

**ENCORE COMMONS  
FITNESS CENTER  
FITNESS CENTER AGREEMENT**

This Exercise Facility Agreement (the "Agreement") dated as of \_\_\_\_\_, 20\_\_ (the "Effective Date") is entered into by and between BRI 1870 North Point LLC (the "Owner/Manager"), whose address is 100 North Point Center East, Suite 120, Alpharetta, GA 30022, and the undersigned (the "Permittee") for the right or privilege to use the exercise facility, including the exercise equipment, improvements, furnishings, and fixtures therein situated, at 333 North Point Center, Suite 175, Alpharetta, GA 30022 (collectively, the "Encore Commons Fitness Center" or the "Fitness Center" or the "Facility").

1. Term. Subject to and upon the terms herein set forth, and the rules and regulations promulgated by either Manager or Owner from time to time, Permittee shall have the right to use the Fitness Center. Either Manager or Owner may revoke the Permittee's right to use the Fitness Center at any time with or without cause, in Manager's or Owner's sole discretion. In addition, this Agreement shall automatically terminate at such time as Permittee is no longer a Tenant or an employee of a Tenant of Encore Commons. The term of this Agreement shall commence on the Effective Date and shall continue month to month, unless this Agreement is sooner terminated by Manager or Owner, or otherwise terminated in accordance with the terms set forth herein or otherwise extended by a written agreement by and between the Permittee and either Owner or Manager.
  
2. Use of Fitness Center
  - a. Fitness Center Rules. Permittee shall use the Fitness Center in accordance with the rules and regulations promulgated by Manager or Owner (the "Rules") and posted at the Fitness Center. Any and all persons who participate in or use the Fitness Center or its services must be a Permittee in good standing. Any unauthorized persons discovered by Manager or Owner within the Facility will be deemed a trespasser and requested to leave the Fitness Center. Manager and Owner further reserve the right to close the Fitness Center during legal holidays. Permittee acknowledges that he or she has received a copy of the current Rules prior to entering into this Agreement and that he or she has read, understands, and agrees to the Rules which may from time to time be adopted by Manager or Owner, including but not limited to, the provisions of the Rules which may govern or affect the terms of this Agreement such as renewal or termination of Permittee. Permittee's failure to observe the rules and regulations shall, at Manager's or Owner's election result in the termination of Permittee's right to use the Fitness Center.
  
  - b. Permittee's Responsibilities. The Fitness Center may be equipped from time to time with free weights, weight-lifting machines, stationary bicycles, stair climbers, treadmills and other exercise equipment. In addition to the other responsibilities of the Permittee set forth herein or in the Rules, Permittee is responsible for becoming fully informed as to the function and operation of all exercise equipment, machines, apparatus, furnishings and fixtures within the Fitness Center prior to using the Fitness Center, and will exercise ordinary and reasonable care in his or her operation and use of the Fitness Center.

In the event Permittee is not fully informed as to the function and operation of all exercise equipment, machines, apparatus, furnishing, and fixtures within the Fitness Center, Permittee shall be responsible for reviewing the equipment instruction brochures on file with the Fitness Center and, to the extent Permittee may require additional assistance, to obtain instruction from a qualified personal trainer selected by Permittee at Permittee's cost and expense on the safe and appropriate use and operation of all Fitness Center equipment prior to Permittee's use of the Fitness Center. Permittee agrees to use the exercise equipment for the purposes to which such equipment is intended and apparently designed to be used. Permittee agrees that Permittee's uses of the Facility at all times will be within Permittee's own physical capabilities and limitation. Where instructions from the manufacturer, any independent instruction, or notices concerning use of the exercise equipment within the Fitness Center have been made available, Permittee agrees to follow such instructions in utilizing the Fitness Center. Permittee agrees and understands that using the Fitness Center involves dangers of personal injuries such as muscle strain, as well as other dangers and injuries that cannot be foreseen, and that injury or death could result from his or her use of the Fitness Center. Use of the Fitness Center means that the Permittee has knowledge of and appreciates the risks involved with such use, including potential injuries, which may arise therefrom. Permittee shall be responsible for undertaking all reasonable steps to guard against injury to his or herself and to other persons or property within the Fitness Center or the premises of Encore Commons, and to prevent damage to the Fitness Center or any other property within Encore Commons. Permittee shall promptly notify Manager of any defective exercise equipment, as well as any damage to the equipment. Permittee is responsible for safeguarding all valuables prior to entry, or while within the Fitness Center, and agrees that the lockers provided within the Fitness Center are designed for clothing and gym bags and that valuables are not secure in the Fitness Center. Neither Manager nor Owner is responsible for lost or stolen items.

