

**Buckhead Tower at Lenox Square Fitness Center  
AGREEMENT & RELEASE**

Date of Agreement: \_\_\_\_\_

First 5 numbers from your building access card. \_\_\_\_ \_

**The Parties:** This Fitness Center Agreement and Release (the "Agreement") is entered between PARMENTER LLC (the "Manager") and \_\_\_\_\_ ("Member"), as employee of \_\_\_\_\_ (the "Employer"), which Employer is a tenant in Suite \_\_\_\_\_, of that certain building located at 3399 Peachtree Road, NE, Atlanta, Georgia 30326, known as Buckhead Tower at Lenox Square (the "Building"), owned by 3399 PEACHTREE LLC (the "Owner") regarding the fitness center amenity located in Suite 100 of the Building and provided as an amenity for tenants of the Building and their employees (the "Fitness Center").

**Description of Membership:** By signing this Agreement and paying the Activation Fee set forth below, Member shall be entitled to use the Fitness Center subject to all terms and conditions contained herein, and such additional terms and conditions as Manager or Owner, in their sole discretion, may institute from time to time.

**Length of Membership:** This membership shall be activated upon receipt by Manager of this Agreement signed by Member and the Activation Fee referenced below, and shall expire automatically, without notice or documentation to Member, either (1) on the date Member is no longer employed by Employer, or (2) the date Employer no longer leases and/or occupies space in the Building. In addition, either Manager or Owner may, without prior written notice, suspend or revoke Member's privileges to use the Fitness Center at any time if Member fails to comply with the terms of this Agreement or such other rules and regulations governing the Fitness Center as may be enforced by Manager from time to time.

In consideration of Owner's making the Fitness Center facility available for use by Member, Member hereby acknowledges and agrees as follows:

1. **Activation of Membership:** Upon execution of this Agreement and payment of the Activation Fee set forth below, Member shall be entitled to use the Fitness Center in compliance with the terms and conditions of this Agreement.

2. **Membership Fee:** Contemporaneously with Member's delivery of this Agreement to Manager, Member shall also deliver to Manager a check made payable to Owner "3399 PEACHTREE LLC" in the amount of ONE HUNDRED DOLLARS (\$100.00) (the "Membership Fee"). The Membership Fee is a one-time, non-refundable fee that upon receipt will activate this membership. Upon activation of this Membership, Member's building access card will be specially activated to permit Member to access the Fitness Center during Fitness Center Hours of Operation, set forth below.

3. **Hours of Operation:** The Fitness Center shall be open and available for use from 5:00 a.m. until 9:00 p.m., Monday through Friday, except for legal holidays recognized by the Building (the "Hours of Operation"). The Fitness Center will close promptly at the time specified herein, and all persons then in the Fitness Center will be asked to remove all of their personal property from the Fitness Center and leave the Facility. It shall be grounds for termination of this Agreement if Member uses his/her access card to gain access, or to permit access to others, before or after the Hours of Operation set forth herein.

4. **Assumption of Risk:** Use of the Fitness Center involves the risk of injury, whether you or someone else causes it. Specific risks vary from one activity to another and the risks range from minor injuries to major injuries, such as catastrophic injuries, including death. **MEMBER IS SOLELY AND COMPLETELY RESPONSIBLE FOR HIS OR HER OWN SAFETY WHILE USING THE FITNESS CENTER, AND MEMBER AGREES TO USE THE FITNESS CENTER AT MEMBER'S SOLE RISK.** Member understands and agrees that neither Manager nor Owner are in the business of, nor do they have any experience in, operating exercise and fitness facilities. The Fitness Center is an unstaffed facility, made available for Member's use at Member's sole risk. The Fitness Center will not be actively supervised by Manager, Owner or any of their agents or employees, although Manager and Owner expressly reserve the right to install video monitoring equipment, for security purposes, in and about the Fitness Center, at Manager's and Owner's sole election. Member will not look to Manager or Owner for assistance or expertise in any manner whatsoever involving the Fitness Center.

