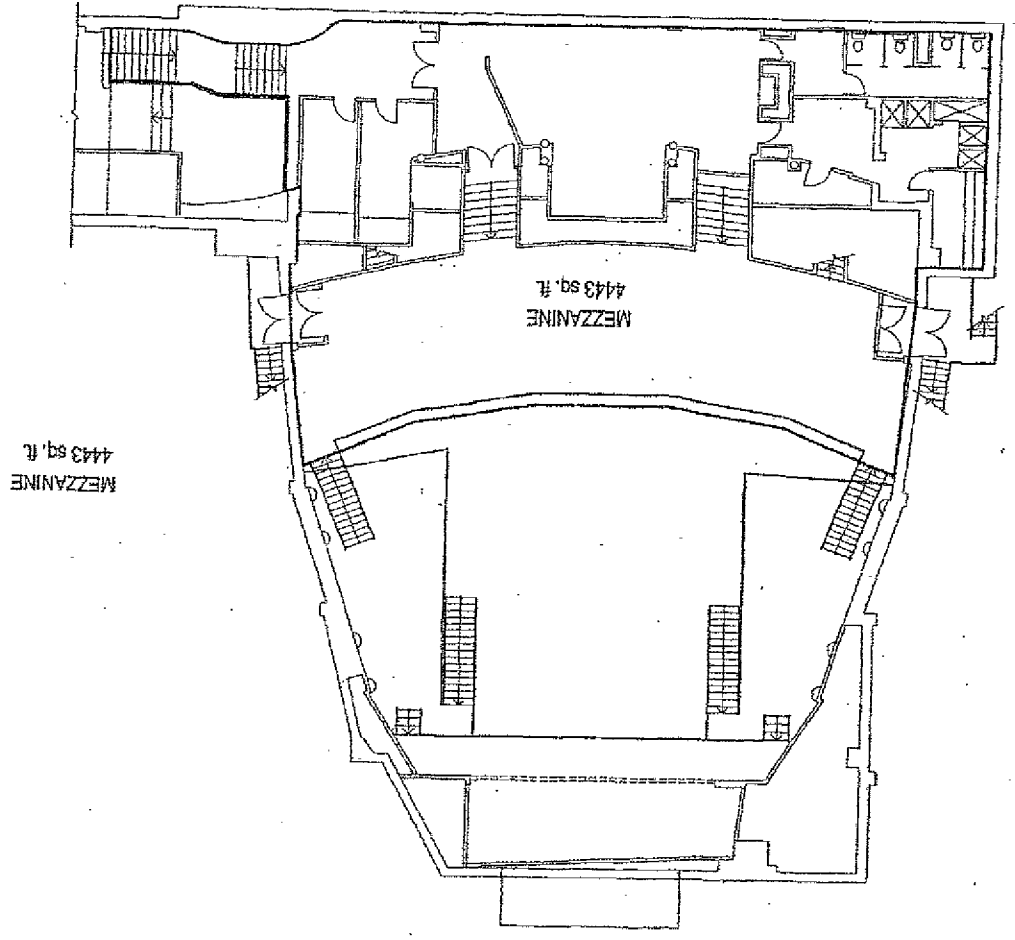


Schedule "A"





Schedule "A"



Schedule "A"

Schedule "B"

Rules and Regulations

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

Schedule "C"

Landlord's and Tenant's Work

Landlord's Work

None - as is where is condition.

Tenant's Work

As per Section 9.4 above.

Schedule "D"
Indemnity Agreement

[Intentionally deleted]

Schedule "E"

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See paragraph 7 of Schedule "F"

Schedule "F"
Additional Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

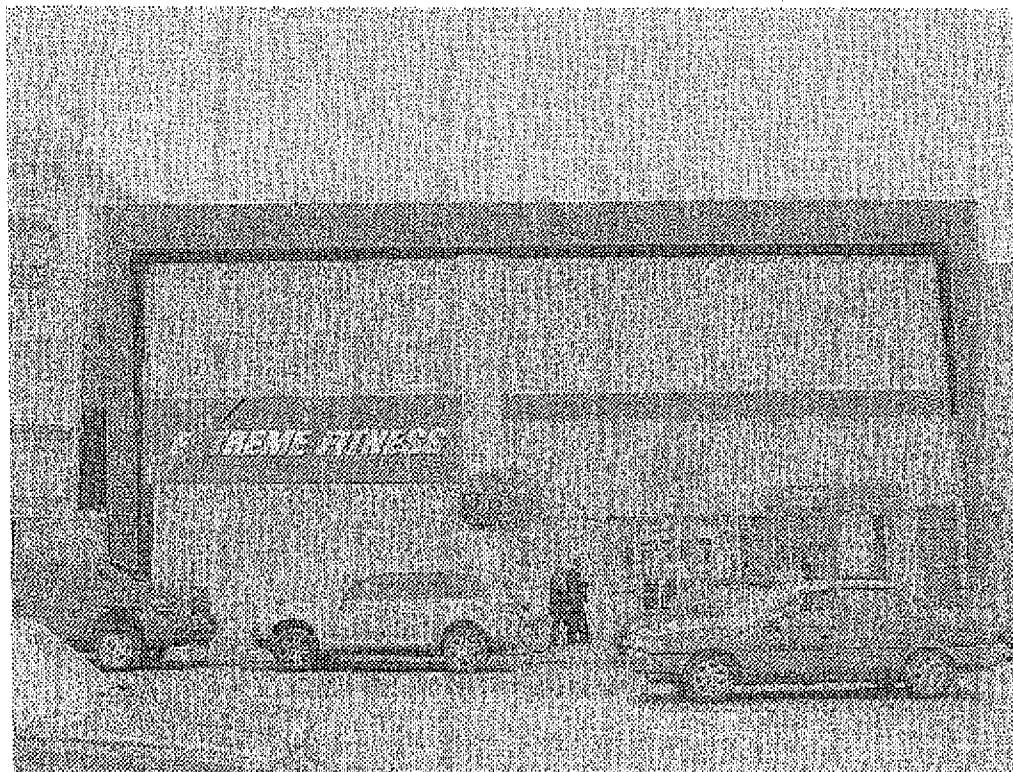
~~Premises shall comply with all federal, provincial, municipal or other governmental statutes, laws, by-laws, rules and regulations, including zoning for that use as provided in this agreement.~~

