

# S.C. Herman & Associates, Inc.

*Real Estate Development & Management since 1963*

## **AGREEMENT FOR USE OF FITNESS CENTER**

In consideration of being permitted to access and utilize the fitness center (the “Fitness Center”) in the building located at 1120 Vermont Ave., N.W., Washington, D.C. 20005 (the “Building”), I agree, on behalf of myself, my personal representatives, assigns, heirs, and next of kin, as follows:

1. I hereby release, waive, discharge, and covenant to not sue 1120 Vermont Avenue Associates, LLP, and its successors and assigns (“Owner”), as the owner of the Building in which the Fitness Center is a part, together with Owner’s principals, partners, affiliates, officers, agents, employees, and all other personnel providing services at the Fitness Facility (individually and collectively with Owner referred to as the “Released Parties”), from all liability to me, my personal representatives, assigns, heirs, and next of kin for any and all claims, demands, obligations, loss or damage on account of my injury, disability, death, or damage to or loss of any of my property, at any time now or in the future, arising out of the use of the Fitness Center or while I am in the Fitness Center premises, from any cause whatsoever, even if caused by the negligence of the Released Parties, excepting only the gross negligence or willful misconduct of the Released Parties (individually and collectively, the “Released Matters”). I voluntarily and knowingly assume the risk of all such injury, disability, death, damage or loss.

2. I hereby agree to indemnify and save and hold harmless and defend the Released Parties (with counsel reasonably selected by the Released Parties), from any and all claims, demands, obligations, losses, liability, damages, costs or expenses, including but not limited to attorneys’ fees, which the Released Parties may incur related to any Released Matters. I expressly agree that the foregoing release, discharge, covenant not to sue, waiver and indemnity agreement is intended to be as broad and inclusive as is permitted by the laws of the District of Columbia.

3. I expressly agree that any personal trainers on the premises are a separate and distinct entity from the herein-stated Released Parties, and I understand and agree that the Released Parties, are not liable or responsible in any way for the actions of such personal trainers.

4. I agree that use of the Fitness Center is permitted solely under the terms of this agreement and in consideration of mutual promises and releases made herein. I understand and agree that the Fitness Center and its facilities are separate and distinct from the related services and related facilities which are provided to me as an employee of a tenant of the Building. I agree that I may be a member of the Fitness Center only while I am an employee of a tenant at the Building, and that my membership, if not earlier terminated, will terminate immediately upon my ceasing to be an employee of a tenant at the Building. I understand that this Agreement shall only be valid to the extent my employer maintains a valid “Fitness Center Agreement - Tenant Joinder” on file with Owner.

5. I understand and agree that the Owner and its agents, in their sole discretion, may change the hours of operation, the equipment and facilities provided, or any other aspect of the Fitness Center, including its continued operation, without any liability therefore and without any reduction or set off against the rent which any tenant may under a separate lease agreement for premises in the Building.

6. I promise to comply with the following regulations, and any others established by the Released Parties in the future for the use of the Fitness Center, and I understand and agree that the Released Parties have the right, at their sole discretion, to establish any additional regulations or policies which they determine are useful and I promise I will comply with such regulations or policies:

A. Only authorized employees of tenants who have executed an Agreement for Use of Fitness Center (hereafter "Members") may use the Fitness Center. No Member shall admit, bring or permit any guest, children or visitors to come into or use the Fitness Center, and such violation shall result in immediate termination of this agreement with the Member, in which event such Member shall not be permitted to enter or use the Fitness Facility.

B. Each Member shall be liable for any property damage and or personal injury at the Fitness Center caused by the Member. It shall be the obligation of the Member to pay for any related costs of such damage or injury upon presentation of a statement thereof.

C. Members shall alert the Released Parties of any and all problems regarding the maintenance of exercise equipment and any other part of the Fitness Center in which a Member observes a problem. Notwithstanding the foregoing, Released Parties shall have no obligation to, and assume no liability for, the repair or maintenance of any such equipment or other part of the Fitness Center, and Members assume complete risk of such equipment and facilities.

D. Members shall review and follow posted instructions on operation of all equipment and facilities, including without limitation not using equipment that is broken or under repair.

E. I agree to conduct myself in a controlled and reasonable manner at all times, and to refrain from using any equipment in a manner inconsistent with its intended design and purpose.

F. The Owner reserves the right to close the Fitness Center to Members if the number of people using the Fitness Center exceeds the capacity of the facility. Furthermore, the Owner reserves the right to modify or close the Fitness Center to Members without prior notice at any time, as deemed desirable by the Owner.

7. I further warrant the following statements are true and correct, and understand that the Released Parties have relied on these statements in entering into this agreement, and in giving me permission to enter the Fitness Center:

A. No oral representation, statements, or inducements apart from the this written agreement have been made;

B. I am 18 or more years of age;

C. I am in a good condition of health and am able to use the exercise equipment contained within the Fitness Center without restriction. I warrant and represent that I have no disability, impairment or ailment preventing me from engaging in active or passive exercise or that will be detrimental to my health, safety or physical condition, if I do so engage or participate. I agree that the Fitness Center and the Released Parties assume no responsibility for any injury or illness caused by any physical condition. I shall not use the Fitness Center facilities if I am under any physician's care without express approval of my physician and the Released Parties. I expressly agree that if I have any reason to believe I have a physical impediment to an exercise then I will not undertake such exercise without first having a physician review such exercise. The Fitness Center recommends that all Members obtain physical examinations prior to using the facility. Those Members who have a previous history of cardiovascular disease or related health illnesses are especially urged to obtain such examinations.

D. I understand that there is no staff on site at the Fitness Center and no member of the Building staff has had any training that would qualify them to dispense medical advice or prescribe treatment, and I acknowledge that no such representation has been made. I further understand that Owner does not have any expertise in the management or operation of a fitness and health facility, including without limitation (i) determining the effect of any specific exercise, (ii) prescribing any exercise program or (iii) instructing in the use of exercise equipment.

E. I understand that no representations or warranties, express or implied, have been made by Owner with respect to the condition of the Fitness Facility or any of the equipment or facilities located therein, and any and all such representations and warranties are disclaimed by Owner to maximum extent permitted by law.

F. I understand the Released Parties shall not be responsible to Members for articles lost or stolen in the Fitness Center or lockers (if provided), or for loss or damages to any other property.

8. This agreement may be modified only by an instrument in writing, signed by the Member and duly authorized representative of the Owner. Any agreements with the Member which are not set forth in this Agreement, or in a written amendment as aforesaid, shall not be valid and any oral agreements or oral changes to this Agreement shall not be valid.

9. Notwithstanding anything to the contrary herein, Owner may terminate this agreement and revoke Member's ability to use the Fitness Center at any time, in the event Member breaches this agreement in any way.

- By checking this box, you agree that this Agreement is being electronically submitted to Owner, and as such, that this Agreement will be binding on you following the Owner's approval hereof (which approval may be sent to you via email). Notwithstanding the foregoing, the act of submitting this Agreement for Owner's review does not give you the right to begin using the Fitness Center until you are notified of Owner's approval. You agree that if this Agreement is rejected by Owner, in its sole discretion, this Agreement shall be deemed null and void and you shall have no further rights hereunder. By checking this box you confirm that you have read this Agreement, understand it, and submit it voluntarily. You further acknowledge this Agreement is binding on you without the necessity of the Owner's signature appearing on it.