

19- ✓ Fitness LLC
PO Box 37
Genoa NV 89411

DECLARATION OF ESTABLISHMENT
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND
GRANTS OF EASEMENTS

This DECLARATION is made this 8th day of March, 2000, by FITNESS LIMITED LIABILITY COMPANY.

RECITALS

WHEREAS, Company owns that certain real property located in the town of Minden, County of Douglas, Nevada (the "subject property"), more particularly described in Exhibit "A" attached hereto.

WHEREAS, Company desires to subject the subject property to the covenants, conditions and restrictions hereinafter set forth and to establish the appurtenant easements hereinafter described, pursuant to a general plan for the improvement of the Subject Property for the mutual benefit of the present and future owner(s) of the Subject Property and their respective heirs, successors, assigns, grantees, mortgagees, lessees, tenants and Subtenants, so that the subject property and portions thereof subsequently created (referred to herein as "parcels" shall each be subject to this Declaration and shall be encumbered and burdened by, and entitled to, the benefits of this Declaration. As used herein, an "Owner" shall be the free simple legal title holder of a Parcel or any portion thereof.

NOW, THEREFORE, Company declares that the subject property is hereby subjected to the covenants, conditions and restrictions hereinafter set forth and the easements hereinafter described.

1. **Establishment of Restrictions** - Company declares that each lot, parcel or any portion thereof comprising the subject property is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, conditions and covenants, all of which are declared to be in furtherance of Company's plan for the improvement and sale of such land and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the subject property in every part. All of the limitations, restrictions, conditions and covenants shall run with the land and shall be binding on all owners, entities or persons having or acquiring any right, title or interest in the subject property or any part thereof.

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2. **Easements for Ingress and Egress.** The Company hereby creates, and agrees to grant to subsequent holders of any interest in the subject property or any portions thereof, and similarly reserves therefrom, non-exclusive easements appurtenant to the subject property for the purpose of ingress and egress along the "common access drives" shown on Exhibit "B" attached hereto, and to the respective parcels and the public streets adjoining said parcels.

(a) **Restricted Access to Mahogany Drive:** The ingress and egress of vehicular traffic is restricted to the common access driveway accessing Mahogany Drive. No other direct vehicular access to Mahogany Drive is permitted.

3. **Common Access Drives: Improvement, Maintenance and Repair, Insurance and Real Property Taxes.**

(a) **Common Access Drives Improvements.** Each Owner of a Parcel located within subject project on which a portion of the Common Access Drives is located shall improve such portion of the Common Access Drives with concrete curbs and gutters and asphalt surfacing, pursuant to detailed plans and specifications available from the Company, Fitness LLC, P.O. Box 37, Genoa, Nevada 89411.

(b) **Common Access Drives Maintenance and Repair.** Each Owner of a parcel (or any portion thereof), shall keep Common Access Drives located on its Parcel in good condition and repair, clean and free of rubbish and other hazards to persons using such areas. The maintenance of the Common Access Drives required by this Declaration shall include, without limitation, the following items:

(i) Maintenance of the surface of the common Access Drives so as to be level, smooth and evenly covered with asphalt or any other type of surfacing material originally installed on such, or such substitute as will in all respects be equal to it in quality, appearance and durability;

(ii) Removal of all paper, debris, litter, filth, refuse and obstructions from the Common Access Drives, and washing or thoroughly sweeping the Common Access Drives;

(iii) Cleaning of lighting fixtures located within the Common Access Drives, as necessary, and relamping of lighting fixtures within three (3) days after burnout; and

(iv) Repainting of striping, markers, and directional signs as reasonably necessary, but in no event less often than every five (5) years.

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(c) **Common Access Drives Insurance.** Each Owner Shall insure the Common Access Drives located on its Parcel against occurrences giving rise to liability to the other Owners according to general all risk liability Policies in an amount acceptable to the Owners, as determined pursuant to Section 12 (k) hereof. Each Owner shall name each additional Owner and their respective tenants as "additional insured" under each such insurance Policy required to be maintained by the terms of this Declaration. Until decided by the Owners to the contrary, One Million Dollars (\$1,000,000) of liability insurance shall be carried with respect to the liability of the Owners for the Common Access Drives.

(d) **Common Access Drives Real Property Taxes.** Each Owner of a Parcel (or any portion thereof) shall be responsible for the payment of all taxes and assessments levied against Its own Parcel, including such portions of the Common Access Drives as are located thereon, without the right to reimbursement or contribution by any other owner of a Parcel.