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

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

Schedule "G"

Attach exterior renovation plans



Tab B

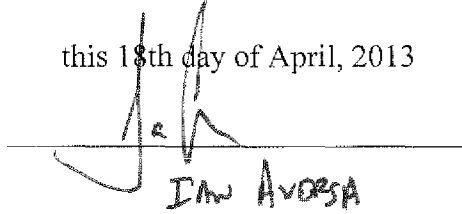
Attached is Exhibit "B"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013

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

Commissioner for taking Affidavits, etc

David V. Westwood

From: David V. Westwood [dvwestwood@ileaselawyer.com]
Sent: Tuesday, April 22, 2008 5:09 PM
To: 'Michael Singer'
Cc: 'David Bell'
Subject: Extreme Fitness at 635 Danforth Avenue, Toronto, Ontario

Michael:

I have reviewed your email of April 4, 2008 to Mr. David Bell of the Landlord. The operative document is a lease (the "Lease") undated in October 2006 between 1079268 Ontario Inc. (the "Landlord") and Extreme Fitness, Inc. (the "Tenant"). I respond as follows:

1. In the Basic Terms provision of § 1.1 of the Lease, 'Premises' in § 1.1(d) refers to the "entire Property". "Property" is defined in § 1.1(c) of the Lease as being the property municipally known as 635 Danforth Avenue, Toronto, Ontario, and further includes its legal description. While the definition of Premises then refers to 3 floors and a mezzanine, this is in error as it is not consistent with 'the entire Property'.
2. "Lands" is defined in § 1.2(i) as being the lands described in § 1.1(d).
3. "Premises" is defined in § 1.2(p), and even though it references a Rentable Area, in my opinion that area is irrelevant based upon the definition of Property.
4. "Property" is defined in § 1.2(q) as being comprised of the lands, plus "improvements, buildings, fixtures and equipment ..." There is also a specific comment of what is not included in "Property" but there is no reference to the basement in these exclusions.
5. In § 2.2 the requirement for measurement of the Premises has been deleted.
6. If the intent was to exclude the basement, then there would have to have been a corresponding exclusion of the basement from the Tenant's payment of Operating Costs and Taxes. As there is not such exclusion, the area of the basement is included in Premises.

Consequently the Premises includes the basement and the absence of a specific reference to the basement in the document is not relevant.

Note also that:

1. In the initial drafts of the Lease, there was a reference to the basement as not being part of the Lease, but that was removed through negotiation and the reference to the 'entire Premises' added.
2. The Basic Rent is not based on an actual dollar amount as the figure incorporates three digits to the right of the decimal point. The Basic Rent was based upon a lump sum figure, not an amount per square foot.
3. You suggest that the change of the basement from storage to a 'functional area' was not made apparent to the Landlord. I respectfully disagree. In my letter (the "Letter") to you dated October 12, 2007 with regard to the Lease and the letter agreement for 627 Danforth Avenue, Toronto, Ontario, you will note in paragraph vi that the Landlord has acknowledged its approval of all of the plans for the alterations to the Premises. This included the basement. The Landlord would not have approved of these plans if the basement was not to be part of the Premises.

Therefore the suggestion in your April 4, 2008 email that the Tenant must pay Basic Rent on the area of the basement is not correct.

I am advised that the Landlord has failed to pay the gst on the \$36,000.00 as required by paragraph ii of the Landlord. Would you please attend to the prompt payment of the required gst.

4/22/2008

Regards,

David Westwood

David V. Westwood (Commercial Lease Law) Professional Corporation

David V. Westwood, Barrister & Solicitor
4 King Street West, Suite 900
Toronto, Ontario, M5H 1B6

Tel: 416-640-4212
Fax: 416-640-4218
www.ileaselawyer.com

Tab C

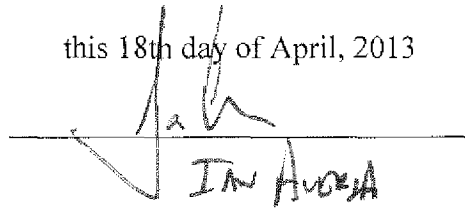
Attached is Exhibit "C"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013



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

Commissioner for taking Affidavits, etc

David V. Westwood

From: David V. Westwood [dvwestwood@ileaselawyer.com]
Sent: Wednesday, August 20, 2008 3:19 PM
To: 'Michael Singer'
Cc: 'Peter Walkey'; 'morryoffman@msn.com'
Subject: Extreme Fitness at 635 Danforth Avenue, Toronto, Ontario

Mr. Singer:

The attached letter is self explanatory.

