



**FITNESS CENTER
AGREEMENT, WAIVER AND RELEASE**

This Fitness Center Agreement, Waiver and Release (this "Agreement") is entered into as of the date set forth below the undersigned member’s signature hereto, by the undersigned member (“Member”):

Member Name: _____

Company: _____

Building: (Circle One) Hub, 225, 229, 233, 235, 245 or 285 _____

Phone Number: _____ **Email:** _____

Access Card #: _____ **Locker Room:** Male _____ Female _____

to, for the benefit and in favor of ACP MARQUIS II LLC, a Delaware limited liability company, its successor and assigns (“Owner”), as owner of the commercial office building located at 285 Peachtree Center Avenue, Atlanta, Georgia 30303 (the “Building”), and Owner’s property manager for the Building, presently BSC Realty Services, LLC, and any third party manager hired or retained by Owner to manage the Building (“Manager”), regarding certain fitness center facilities (the "Fitness Center") located in the Building.

A. As a specific and material inducement to Owner permitting Member to use the Fitness Center and equipment therein, Member warrants, represents and agrees that he/she regularly sees a physician, is in good physical condition and has no disability, impairment or ailment preventing him/her from engaging in active or passive exercise or that any such exercise may be harmful or detrimental to his/her health, safety, comfort or physical condition if he/she does so engage or participate in any active or passive exercise.

B. As a specific and material inducement to Owner permitting Member to use the Fitness Center and equipment therein, Member has agreed to execute and deliver this Agreement to Owner, without which, Member acknowledges and agrees that Member would not be permitted use of the Fitness Center.

NOW, THEREFORE, in consideration of the right to use the Fitness Center, and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, Member covenants and agrees as follows:

1. The recitals to this Agreement are true and correct and are expressly incorporated into this Agreement.
2. Member acknowledges and agrees that this Agreement and the releases and waivers contained herein are a material consideration and inducement for Owner permitting Member to use the Fitness Center.
3. By signing this Agreement, Member shall be entitled to use the Fitness Center subject to and in accordance with all the terms and conditions contained herein and such additional terms and conditions and rules and regulations as Manager (defined below) or Owner, in their sole discretion, may enact from time-to-time.
4. Member acknowledges that a fee will not be charged for the use of the Fitness Center or facilities. Notwithstanding the foregoing to the contrary, Owner reserves the right to charge a fee at any time upon at least thirty (30) days’ prior notice to Member and/or to require Member to execute a membership application agreement regarding its membership in and use of the Fitness Center.
5. Member acknowledges and agrees that Manager shall be entitled to enforce the terms of this Agreement.
6. Member understands, acknowledges, and agrees that neither Manager nor Owner is in the business of operating exercise and fitness facilities, and that the Fitness Center is being made available purely as a convenience to

Member. Member will not look to Manager or Owner for assistance or expertise in any manner whatsoever involving the Fitness Center or use of the equipment or participation in activities therein. **MEMBER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE FITNESS CENTER IS NOT ATTENDED OR ACTIVELY SUPERVISED BY OWNER, MANAGER OR ANY PERSONNEL, AGENTS OR CONTRACTORS OF OWNER OR MANAGER. MEMBER FURTHER ACKNOWLEDGES AND AGREES THAT MEMBER SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR HIS OR HER OWN SAFETY, AND MEMBER AGREES TO USE THE FITNESS CENTER AT MEMBER'S SOLE RISK.**

