

## Liability Release, Indemnity and Waiver

The parties to this Release are \_\_\_\_\_ (“Indemnitor”) and FSP 1999 BROADWAY, LLC, a Delaware limited liability company (“Hines”). The Indemnitor is choosing to use the facilities and to participate in the programs and activities of the Fitness Club (“Club”). As a condition to being permitted to use the Club, Hines is requiring the Indemnitor to execute this instrument and is relying upon the representations and agreements of the Indemnitor in this instrument in choosing to permit the Indemnitor to use the Club.

**Assumption of Risk.** Indemnitor expressly understands and agrees that use of the Club may be of a hazardous nature and may include physical and/or strenuous exercise or activity, and that participating in Club programs or use of Club facilities presents risks to Indemnitor both serious and minor, including but not limited to personal property damage, illness, head or other injuries, loss of sight, broken bones, brain damage, paralysis and death. Indemnitor understands and agrees that part of the risk involved in undertaking any activity or program is relative to Indemnitor’s own state of fitness or health (physical, mental, or emotional), and to the awareness, care, and skill in which Indemnitor conducts himself or herself in that activity or program. Indemnitor understands and agrees that : (i) physical activity includes but is not limited to stretching, walking, running, lifting, pushing, bending, endurance training, physical contact, jumping, twisting, personal interaction, and increased heart rate; and (ii) he or she may experience potential health risks including but not limited to transient lightheadedness, faintness, abnormal blood pressure, chest discomfort, leg cramps, nausea, sprains, joint problems, fractures, lacerations, and sports related injuries. Indemnitor also understands that the Club may be warmer than usual during the summer months, and Indemnitor will take the appropriate actions during abnormally hot days which include but are not limited to staying hydrated, monitoring his or her physical well-being, and participating at a moderate and reasonable level. Indemnitor is solely responsible for researching and evaluating the risks he or she may face and is responsible for his or her actions. Indemnitor further recognizes, understands and agrees that Hines and any operator of the Club assume no responsibility for any liability, damage, claim, expense or injury that may be caused by Indemnitor’s conduct committed prior to, during or after use of the Club, or for any liability, damage, claim, expense or injury caused by the conduct of any other user of the Club or caused by any other person.

**Indemnification and Hold Harmless.** Indemnitor understands that he or she is personally responsible and, for himself or herself and for his or her heirs, successors, personal representatives and assigns (collectively, the “Indemnifying Parties”) agrees to indemnify, defend and holds harmless Hines, its officers, managers, members, agents, representatives, volunteers, and employees, any operator of the Club, and their respective heirs, successors and assigns (collectively, the “Indemnitees”) from and against any action, liability, damage, claim or expense (including without limitation, attorneys fees) that any Indemnitee may incur or sustain, regardless of cause or fault, as a result of any use of the Club, its programs or facilities by the Indemnitor.

**Release of Claims.** In consideration of being allowed to use the Club, its programs and facilities, Indemnitor, on behalf of the Indemnifying Parties, hereby releases and discharges the Indemnitees from any and all claims which may arise from any cause whatsoever relating to use of the Club, its programs or facilities, including any negligent act or omission by any one or more of the Indemnitees. Indemnitor, on behalf of the Indemnifying Parties, further releases and discharges the Indemnitees from liability for any accident, illness, injury, loss or damage to personal property, or any other consequences arising or resulting directly or indirectly from Indemnitor's use of the Club, its programs or facilities. Indemnitor, on behalf of the Indemnifying Parties, acknowledges and agrees that the Indemnitees assume no responsibility for any liability, damage, action, claim, expense or injury that may be caused by Indemnitor's conduct committed prior to, during, or after use of the Club, its programs or facilities, or for any liability, damage, or injury caused by the conduct of any other user of the Club or caused by any other person.

**Rules and Regulations.** Indemnitor agrees to abide by all Club policies, rules, and regulations as may be in effect from time to time.

**Physical Condition and Insurance.** Indemnitor represents that he or she is physically capable of participating and has no known health restrictions that might jeopardize his or her safety or health or the safety or health of others during his or her use of the Club.

**Severability.** It is understood and agreed that if any provision of this instrument or the application thereof is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this instrument that can be given effect without the invalid provisions or applications. To this end, the provisions of this instrument are declared severable.

**Governing Law and Venue.** This release shall be construed in accordance with, and governed by, the internal laws of the State of Colorado without application of any conflict of laws provisions that would otherwise require or permit construction of this instrument under the laws of any other jurisdiction. The venue for any action arising out of this instrument shall only be in the federal or state district courts located in the City and County of Denver. The parties agree to submit to jurisdiction in the City and County of Denver, State of Colorado.

**Construction and Scope of Instrument.** The language of all parts of this instrument shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. This instrument is the only, sole, entire, and complete agreement of the parties relating in any way to the subject matter hereof. No statements, promises, or representations have been made by any party to any other, or relied upon, and no consideration has been offered or promised, other than as may be expressly provided herein. The Indemnitees are not bound by the statements of any person with respect to the contents of this instrument, including without limitation the statements of any employee or representative of the Club. This instrument supersedes any earlier written or oral understandings or agreements between the parties relating to the Club. Indemnitor acknowledges that he or she has read this release and that he or she understands its meaning and effect

INDEMNITOR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Date