Regards,

David Westwood

David V. Westwood (Commercial Lease Law) Professional Corporation
David V. Westwood, Barrister & Solicitor
4 King Street West, Suite 900
Toronto, Ontario, M5H 1B6

Tel: 416-640-4212
Fax: 416-640-4218
www.ileaselawyer.com

**David V. Westwood
(Commercial Lease Law)
Professional Corporation**

58

VIA EMAIL ONLY
michael.s.singer@gmail.com

August 20, 2008

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

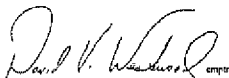
Dear Mr. Singer:

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

I have now received instructions with regard to the Landlord's request for the payment of Basic Rent based upon the area of the basement portion of the Premises. Please be advised that the Tenant will not agree to pay a further Basic Rent based upon the area of the basement portion of the Premises. The Tenant reiterates its position as expressed to you in my email of April 22, 2008.

Yours truly,

David V. Westwood (Commercial Lease Law) Professional Corporation



David V. Westwood
Barrister and Solicitor

COPY: Mr. M. Offman

Extreme\Danforth\Landlord letter, August 20, 2008

Tab D

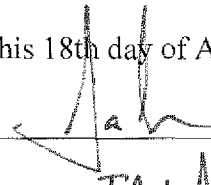
Attached is Exhibit "D"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013



IAN ANORSA

Commissioner for taking Affidavits, etc

David V. Westwood

From: David V. Westwood [dvwestwood@leaselawyer.com]
Sent: Wednesday, September 20, 2006 1:19 PM
To: 'michael.s.singer@gmail.com'
Cc: 'morry offman'; 'Jo Ann Citro'
Subject: Extreme Fitness at 627 and 635 The Danforth, Toronto, Ontario
Importance: High

I have reviewed your text message to Mr. Offman of September 18, 2006 and I comment as follows:

1. The Tenant requires accurate floor plans for all levels of 635 The Danforth. This is essential for the Tenant to determine if the layout of this building and the floor area is sufficient for the Tenant's needs. Please provide these immediately.
2. The Landlord must confirm that it will be able to provide a minimum of 6,000 square feet in the building municipally known as 627 The Danforth. The Tenant will also require a floor plan of this area as well as the elevations to ensure that this space can be easily integrated with 635 The Danforth.
3. The Landlord must further provide confirmation from the City of Toronto that this minimum 6,000 square foot area can be integrated with 635 The Danforth.
4. The Landlord must be able to turn over this 6,000 square feet by [_____ to be determined] failing which the Tenant must be able to terminate the lease for both buildings, or alternatively the Minimum Rent for 635 The Danforth must abate for a period of _____ [to be determined] days.
5. With regard to the lease for 627 The Danforth, please advise me as follows:
 - i. What is the Minimum Rent rate on a square foot basis for this space?
 - ii. What is the area of all other portions of this building?
 - iii. What would the Tenant's proportionate share ratio be for this building?
 - iv. Would the utilities consumed by the Tenant in this space be tied to the Tenant's utility meters for 635 The Danforth?
6. I do not agree that the Tenant should be responsible for the base building services or the structure. The argument that the number of members of the Tenant will cause excessive wear and tear is not acceptable. The Tenant will be constructing the Premises to meet the needs of its members and the Landlord is being remunerated for this use. Further, there currently is a fitness club in the Premises. Therefore the Landlord must be responsible for the repairs and replacements as stated in the draft offer to lease.
7. While the Tenant is taking 635 Danforth "as is", it still must be subject to the Tenant's due diligence and the ability to reject this site if the due diligence process indicates that the site is not acceptable.
8. It is my understanding that the Landlord no longer requires the use of the kitchen in 635 The Danforth. This space will now become part of the Leased Premises. Consequently the Tenant can use the drive way and all parking areas.

I look forward to receiving your response and the requested information as soon as reasonably possible.

Regards,

David Westwood

9/21/2006

David V. Westwood (Commercial Lease Law) Professional Corporation

David V. Westwood, Barrister & Solicitor
4 King Street West, Suite 920
Toronto, Ontario, M5H 1B6

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Fax: 416-640-4218
www.ileaselawyer.com

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No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.1.405 / Virus Database: 268.12.5/450 - Release Date: 9/18/2006

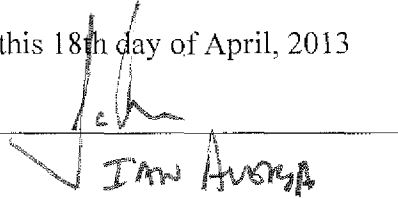
Tab E

Attached is Exhibit "E"

Referred to in the
Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013

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

Commissioner for taking Affidavits, etc

MICHAEL S. SINGER, Barrister & Solicitor

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

Tel: (416) 224-8383 Fax: (416) 224-2408

October 2, 2007

File #2304

David V. Westwood
Barrister & Solicitor
Suite 920, 4 King Street West
Toronto, ON M5H 1B6

Attention: David V. Westwood

Dear Sir:

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

Further to our telephone discussion, I am providing you with the details relating to the Tenant's breach of the Lease.

As you know, both the Landlord and I have discussed directly with your client a number of breaches by the Tenant of its obligations under the Lease. It is hoped that this matter will be resolved amicably and without the necessity for the Landlord to give formal notice of the breach to the Tenant and to its lender, Golub Capital.

Prior to entering into the Lease and during the negotiations between the Landlord and the Tenant with respect to the business terms of a proposed lease of the premises, the Tenant informed the Landlord that it intended to purchase the assets, as a going concern, of the then existing month to month tenant, Oxygen Fitness, that occupied part of the building at 635 Danforth Avenue, Toronto, on the condition that the Tenant obtains a lease of the building at 635 Danforth Avenue from the Landlord. The Tenant further informed the Landlord that it intended to make leasehold improvements to the interior of the building, at its expense and required the Landlord to renovate/remodel the exterior of the building, at the Landlord's expense. The Landlord indicated that it was prepared to lease the building to the Tenant on the terms set forth in various correspondence and term sheet negotiated and agreed to by the Landlord and Tenant. The Tenant provided the Landlord with drawings for the Landlord's work on the exterior of the building facing Danforth. The Landlord approved the drawings.

