

FITNESS CENTER AGREEMENT

NOTICE: DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES.

This Fitness Center Agreement (this "Agreement"), made effective this ____ day of 2022, confirms the mutual understandings and agreement of BOF III MN 10 WEST END, LLC, a Delaware limited liability company ("Owner"), and _____ ("Member", who is an employee of ("Tenant")), in connection with Member's use of the shared Fitness Center (the "Fitness Center") located at 10 West End (the "Building").

1. **MEMBERSHIP TERM.** The terms and conditions of this Agreement shall be in full force and effect beginning on the date set forth above and shall continue until the last day of the first (1st) full calendar month thereafter (such period being the "Membership Term"); PROVIDED, HOWEVER, THE MEMBERSHIP TERM WILL RENEW AUTOMATICALLY ON A MONTH-TO-MONTH BASIS THEREAFTER UNTIL THIS AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 3 BELOW.

2. **RULES AND REGULATIONS.** At all times during the Membership Term, Member shall abide by the Rules and Regulations of the Fitness Center (the "Rules and Regulations") set forth on **Exhibit "A"** attached hereto, which Owner may modify at any time, from time to time, in its sole discretion.

3. **TERMINATION RIGHTS.** Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate immediately in the event any of the following occurs: (a) Tenant no longer leases space at the 10 West End (b) Member notifies Owner or the Building property manager of Member's desire to terminate this Agreement or the membership hereunder, (c) Owner or the Building property manager notifies Member that this Agreement and/or Member's membership hereunder is terminated (which notice may be given for any reason or no reason at all, in Owner's or the Building property manager's sole discretion), or (d) Member returns Member's access key card or key fob to Owner. Upon termination under (a), (b) or (c) above, Member shall promptly return Member's access key card or key fob to Owner or the Building property manager. **Owner may elect to discontinue the Fitness Center at any time. Owner reserves the right to revoke membership privileges for any Member who fails to observe the Rules and Regulations.**

4. **CARD KEY or KEY FOB.** The lock on the door to the Fitness Center, and locker rooms where applicable, will be coded such that the Building access key card or key fob may be activated by Owner to also access the Fitness Center.

5. **ASSIGNMENT.** This Agreement may be assigned by Owner in its sole discretion without Member's prior written approval, in which event the assignee will have all of the rights of Owner hereunder. Member shall not assign any of Member's rights under this Agreement to any person or entity.

6. **GUESTS PROHIBITED.** Non-members ("Guests," or, individually, a "Guest") of the Fitness Center are strictly prohibited from accessing the Fitness Center. Member shall not permit any Guest to use or possess Member's card key or key fob to gain access to the Fitness Center. Member's membership may be terminated by Owner if Member loans its key card to anyone for access to the Fitness Center.

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7. **MEMBER'S RESPONSIBILITY FOR USE OF FITNESS CENTER.** Member hereby assumes all of the risks of using the Fitness Center and the equipment therein. Member understands that the Fitness Center shall be unmanned and unsupervised by Owner, and that any and all employees or agents of Owner or its authorized representatives who may be present at any time in the Fitness Center are not licensed medical professionals. Member understands and acknowledges that there are risks inherent with vigorous exercise, weight training, or other activities customarily undertaken at the Fitness Center, including but not limited to serious bodily injury or even death. Member understands and acknowledges that Member should not engage in vigorous exercise, weight training, or other activities customarily undertaken at the Fitness Center without first consulting Member's personal physician and considering any risks Member may incur in participating in these activities. Member understands and acknowledges that Owner has no expertise in diagnosing, examining or treating any medical condition. Member agrees that Member will not use the Fitness Center if Member has any open cuts, abrasions, sores, infections, maladies or inability to maintain personal hygiene, or any other medical condition that poses a direct threat to the health or safety of Member or others. Member agrees to use the Fitness Center in accordance with all applicable governmental public health requirements.