7. Member expressly agrees that Owner and Manager and any and all of their respective parent companies, subsidiaries, members, managers, officers, directors, employees, agents and contractors (the "Released Parties") shall not be liable for any injuries, damages or losses of any type, known or unknown, anticipated or unanticipated, resulting from or arising out of Member being in, on or about the Building or the Fitness Center or as a result of using the Fitness Center. **MEMBER ASSUMES FULL RESPONSIBILITY FOR ANY INJURIES, DAMAGES OR LOSSES WHICH MAY OCCUR TO MEMBER AND OR MEMBER'S PERSONAL PROPERTY IN, ON OR ABOUT THE BUILDING OR THE FITNESS CENTER AND MEMBER DOES HEREBY FULLY AND FOREVER RELEASE AND DISCHARGE THE RELEASED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, COSTS, DAMAGES, EXPENSES, RIGHTS OF ACTION OR CAUSES OF ACTION, PRESENT OR FUTURE, WHETHER THE SAME BE KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, RESULTING FROM OR ARISING OUT OF MEMBER'S USE OR INTENDED USE OF THE FITNESS CENTER OR EQUIPMENT THEREIN.**
8. If Member has a history of heart disease or any other potential problem with respect to a health or physical condition, Member shall consult a physician with respect to his/her exercise program before using any of the Fitness Center equipment, and obtain a written medical release from the treating physician authorizing Member to engage in exercise activity. Owner reserves the right to deny membership or require a physician's approval for any person deemed to be an exercise risk because of cardiovascular disease or any other health problem.
9. The membership granted hereby shall be revoked automatically, without any notice or documentation to Member (1) on the date Member is no longer employed by Employer, (2) on the date Employer no longer leases and occupies space in the Building, (3) Member no longer occupies its office in the Building or (4) Owner elects to discontinue the Fitness Center. Owner may elect in its sole and absolute discretion at any time and from time to time to terminate and cease the provision of the Fitness Center. In addition, either Manager or Owner may suspend or revoke Member's privileges to use the Fitness Center at any time if Member fails for any reason to comply with any of the "Conditions of Membership" set forth in Exhibit A attached hereto and incorporated herein by this references, as the same may be amended or modified from time to time, or any rules and regulations for the use of the Fitness Center posted therein or provided to the Members, as the same may be enacted, amended or modified from time to time by Owner or Manager.
10. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without application of its conflict of law principles.
11. **MEMBER ACKNOWLEDGES HAVING READ THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE CONDITIONS OF MEMBERSHIP, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL REGARDING THE SAME, AND WITH FULL KNOWLEDGE AND APPRECIATION OF THE POTENTIAL RISKS, AND IN CONSIDERATION OF MEMBER'S USE OF THE FITNESS CENTER, MEMBER, FOR ITSELF, ITS HEIRS, EXECUTORS, ADMINISTRATORS AND ANYONE ENTITLED TO ACT ON MEMBER'S BEHALF, AGREES TO WAIVE, RELEASE, DISCHARGE, HOLD HARMLESS AND INDEMNIFY THE RELEASED PARTIES FROM ANY AND ALL LIABILITY, CLAIMS OR DAMAGES OF ANY KIND WHATSOEVER ARISING FROM OR CONNECTED WITH MEMBER'S ACCESS TO AND USE OF THE FITNESS CENTER AND EQUIPMENT THEREIN.**

IN WITNESS WHEREOF, the undersigned has executed this Agreement with knowledge that Owner intends to rely on this Agreement as of the date set forth below.

MEMBER:

_____ (L.S.)

PRINT NAME: _____

Date: _____, 20__

WITNESS:

_____ (L.S.)

PRINT NAME: _____

Please note your Company contact/administrator must submit waivers in Angus.

EXHIBIT A
CONDITIONS OF MEMBERSHIP

1. Member agrees that this instrument and the privileges referenced herein are not to be construed in any way as creating any license, easement or other legal right, contractual or otherwise, to the benefit of the undersigned. OWNER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ALL OR ANY PART OF THE FITNESS CENTER, INCLUDING, WITHOUT LIMITATION, THE EQUIPMENT.
2. Member Acknowledges and agrees that the present hours of availability of the Fitness Center are from 6:00 a.m. to 8:00 pm, Monday – Friday. Owner expressly reserves the right to change the hours of operation from time to time and at any time with or without notice to Member and to close the Fitness Center for cleaning and/or renovations from time to time.
3. Member shall be employed by an employer who currently leases and occupies space in the mixed use retail and office project known as “Peachtree Center” (the “Project”), and Member shall have its office or place of employ in employer’s premises within the Project.
4. This Agreement and the membership granted herein are personal to the Member and, as a result, are **non-transferable** by Member for any reason whatsoever and are for Member's individual use **only**. Member shall be eighteen (18) years of age or older.
5. Member shall use the equipment only in the manner intended by the manufacture, and shall not modify the equipment in any manner whatsoever. The Member shall not utilize any portion of the Fitness Center or equipment which the Member does not fully understand or if the Member is not in good physical condition and fully able to use such equipment. The Member understands and agrees that in using any of the Fitness Center or equipment, there is a possibility of accidental or other physical injury and that any use of thereof shall be at the Member’s sole risk.
6. Member agrees to conduct himself/herself in a quiet and well-mannered fashion when in or about the Fitness Center so as not to cause any disturbance which would interfere with the enjoyment and effective use of the Fitness Center by other Members. Under no circumstances will Member use foul, loud, abusive or slanderous language, or harass, molest or badger other Members. Member further agrees that it shall not play music in the Fitness Center other than on a personal music device with headphones so as to not disturb other Members. No music played in the Fitness Center shall contain foul, loud, abusive or slanderous language. In addition to those terms and conditions of this Agreement, Member agrees to abide by all rules and conditions implemented by Manager or Owner from time to time and posted in the Fitness Center. Manager and Owner reserve the right to terminate this Agreement and cancel any and all rights to use the Fitness Center should Member fail to abide by such rules and conditions posted in the Fitness Center.
7. Member shall dress appropriately at all times during the use of the Fitness Center. Leotards and tights, sweat suits or gym shorts and suitable tops are required for women. Men are required to wear sweat suits or gym shorts with a tee shirt. Men and women are further required to wear sweat socks and soft-soled gym shoes at all times in the exercise area.
8. Member agrees that he/she will not use the Fitness Center with any open cuts, abrasions, open sores, infections or the like, and that Member shall comply with local public health requirements. Manager, at its sole discretion, shall have the final judgment as to whether Member shall have access to and/or use of the Fitness Center, and may deny Member access to and/or use of the Fitness Center for any or no reason.
9. Member shall not loiter or use the other common areas of the Building while in gym or running attire except when entering and exiting the Building.
10. Member agrees not to introduce a computer virus, which shall be considered an undocumented and unauthorized program designed to cause a loss of, or damage to, data files or operating files; or to gain access to, and/or interfere with, the operations of, any programs or computer resources contained within the Fitness Center’s equipment.