The Landlord and Tenant entered into the Lease and a copy of the floor plan was annexed as "Schedule A" to the Lease and a copy of the approved exterior renovation plan was attached as "Schedule G" to the Lease.

Prior to entering into the Lease, the Tenant did not deliver to the Landlord any drawings or other specifications relating to the Leasehold Improvements and Alterations that the Tenant intended to make in or to the premises. Based upon the exterior renovation plans in Schedule "G" to be performed by the Landlord, at its expense, and without knowledge or approval of any material Alterations to be made by the Tenant to the building, the Landlord agreed that the initial term of the

- 2 -

Lease is two years and two days, commencing October 30, 2006 and ending October 31, 2008, provided the Tenant immediately exercised the first renewal term of three years, thereby extending the term of the Lease to October 31, 2011.

The Landlord agreed to enter into the Lease of the premises for essentially a five year term. However, the Landlord would not have agreed to lease the premises for a five year term if the Tenant had disclosed to the Landlord during the negotiations and prior to the execution of the Lease that the Tenant intended to or would make material Alterations to the interior of the building and specifically, some of the Alterations, structural and otherwise, that have been made by the Tenant on the first floor of the building. If this information had been disclosed to the Landlord during the negotiations and prior to the entering into the Lease, the Landlord would have required the Tenant to commit to a term of at least ten years. The substantial and material Alteration made by the Tenant to the building, without the Landlord's consent, have resulted in a material adverse effect on the use and value of the building for future leasing or resale purposes that can only be economically viable to the Landlord if the term of the Lease is at least ten years.

Section 9.4 of the Lease provides, in summary, that the Tenant will not make or erect in or to the premises any installations, alterations, additions or partitions (an "Alteration") without first submitting drawings and specifications to the Landlord and obtaining the Landlord's prior written consent. The Tenant must further obtain the Landlord's prior written consent to any change or changes in such drawings and specifications.

Subsequent to entering into the Lease and occupying the premises, the Tenant made or caused to be made or erected in or to the premises certain Alterations without first submitting drawings and specifications to the Landlord and obtaining the Landlord's prior written consent. In particular, the Tenant made certain material Alterations to the premises without submitting the drawings and specifications to the Landlord and without obtaining the Landlord's consent thereto, such as:

- removal of the existing elevator
- removal of the existing sprinkler system
- making a hole through the cement floor on the ground floor level in the building

Accordingly, the Tenant has breached its obligations under the Lease.

Pursuant to Section 1 of the Rules and Regulations attached as Schedule "B" to the Lease, the Tenant has the exclusive use of the parking area and the driveway on the premises located in the rear of the building, 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 subject property or to the property known municipally as 627 Danforth Avenue, Toronto. The Tenant is prohibited from permitting, granting a license or any other rights to any party to use or otherwise occupy the parking area and/or driveway. The Tenant has breached its obligations under this Section of the Rules and Regulations as a result of the following activities of the Tenant:

- the Tenant is using the driveway and parking area for access by its employees, agents, club members and invitees into the building
- the foregoing use of the parking area and driveway by the Tenant interferes with the Landlord's right of use and access for the purpose of carrying out additions and/or improvements to the premises or to the property known municipally as 627 Danforth Avenue.

- 3 -

In the spirit of co-operation and without any contractual obligation, the Landlord assisted the Tenant in obtaining a building permit and in its successful application to the Committee of Adjustments for a minor variance by providing the Tenant with off-site ancillary parking spaces for its members and thereby enabled the Tenant to carry on its business at the premises. The Landlord will withdraw the ancillary parking and formally give notice of the Tenant's breach of the Lease unless this matter is amicably resolved by the Tenant exercising, at this time, its second right of renewal and thereby extending the term of the Lease from October 31, 2011 to October 31, 2016.

This letter and the proposed resolution by the Landlord does not in any way derogate from the rights of the Landlord under the Lease nor operate as a waiver or release the Tenant from its obligations under the Lease.

Please give this matter your most urgent attention.

Yours truly

Michael S. Singer (signed)

MICHAEL S. SINGER

MSS/ljs

Encl.

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Tab F

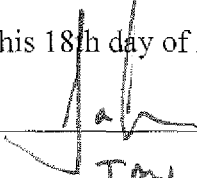
Attached is Exhibit "F"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013



IAN AVERSA

Commissioner for taking Affidavits, etc

**David V. Westwood
(Commercial Lease Law)
Professional Corporation**

VIA EMAIL ONLY
michael.s.singer@gmail.com

October 12, 2007

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

Dear Mr. Singer:

- Re: A lease (the "Lease") made the 30th day of October, 2006 between 1079268 Ontario Inc. ("Landlord # 1") and Extreme Fitness, Inc. (the "Tenant") for certain premises ("Premises # 1") in that building municipally known as 635 Danforth Avenue, Toronto, Ontario
- Re: A letter agreement (the "Agreement") dated the 30th day of October, 2006 between 2010999 Ontario Inc. ("Landlord # 2") and the Tenant for certain premises ("Premises # 2") in that building municipally known as 627 Danforth Avenue, Toronto, Ontario

By this letter, Landlord # 1, Landlord # 2 and the Tenant agree as follows:

- i. Landlord # 1 and the Tenant have agreed upon the extent of the required construction of the storefront of Premises # 1 and Premises # 2, as shown on construction plans (the "Storefront Plans") initialed by each of Landlord # 1, Landlord # 2 and the Tenant. The Tenant shall complete the work (the "Work") shown on the Storefront Plans and Landlord # 2 agrees that the Tenant may complete this Work.
- ii. Landlord # 1 will pay to the Tenant the sum of thirty six thousand dollars (\$36,000.00) plus gst thereon, as compensation for the Tenant completing the Work, which amount is payable as follows:
 - On or before November 3, 2007, the sum of fifteen thousand dollars (\$15,000.00), plus gst, and
 - Within ten (10) days of the Tenant completing the Work, the sum of twenty-one thousand dollars (\$21,000.00) plus gst.