- c. Assumption of Risk. Permittee has personally conducted an inspection of the Fitness Center and hereby acknowledges that no security personnel, exercise consultant or other attendant shall be present in the Fitness Center. Permittee shall be solely responsible for his or her own safety and shall determine his or her own physical capabilities and limitation in using utilizing the Fitness Center. Permittee agrees that upon any use of, or presence within, the Fitness Center, Permittee is making an informed choice to use or be present within the Fitness Center and expressly assumes the risk of such use or presence. Permittee acknowledges that the American College of Sports Medicine advises that each Permittee, especially those 35 years of age and older, should consult his or her physician and follow such physician's recommendation before using the Facility or otherwise beginning any exercise program at the Fitness Center. Furthermore, if Permittee has a history of heart disease, Permittee should consult a physician before using the Fitness Center.

3. No Waiver. Permittee does hereby acknowledge that failure of Manager or Owner to enforce any Rules, or any conditions of Permittee's use of the Fitness Center or any of the Manager's or Owner's rights under this Agreement or under law shall not be deemed or construed to be a waiver by Manager or Owner of its rights thereafter to insist upon the Permittee's compliance with all Rules adopted by Manager or Owner, from time to time, and with all terms and conditions of this Agreement.
  
4. Release. In consideration of the use of the exercise and recreational facilities at the Fitness Center, Permittee does hereby agree to release and hold harmless Manager, Owner, and any successor owner of the building wherein the Fitness Center is located and their respective subsidiaries and affiliates, employees, officers, agents, contractors, contract managers, successors and assigns (collectively hereinafter, the "Released Parties") from liability for all injuries sustained by Permittee, any loss or damages of any nature or kind and/or cost of liability resulting from any act or omission, including negligence of the Released Parties, in connection with the use of the Fitness Center by Permittee or others. Permittee agrees to indemnify and hold harmless the Released Parties from any loss, liability, damage or cost that they may incur from Permittee's presence at the Fitness Center or use of the Fitness Center, including but not limited to any liability or loss the Released Parties may be held responsible for because of any torts committed by the Permittee or any guest of Permittee, against the Permittee or against any other persons present at the Fitness Center or present within the premises of Encore Commons, and Permittee further agrees to reimburse the Released Parties for any damage that he or she may cause, or any guest of the Permittee may cause, to the Fitness Center or the asset or property of the Released Parties. It is intended that this release shall constitute a good sufficient and complete defense against any actions which might be brought by the Permittee or anyone acting on the Permittee's behalf or claiming by or through the Permittee alleging injury, loss or damage arising out of use of or presence within the Fitness Center. The execution and delivery of this release and indemnity is a material inducement for the rights granted to Permittee hereunder, and Permittee acknowledges that Manager and Owner are relying on this release and indemnity and that Manager and Owner would not grant rights to Permittee as provided herein in the absence of this release and indemnity. Permittee has signed this release and indemnity of his or her own free will and agrees with all terms and conditions.

5. Miscellaneous. By signing this Agreement, Permittee acknowledges that he or she has read this entire Agreement and fully understands and agrees to all terms and conditions of this Agreement and the Rules as amended from time to time. This Agreement shall inure to be the benefit of Manager, Owner, and the Released Parties and their respective successors and assigns.

PERMITTEE:

Name: \_\_\_\_\_  
(Print)

Name: \_\_\_\_\_  
(Signature)

Employer \_\_\_\_\_

Office Telephone Number: \_\_\_\_\_

Access Card Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date: \_\_\_\_\_

In the event of an emergency, please contact:  
(relationship and telephone number):

**Email to: [encorecommons@ops.waldensecurity.com](mailto:encorecommons@ops.waldensecurity.com)**