11. Each Member is responsible for his/her own personal belongings. Owner and Manager shall not be responsible for damaged, lost or stolen articles of clothing or any other personal property of the Member and Member waives any claim for loss or damage of personal property while using the Fitness Center. Lockers are provided for use at Member's sole risk and **only** while Member is using the Fitness Center or its locker room facilities, and Member shall remove all property from the lockers while Member is not using the Fitness Center or its locker room facilities. Member hereby acknowledges that any locker that is secured by a lock past business hours may be removed and any property located in the locker or the Fitness Center shall be deemed abandoned, and Manager or Owner may dispose of it in any manner and without recourse. Owner and Manager reserve the right in their sole and absolute to discontinue locker service at any time and from time to time.
12. Member understands that towel and soap service at the hand sinks are offered as an extended courtesy and agrees to not remove commodities from the Fitness Center.
13. Manager or Owner shall have the right to add, change, remove, move, eliminate or modify the Fitness Center or any part thereof, or the equipment, facilities or services in the Fitness Center in any manner, without notice to the Member.
14. Member agrees to immediately report to Manager any malfunction, problem or damage to the equipment.
15. No food, beverages or glass containers are allowed in the Fitness Center, except for water contained in a capped bottle.
16. Member shall not operate the equipment or access or utilize the Fitness Center in any manner while under the influence of alcohol or any drugs or medication of any type (including, but not limited to, illegal, prescription, or over-the-counter). Under no circumstances shall Member move exercise equipment in any manner not authorized in writing by Manager or Owner.
17. **THERE SHALL BE NO SMOKING, ALCOHOLIC BEVERAGES, OR DRUGS OR MEDICATIONS OF ANY TYPE (INCLUDING, BUT NOT LIMITED TO, ILLEGAL, PRESCRIPTION, OR OVER-THE-COUNTER) ALLOWED IN ANY PART OF THE FITNESS CENTER BY ANY PERSONS.**
18. **NO GUEST OF THE MEMBER WILL BE ALLOWED IN THE FITNESS CENTER. ANY PERSON USING THE FITNESS CENTER MUST BE AN EMPLOYEE OF A COMPANY THAT HAS A VALID LEASE IN GOOD STANDING AT THE BUILDING AND SUCH PERSON SHALL HAVE ITS OFFICE IN THE BUILDING. MEMBERSHIP DOES NOT INCLUDE FAMILY MEMBERS. ANY VIOLATION OF THIS RULE IS CAUSE FOR TERMINATION OF THIS AGREEMENT AND MEMBER'S MEMBERSHIP.**
19. Manager and Owner's decisions on all issues involving or relating to the Fitness Center shall be final.
20. Manager and Owner reserve the right to amend or add to these rules and conditions as they deem necessary for the proper management of the Fitness Center, and such additions and amendments to the rules and conditions may be made without written notice to the Member provided the same are posted in the Fitness Center. It shall be the Member's responsibility to observe the rules and regulations that are posted in the Fitness Center.