If Landlord # 1 does not pay either amount when due, then the Tenant may set off such amount, plus interest thereon at ten percent (10%) per annum from the next installment of Rent becoming due pursuant to the Lease.
- iii. Landlord # 1 withdraws all of the alleged defaults of the Tenant outlined in the letter of the Landlord's solicitor Mr. Michael S. Singer dated October 2, 2007 to David V. Westwood.

.....2/

Suite 920, 4 King Street West, Toronto, Ontario, M5H 1B6
telephone: 416.640.4212 fax: 416.640.4218
email: dvwestwood@leasealawyer.com web: www.leasealawyer.com

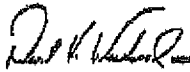
- 2 -

- iv. Landlord # 1 confirms to the Tenant and acknowledges the Tenant's reliance thereon that as of the date that Landlord # 1 signs this letter, the Tenant is not then in default and has not been in default of any of its obligations contained in the Lease.
- v. Landlord # 2 confirms to the Tenant and acknowledges the Tenant's reliance thereon that as of the date that Landlord # 2 signs this letter, the Tenant is not then in default and has not been in default of any of its obligations contained in the Agreement.
- vi. Landlord # 1 hereby confirms to the Tenant and acknowledges the Tenant's reliance thereon that the Landlord # 1 has approved all of the Tenant's proposed alterations to Premises # 1.
- vii. Landlord # 2 hereby confirms to the Tenant and acknowledges the Tenant's reliance thereon that the Landlord # 2 has approved all of the Tenant's proposed alterations to Premises # 2.
- viii. Provided each of Landlord # 1 and Landlord # 2 signs this letter on or before 5:00 p.m. on Friday, October 19, 2007 and returns at least one copy of this letter and a copy of the Storefront Plans initialed by each of Landlord # 1 and Landlord # 2, then the Tenant will within seven (7) days thereafter exercise its rights of renewal as provided in the Lease and the Agreement respectively such that the Lease and Agreement would then terminate on October 31, 2016.

Please have each of Landlord # 1 and Landlord # 2 acknowledge this letter by initialing page 1, executing the letter in the place provided below and returning two (2) copies to the writer for presentation to, and if acceptable, execution by the Tenant. PLEASE NOTE THAT I do not have the authority to bind the Tenant.

Yours truly,

David V. Westwood (Commercial Lease Law) Professional Corporation



David V. Westwood
Barrister and Solicitor

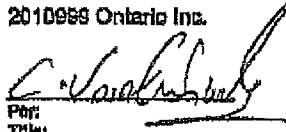
Each of 1079268 Ontario Inc. and 2010999 Ontario Inc. agrees to the provisions of this letter. Dated at Toronto, Ontario, this 12th day of October, 2007.

1079268 Ontario Inc.



Per:
Title:
I have the authority to bind this company

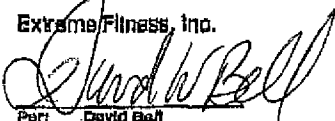
2010999 Ontario Inc.



Per:
Title:
I have the authority to bind this company

Extreme Fitness, Inc. agrees to the provisions of this letter. Dated at Toronto, Ontario, this 12th day of October, 2007.

Extreme Fitness, Inc.



Per: David Bell
Title: Chief Financial Officer
I have the authority to bind this company

Extreme Danforth Landlord Letter, Oct 12, 2007

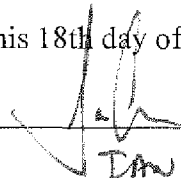
Tab G

Attached is Exhibit "G"

Referred to in the
Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013



Dan Averys

Commissioner for taking Affidavits, etc

EXTREME FITNESS

www.extremefitness.info

VIA EMAIL

October 12, 2007

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

Attention: Constantine Voidonicolos

Gentlemen:

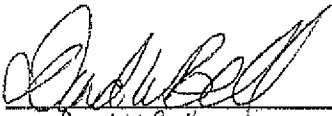
Re: A lease (the "Lease") made the 30th day of October, 2006 between 1079268 Ontario Inc. (the "Landlord") and Extreme Fitness, Inc. (the "Tenant") for certain premises in that building municipally known as 635 Danforth Avenue, Toronto, Ontario

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

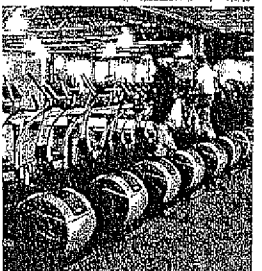
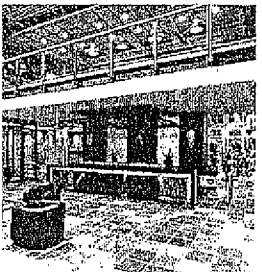
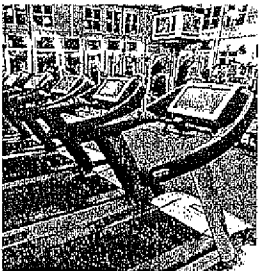
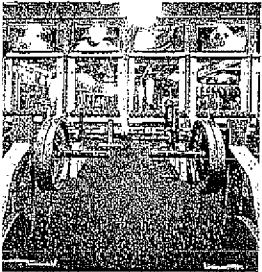
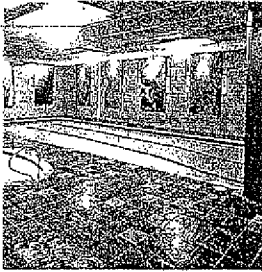
The Tenant has two (2) remaining rights of renewal, each of five (5) years, as provided in Section 7 of Schedule "F".