8. **WAIVER AND RELEASE.** MEMBER HEREBY WAIVES AND RELEASES OWNER AND EACH OF ITS MEMBERS, MANAGERS, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "OWNER PARTIES") FROM ANY AND ALL CLAIMS, COSTS, DAMAGES OR LIABILITIES OF ANY NATURE, INCLUDING PROPERTY DAMAGE, LOSS OR THEFT, BODILY INJURY OR DEATH, ARISING OUT OF MEMBER'S USE OF THE FITNESS CENTER OR MEMBER'S BREACH OF THIS AGREEMENT. THIS WAIVER AND RELEASE SHALL SURVIVE THE CANCELLATION OR TERMINATION OF THIS AGREEMENT.

9. **WARRANTY AND REPRESENTATION.** Member hereby warrants and represents that, as of the date of this Agreement, Member is an employee of Tenant. Member agrees to use the Fitness Center for only such time as Member is employed by Tenant at the Building. Member hereby agrees that, if during any calendar month Member uses the Fitness Center while not employed by Tenant, then upon Owner's written demand, Member (and not Tenant) shall be charged and shall pay to Owner within five (5) business days following Member's receipt of such demand a monthly fee of Five Hundred and No/100 Dollars (\$500.00), without proration for any partial month.

10. **MISCELLANEOUS.** This Agreement constitutes the entire agreement between the parties and cancels and supersedes all prior promises, representations, understandings and/or agreements between the parties. This Agreement is governed by the laws of the State of Minnesota. The provisions of this Agreement are severable and if any provision is determined to be illegal or unenforceable, the remaining provisions and any partially enforceable provision will nevertheless be enforceable. Owner's failure to enforce any remedy or provision of this Agreement may not be construed as a waiver of such remedy or provision. Any dispute between Owner and Member or their respective heirs, successors and assigns may only be litigated in the state or federal courts that have jurisdiction where the Building is located, pursuant to a bench trial; **MEMBER WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT.**

[MEMBER SIGNATURE ON THE FOLLOWING PAGE]

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I certify that I have read this Agreement, and I fully understand its content. I hereby agree to the terms of this Agreement as of the date set forth below.

MEMBER:

Signature: _____

Printed Name: _____

Date: _____

Access Card Number: _____

Employer/Tenant: _____

Employer Suite Number: _____

Phone: _____

Emergency contact: _____

Emergency contact phone number: _____

Relationship: _____

(TO MEMBER) YOU ARE ENTITLED BY LAW TO AN EXACT COPY OF THIS AGREEMENT

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EXHIBIT "A"

FITNESS CENTER RULES AND REGULATIONS

1. Use of the Fitness Center is limited to personnel employed at 10 West End. No guests are allowed.
2. You may not use the Fitness Center unless you have read, understood, and signed the Fitness Center Agreement to which these Fitness Center Rules and Regulations are attached.
3. The hours of the Fitness Center are: 6:00AM-8:00PM, Monday-Friday.
4. You may not bring food or drinks into the Fitness Center (other than sports drinks and water) unless expressly allowed by Owner or the Building property manager in writing.
5. Wear shirts, appropriate shorts or pants, and athletic shoes while in the Fitness Center.
6. Wipe down stations and equipment when finished.
7. Observe a 20-minute maximum on machines when others are waiting.
8. Return all weights and equipment to the appropriate place when finished.
9. **IMPORTANT:** Do not use equipment unless you fully understand its written instructions and proper use.
10. Do not drop weights or slam machine equipment during exercise.
11. Secure loose items and bags in the locker while using Fitness Center. Items left in the Fitness Center and in the locker area overnight may be removed by the Building property manager. Neither Owner nor the Building property manager will be responsible for any personal property left within the Fitness Center, including items stored in lockers.
12. Report any injuries or problems immediately to the Building property manager.
13. Offensive behavior of any kind will NOT be tolerated in the Fitness Center. You will be removed from the Fitness Center for any such behavior and multiple instances of offensive behavior may result in permanent loss of use of the Fitness Center. Any behavior exhibited by others you feel as inappropriate should be reported to the Building property manager immediately.
14. Please use towels thoughtfully and with little waste. Return towels to the appropriate bins after use. Do not remove them from the Fitness Center.

Thank you for your effort in helping to maintain a nice Fitness Center for all Fitness Center users.