5. **Release:** Member expressly agrees that Owner, Manager and all of their officers, directors, employees and agents shall not be liable for any injuries, damages or losses of any type originating or sustained by Member in, on or about the Building or the Fitness Center as a result of using the Health Club and the equipment therein. Member assumes full responsibility for any injuries, damages or losses, which may occur to Member in, on or about the Building or the Fitness Center, resulting from or arising out of the Member's use or intended use of the Fitness Center and equipment therein. In consideration of your participation in the activities offered at the Fitness Center, you understand and voluntarily accept this risk and you waive all rights of recovery, claim, action or cause of action against the Manager, the Owner, its agents (including partners, both general and limited), trustees, members, shareholders, officers, directors, and employees (collectively, "Owner Related Parties") for any claims of loss or damage whether known or unknown, anticipated or unanticipated that may occur at the Fitness Center, or the Building, including, without limitation, any personal or bodily injury to you, or mental injury, economic loss or any damage to you, your unborn child, or any of your personal property therein, regardless of cause of origin, including negligence of Manager, Owner, Owner Related Parties, or anyone using the Fitness Center, whether related to exercise or not. Further, you understand and acknowledge that neither Manager nor Owner manufactures fitness or other equipment at the Building or in the Fitness Center, but purchases and/or leases such equipment. You understand and acknowledge that Owner is providing recreational facilities and neither

Manager nor Owner shall be held liable for defective products or negligent services. If there is any dispute or claim between you and Manager, Owner and/or Owner Related Parties involving an amount in controversy of more than Five Thousand Dollars (\$5,000), or if your dispute or claim is or could be designated as a class action, you and Manager and/or Owner agree to submit the dispute for resolution to binding arbitration suing the American Arbitration Association's (AAA) Commercial Arbitration Rules (AAA Rules) in effect on the date of this Agreement, except as to those AAA Rules that conflict with or differ from this Agreement. Unless controlling legal authority requires otherwise, there shall be no right or authority for any dispute to be heard or arbitrated on a class action basis, as a private attorney general, or on a basis involving disputes brought in a purported representative capacity on behalf of the general public, provided, however, that any individual claim is subject to this Agreement to arbitrate. To the extent permitted by applicable law, you hereby waive trial by jury in any action, proceeding or permitted counterclaim brought by Owner against you on any matter arising out of or in any way connected with your use of the Fitness Center, any claim of injury or damage, or any emergency or other statutory remedy with respect thereto.

6. **Member's Representations:** Member warrants, represents and agrees that he or she is in good physical condition and has no disability, impairment or ailment preventing him or her from engaging in active or passive exercise or that will be detrimental to his/her health, safety, comfort or physical condition if he/she does so engage or participate at the Fitness Center. Member shall consult a physician with respect to his or 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. Member acknowledges that Manager, Owner and/or Owner Related Parties have not given you medical advice relating to your physical condition and ability to use the Fitness Center. Member agrees that he or 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 and/or Owner may, at its sole discretion, deny access to the Fitness Center.

7. **Indemnity:** Member hereby covenants and agrees that it shall indemnify and hold harmless Manager, Owner, and Owner Related Parties, from any loss, liability, claims, suits, costs, expenses, including without limitation attorney's fees, and damages, both real and alleged, arising out of Member's use of the Fitness Center, including but not limited to attorney's fees, whether or not any legal action is instituted, and/or any act, omission, negligence or malfeasance of the Member. The provisions of this section shall survive the expiration and any termination of this Agreement.