Yours truly,

Extreme Fitness, Inc.



per: *David W. Bell*
title: *Chief Financial Officer*
I have the authority to bind this company



BLOOR STREET
80 Bloor Street West
Toronto, ON M5S 2Y1
Phone 416.960.2434

CEDARBRAE
3495 Lawrence Ave East
Scarborough, ON M1H 1B3
Phone 905.426.7828

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

DELISLE
1521 Yonge Street
Toronto, ON M4T 1Z2
Phone 416.822.9624

DUNFIELD
110 Eglinton Ave East
Toronto, ON M4P 2Y1
Phone 416.465.0200

INTERCHANGE
80 Interchange Way
Vaughan, ON L4K 5C3
Phone 905.850.4402

NORTH YORK
4960 Yonge Street
Toronto, ON M2N 6K1
Phone 416.222.0342

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

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

THORNHILL
8281 Yonge Street
Thornhill, ON L3T 2C7
Phone 905.709.9489

WELLINGTON
111 Wellington St. West
Toronto, ON M5J 2S6
Phone 416.362.2522

WHITBY
75 Consumers Drive
Whitby, ON L1N 9S2
Phone 905.665.9682

HEAD OFFICE
8281 Yonge Street
Thornhill, ON L3T 2C7
Phone 905.709.1248

Tab H

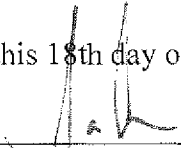
Attached is Exhibit "H"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 18th day of April, 2013



JIM AVOYSA

Commissioner for taking Affidavits, etc

LANDLORD CONSENT AGREEMENT

This LANDLORD CONSENT AGREEMENT (this "Agreement") dated as of May 20, 2011 is entered into between 1079268 Ontario Inc. (the "Landlord") and NATIONAL BANK OF CANADA, as administrative agent for the Lenders (as defined in the Security) (the "Lender").

RECITALS

- A. The Landlord is the owner of real property municipally known as 635 Danforth Avenue, Toronto, Ontario, and more particularly described in the attached Schedule A (the "Premises"). The Landlord has leased to Extreme Fitness, Inc. by a lease dated October 30, 2006 and a letter from Extreme Fitness, Inc. exercising its second right of renewal dated October 12, 2007 (collectively, the "Lease") the whole of the Premises.
- B. The Tenant proposes to grant to the Lender a security interest by way of a charge/mortgage and other security, as they may be amended or replaced from time to time (collectively, the "Security") in the Tenant's leasehold interest in the Lease and the Premises and in the Tenant's present and future inventory, equipment, the Tenant's trade fixtures and other personal property located in or about the Premises (the "Personal Property").

AGREEMENT

NOW THEREFORE, for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Landlord's Consent.
 - (a) The Landlord consents to the Security by the Tenant.
 - (b) Except as provided in this Agreement, this consent does not in any way derogate from the rights of the Landlord under the Lease nor operate to release the Tenant from its obligations under the Lease.
 - (c) This consent does not constitute a waiver of the necessity for consent to any further assignment or transfer as required under the Lease.
 - (d) By giving its consent, the Landlord does not acknowledge or approve of any of the terms of the Security except for the fact of the security as referred to above in Recital B.

(635 Danforth)

McCarthy Tétrault LLP DOCS #10205341 v. 4

2. Postponement of Landlord Lien. The Landlord postpones any Landlord's lien, rights of distraint, security interests and other interests that the Landlord may now or later have however arising (and whether by the Lease, statute, common law or otherwise, and whether for rent or otherwise) in any of the Personal Property to the extent that they may have priority to the Security, and acknowledges and agrees that the Lender shall have a first priority security interest over the Landlord with respect to any such Personal Property.

3. Nature of Personal Property. Except as otherwise provided in Section 5(1) below, the parties acknowledge and agree that such Personal Property does not constitute, and shall not be deemed to be, a fixture or part of underlying real property but shall at all times be considered personal property.

4. Lender Access. The Landlord agrees that, subject to the rights of the Tenant under the Lease or as otherwise agreed between the Lender and the Tenant, the Lender or its representatives may enter upon the Premises during normal business hours (without being deemed to be in possession) on reasonable prior written notice to the Landlord and in the company of a representative of the Landlord prior to the expiration or earlier termination of the Lease to inspect or, in the event of a default by the Tenant under the terms of the Security, to remove, subject to Section 5(1) below, the Personal Property.

5. Exercise of Remedies by Lender.

(1) Personal Property: The Landlord agrees that the Lender, at its option, may enter the Premises during normal business hours for the purpose of repossessing, removing, selling or otherwise dealing with the Personal Property (without being deemed to be in possession) for a period of up to ninety (90) days after the Lender provides reasonable written notice to the Landlord that it is entering the Premises pursuant to this Section 5(1), provided that the Lender pays the Rent and other money due under the Lease while the Lender is in the Premises hereunder, and the Lender shall promptly repair any damage to the Premises, the Landlord's property or the property of others as a result of doing so. Notwithstanding the foregoing, the Lender acknowledges and agrees that certain fixtures, improvements, installations, alterations and additions (other than trade fixtures, furniture and equipment of the Tenant not in the nature of fixtures) which are in any way attached to the underlying real property (the "Leasehold Improvements") are or, under the terms of the Lease, are to become the property of the Landlord and that the Lender will have no interest in the Leasehold Improvements nor will the Lender attempt to realize upon or remove any Leasehold Improvements.

(2) Lease: If the Lender enters into possession of the Premises under the Security or otherwise, the Lender (or the person appointed on its behalf) may take possession of the Premises for up to one (1) year from the date of the Lender's entry into possession (the "Maximum Possession Period") provided that: the Lender pays any arrearages of Rent and any other money then outstanding and pays the Rent and other money due under the Lease while the Lender remains in possession and diligently proceeds to cure all curable defaults under the Lease; and, the Lender complies with all other obligations of the Tenant under the Lease during such period. If the Lender intends to go out of possession of the Premises before the expiry of the Maximum Possession Period, the Lender shall provide the Landlord with two (2) months' prior

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written notice that it will be going out of possession, provided that no prior written notice is required during the last two months of the Maximum Possession Period.

(3) Notice: The Lender will not exercise any right or remedy to enforce the Security as against the Premises, the Lease or the Personal Property without delivering at the same time as it delivers notice to the Tenant or promptly thereafter, a notice to the Landlord specifying with reasonable particularity the nature of the default of the Tenant under the Security.

(4) Interference: The Lender, in exercising its remedies, shall act in a commercially reasonable manner and shall use commercially reasonable efforts to avoid any inconvenience, disruption or interference with the other tenants or occupants of the property of which the Premises form a part and the conduct of the business from their respective premises.

6. Status of Lease.

(1) Status: The Landlord certifies that it has the authority to enter into this Agreement; the Lease is in full force and effect; the Lease has not been amended or modified; no default exists under the Lease; and, to the best of its knowledge, all rent and other charges have been paid to the extent payable and have not been prepaid by more than two months in advance.

(2) No Rent Increase: The Landlord agrees that there will be no increase in the rent under the Lease despite anything to the contrary in the Lease permitting an increase on account of the transfer constituted by the Security.

7. Amendments etc.

The Landlord agrees that the Lender shall not be bound by any:

- (a) material amendment, material modification, surrender or, except in accordance with this Agreement, termination of the Lease; or
- (b) prepayment of rent (or additional rent) beyond that which is required under the Lease,

unless the prior written consent of the Lender in each case is obtained, which consent shall not be unreasonably withheld or delayed.

8. Notices under Lease. The Landlord shall simultaneously deliver copies of any notices to the Tenant with respect to an event of default to the Lender at the same time and in the same manner as the notice given by the Landlord to the Tenant, addressed to the Lender at its address set out below or such other address that the Lender may subsequently furnish to the Landlord in writing, but the Landlord shall not be liable to the Lender nor shall the Landlord lose any of its rights under the Lease if the Landlord inadvertently fails to do so. Any notice of default shall state the nature of the default and shall specify the amounts of rent or other payments that are claimed to be in default. The Landlord shall provide the Lender with written notice advising that the Landlord intends to terminate the Lease. The period given for rectification in any such notices shall be automatically extended in favour of the Lender by an additional five (5) Business Days. Notices to the Lender shall be sent to its address at:

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National Bank of Canada
 130 King Street West
 Toronto, Ontario M5X 1K9

Attention: Jeffrey Weber
 Facsimile: 416-864-7819

In this Agreement, "Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto.

9. Default and Cure Rights. If there is a default by the Tenant under the Lease, the Landlord shall accept any curative acts made by or on behalf of the Lender within the relevant cure period as if they had been made by the Tenant. The Lender shall have the right (but not the obligation) to cure any default of the Tenant under the Lease. If, however, the default is of a nature that cannot be cured, rectified or remedied (including, without limitation, bankruptcy of the Tenant and continuously operating the business of the Tenant in the Premises), then so long as Lender complies with all other provisions of the Lease, the Landlord will not terminate or vary the Lease or the rights of the Tenant under it provided that, alternatively, a new lease may be granted at the Landlord's option under Section 10 below.

10. New Lease. If the Landlord proposes to terminate the Lease, then the Landlord shall, upon five (5) Business Days written notice from the Landlord of its intention to terminate the Lease or within such longer period as is required under the Lease or as may otherwise be given by the Landlord, enter into a new lease of the Premises with the Lender commencing upon the termination of the Lease. The new lease shall be on the same terms and conditions as the Lease for the then existing balance of the term of the Lease (including, without limitation, any rights or options to renew or extend the term of the Lease or acquire the Premises) and shall have the same priority as the Lease as against the Landlord. The Landlord's obligation to enter into such a new lease shall be subject to the condition that the Lender shall have cured all monetary defaults and commenced, and diligently prosecuted, the cure for all reasonably curable non-monetary defaults.

11. Sale or Assignment.

- (a) The Lender may sell or otherwise dispose of or assign the interest of the Tenant in the Lease or the Premises pursuant to the terms of the Security provided that: any arrears of rent or other money due under the Lease or other default under the Lease is remedied prior to the disposition or assignment being completed; payment of rent and other money due under the Lease is made in accordance with the Lease; and, any such disposition or assignment is made with such notice, consent and otherwise on such terms as is required under the Lease for such disposition or assignment or alternatively as set out in Section 11(b) below.
- (b) Upon such assignment or disposition as permitted under this Agreement and provided that the disposee or assignee has agreed with the Landlord to be bound by and to abide by all of the terms of the Lease, the Landlord shall release the

- 5 -

Lender from all future liabilities and obligations, if any, under the Lease. If the Lender acquires the Tenant's interest under a new lease pursuant to Section 10 above, the Lender may assign the new lease in accordance with the terms and conditions contained in it.