8. **Personal Property:** Each Member is responsible for his or her own personal belongings while using the Fitness Center. Although daily use lockers are provided for the use and convenience of Member, Owner and Manager shall not be responsible for damaged, lost or stolen articles of clothing or any other personal property of Member while in the Fitness Center, and Member waives any claim for loss of personal property while using the Fitness Center, even if such property is located in a daily use locker. The daily use lockers are provided for use ONLY while Member is using

the Fitness Center, and Member shall remove all personal possessions from the lockers while Member is not using the Fitness Center. Any property left in a daily use locker by Member after Hours of Operation of the Fitness Center shall be deemed abandoned, and Manager may remove or dispose of such Property at Manager's sole discretion with no advance warning.

9. **Rules & Regulations:** Member agrees to abide by all Building rules and regulations, a copy of which will be produced upon request, in effect for the Building, and to conduct himself or herself in a quiet and well-mannered fashion when in or about the Fitness Center so as not to interfere with the enjoyment and effective use of the Fitness Center by other Members, or which would interfere with the use by tenants of the Building, their premises, or the common areas of the Building. Under no circumstance will Member use foul, loud, abusive or slanderous language, or harass, molest or badger other members. Member agrees that if present, all cell phones, pagers or similar devices will be turned to "vibrate" mode so as not to interfere with other Members use. Member agrees to use Fitness Center television or music system, or personal music devices only with headphones, and volume must be turned to a level that would not interfere with other Members' use of Fitness Center. Member agrees to abide by all rules and regulations implemented by Manager or Owner use of the Fitness Center, and all of the terms and conditions contained herein. Manager and Owner reserve the right to amend or add to the rules and regulations of the Fitness Center as they deem necessary for the proper management of the Fitness Center, and to terminate this Agreement and cancel any and all rights to use the Fitness Center, should Member fail to abide by such rules and regulations or the terms and conditions of this Agreement. Manager and Owner decisions on all issues involving the Fitness Center shall be final.

10. **Operation of Equipment:** Membership includes use of all of the Fitness Center's facilities. Manager or Owner shall have the right to add, change, remove, move, eliminate or modify the equipment, facilities or services in the Fitness Center in any manner deemed necessary. Member agrees to operate the equipment located in the Fitness Center properly and to avoid careless or dangerous use of the equipment. Under no circumstances shall Member move exercise equipment in any manner not authorized in writing by Manager. Member agrees to immediately report to Manager any malfunction, problem or damage to the equipment. Towels and soap are not provided by the Fitness Center and are the responsibility of the Member for his or her personal use.

11. **No Guest:** No guests will be allowed in the Fitness Center. Any and all persons using the Fitness Center must be employed by a company that has a valid lease at the Building. Membership does not include any family members or personal trainers. Any violation of this rule is cause for immediate membership termination.

12. **Non-Transferability:** This membership may no be transferred or assigned by Member for any reason whatsoever and is for Member's individual and sole use only.

13. **Attire:** Member is expected to wear appropriate athletic attire while using the Fitness Center that is consistent with the Fitness Center being located in a Class "A" Office Building. Leotards, tights, sweat suits, gym shorts and suitable tops are acceptable. Men are required to wear a shirt. Men and women are required to wear socks and soft-soled gym shoes at all times in the exercise area. Member shall not loiter or use the lobby area of the Building while using the Fitness Center, except when entering and exiting the building.

14. **Food, Beverages and Smoking:** THERE SHALL BE NO SMOKING, EATING, OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN ANY PART OF THE FITNESS CENTER. With the exception of plastic water or sport drink bottles, no beverages are permitted in the Fitness Center, and no food or glass containers of any kind are permitted in the Fitness Center.

15. **Notices:** Any notice or other communication required or permitted to be given under this Agreement must be in writing and shall be effective when given or delivered if hand-delivered to the Member at the office of his Employer, and to the Manager/Owner at:

3399 PEACHTREE LLC  
3399 Peachtree Road, Suite 150  
Atlanta, Georgia 30326  
Attention: General Manager

Member has read and understands the foregoing waiver of liability and assumes all risk associated with the activities stated herein, and by Member's signature below, agrees that he or she understands and shall abide by the terms and conditions of this Agreement.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Printed Name of Member

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