12. Estoppel Certificate. Within 15 days after written request for it from the Lender, the Landlord shall, at the cost and expense of the Lender, deliver to the Lender (and any other party identified by the Lender) an estoppel certificate signed by the Landlord in form reasonably designated by the Lender and acceptable to the Landlord, acting reasonably, that certifies as to: (a) the rent payable under the Lease; (b) the term of the Lease and the rights of the Tenant, if any, to renew or extend the term of the Lease; (c) the nature of any defaults by the Tenant alleged by the Landlord; and, (d) any other matters reasonably required by the Lender.

13. SNDA.

- (a) Notwithstanding anything to the contrary set forth in the Lease, the Lease and all rights of the Tenant thereunder shall be subordinate to the lien of and subject to any fee mortgage that may now or hereafter affect the Landlord's interest in the Premises and/or this Lease, or any part thereof, only if and subject to satisfaction of the condition that the holder of such fee mortgage executes and delivers to the Tenant a non-disturbance agreement in form and substance reasonably acceptable to the Tenant and the Lender (an "SNDA"). For the avoidance of doubt, the Lease and the rights of the Tenant thereunder shall not be subordinate to the lien of or subject to any fee mortgage if the holder of such fee mortgage does not execute and deliver to the Tenant an SNDA;

14. Amendments. This Agreement may not be amended or terminated except in writing by the parties to it.

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Province where the Premises are situated.

16. Successors. This Agreement shall enure to the benefit of and be binding upon the parties to it and their respective successors and assigns. Each party agrees to do such further things and grant such further assurances as may be reasonably required from time to time by the other to more fully implement the true intent of this Agreement.

17. Counterpart and Fax. This Agreement may be executed in counterpart, each of which when taken together shall constitute one and the same Agreement. This Agreement may be executed by fax.

IN WITNESS OF WHICH, the parties have duly executed and delivered this Agreement as of the day and year first above-written.

1079268 ONTARIO INC.

NATIONAL BANK OF CANADA, as
Administrative Agent for the Lenders

By: C. VOIRON COLAS
Name:
Title: PRESIDENT

By: Jeffrey M. Weber
Name: JEFFREY WEBER
Title: Authorized Signatory

By: [Signature]
Name:
Title:

By: [Signature]
Name:
Title: RUSSELL A. GARRARD
Senior Director

[We have the authority to bind the Corporation.

[We have the authority to bind the Corporation.

AGREEMENT OF TENANT

For Ten Dollars and other good and valuable consideration, the Tenant hereby acknowledges and agrees to the terms of this Agreement. In addition, the Tenant agrees to pay the Landlord's reasonable legal costs incurred in connection with this Agreement.

In addition, without prejudice to the Tenant's rights with respect to the Lender, the Tenant confirms that the Landlord may rely, and shall be fully protected in relying upon, any communication, instrument or document signed by the Lender, or any action taken by the Lender. Without in any way limiting the foregoing, if the Lender is replaced, then the Tenant confirms that the Landlord may rely upon the written notice received from the then current Lender setting forth the name and address of the successor Lender and, upon receipt of such written notice, the provisions of this Agreement shall be enforceable by and be binding upon the successor Lender.

DATED as of May 20, 2011.

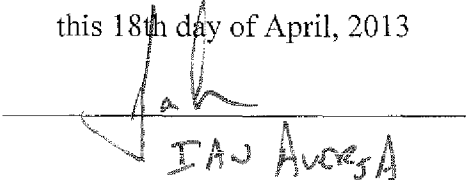
EXTREME FITNESS, INC.

By: *James E. Solomon*
Name: JAMES E. SOLOMON
Title: CEO

By: _____
Name: _____
Title: _____

I/We have the authority to bind the Corporation.

Tab I

Attached is Exhibit "T"
Referred to in the
Affidavit of Alan Hutchens
Sworn before me
this 18th day of April, 2013

Commissioner for taking Affidavits, etc

1079268 ONTARIO INC.

2011-514

699 DANFORTH AVE
TORONTO - ONTARIO
M4J 1L2
(416) 462-1441

RECEIVED MAY 13 2011

INVOICE

TENANT	
Name	EXTREME FITNESS
Address	635 DANFORTH AVE
City	TORONTO Province ON P.C.
FAX	905-709-2960

13/05/2011

Qty	Description	TOTAL
	PARKING TENANT' SHARE EFFECTIVE MAY 1, 2011 RE: 635 DANFORTH AVE	
	PARKING FOR THE MONTH OF MAY 2011	\$ 1,200.00
	as per contract	
		\$ 1,200.00
		\$ 156.00
		\$ 1,356.00

ENTERED
E12772

[Handwritten signatures]
8-100-05-901

Notes

HST Tax Rate(s) 13%

Office Use Only

138561683 RT0001

Thank you for your Business

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF ALAN HUTCHENS

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place

181 Bay Street, Suite 1800

Toronto, Ontario M5J 2T9

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Tel: 416.865.7726

Fax: 416.863.1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: 416.865.3082

Fax: 416.863.1515

Email: iaversa@airdberlis.com

Mark van Zandvoort (LSUC # 59120U)

Tel: 416.865.4742

Fax: 416.863.1515

Email: mvanzandvoort@airdberlis.com

Lawyers for Extreme Fitness, Inc.

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

RESPONDING MOTION RECORD OF
EXTREME FITNESS, INC.
(motion returnable May 28, 2013)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

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Fax: 416.863.1515

Email: mvanzandvoort@airdberlis.com

Lawyers for Extreme Fitness, Inc.