(e) **Breach of Obligation by an Owner.** If any Owner neglects or refuses to perform its obligations contained in this or any other Section of this Declaration within ten (10) days after delivery of a Written notice setting forth such default, any other Owner may perform such obligations and shall be entitled to receive from the defaulting Owner its apportioned share of the cost of curing such default. Such apportioned share shall be due and payable within ten (10) days of the delivery of a bill and if not paid, the Owner advancing such costs shall be entitled to recover from the defaulting Owner the amount of such bill, including interest thereon at the maximum legal rate from the date originally due until the date paid, together with reasonable collection costs, including attorneys' fees. A lien shall be imposed on the property of any defaulting Owner for the amount of such cost, to secure payment of the bill and such lien may be foreclosed as provided at law or in equity.

4. **Minimum Parking Requirements.** No building or other improvement will be constructed or maintained on any Parcel, unless and until provision is made for the construction and maintenance of motor vehicle parking areas on such Parcel sufficient to comply with the minimum requirements of governmental agencies having jurisdiction in the matter, without the need for a variance.

5. **Maintenance of Unimproved Parcels.** All Parcels (or portions thereof) which have not been improved with buildings shall be kept by the Owner neat, orderly, and free of any and all debris, weeds, trash or unsightly material until improved and constructed and in compliance with all requirements imposed by local governmental agencies. All Parcels, including unimproved Parcels, shall be maintained by the Owner thereof so as to control and suppress the likelihood of dust being generated from such Parcel. Such dust control measures shall include

those measures reasonably necessary to limit the creation of dust, including, but not limited to, hydration or the application of other liquid or spray, or the planting of ground cover.

6. **Maintenance and Repair of Improved Parcels** Each Owner shall maintain, or cause to be maintained, the exterior of buildings from time to time located on such Owner's Parcel, in good repair, clean condition, and free of trash and debris. Each Owner shall maintain all landscape and hardscape in a clean, neat and orderly fashion, free of all dirt and debris.

(a) **Damage to Improvements.** In the event any building, structure or other improvement on a Parcel shall be damaged or destroyed by any casualty, the Owner, lessees or user of the Parcel shall promptly:

(i) repair and/or reconstruct such improvement to the condition which existed prior to the damage or destruction, or

(ii) level such improvement, remove the debris from the Parcel and keep the Parcel neat and orderly as required by Section 5, until subsequently improved

(b) **Insurance of Improvements.** At all times during the term of this Declaration, each Owner of a Parcel shall keep improvements on its respective Parcel insured at its sole cost and expense against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in Nevada, with such insurance to be for the full replacement cost of the insured improvements, with a deductible no greater than ten percent (10%) of replacement costs. An Owner (or an owner's tenant with a contractual obligation of repair or rebuild in the event of damage or destruction) may satisfy the insurance requirements of this Section 6(b) through a blanket insurance Policy or policies.

(i) Each Owner shall provide to each other Owner certificates, upon written request, evidencing the fact that the requisite insurance has been obtained.

(ii) Each Owner for itself and its Property insurer, shall release each other Owner and their proper insurers from and against any and all liabilities, claims, causes of action, obligations, demands, damages, losses, costs, or expenses, including attorneys' fees and costs, for damage to the other Owner's Property or loses of rents or profits of such owner resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by intentional action, negligence or contributory negligence of the Owner

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being released or by any officer, agent, employee or associate of the Owner being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing Owner is obligated hereunder to carry, or, if the releasing Owner is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing Owner were carrying that insurance.

7. **Maintenance and Repair of on-site Drainage Facilities** Each Owner is responsible for its pro-rata share of the Maintenance of all on-site drainage facilities and appurtenances, including any and all sand-oil interceptors. (The "Drainage Improvements"). The Town of Minden shall have the right of entry to effect Maintenance or repairs to the Drainage Improvements not completed by the Owner. Any repairs or maintenance that the Town of Minden requests shall be directed to the owners in the form of a work order with a detailed scope of work and estimate of charges. The Owner will either advise within ten (10) days of receipt of the work scope and estimate of charges from the Town of Minden that the Owner will perform the work itself or agree to have the Town of Minden perform the work. Should the Owner not respond to the notice within ten (10) days, then that will act as acceptance to the Town of Minden proposal. Should the Owner accept the work scope, the work shall be performed promptly. Should the Town perform the work, it shall bill the Owner(s) with the right to lien the Property owners for the cost of said Maintenance and repairs. This provision may not be amended, modified or terminated without the prior written approval of the Town of Minden, which approval may not be unreasonably withheld.

8. **Reservation of Utility Easements.** There is hereby granted and reserved non-exclusive easements over each Parcel comprising the Subject Property for the installation, maintenance, repair and operation of public utility Services to any buildings or structures now or hereafter situated on any Parcel comprising the Subject Property, including, but not limited to, electricity, gas, telephone, cable television, sewer, water and drainage facilities, together with the right to grant the same. All such facilities and/or installation shall be constructed even with or below the surface of the ground and shall be located within the area designated on Exhibit "C" as the "Utility Easements", unless the Owners of the affected Parcels mutually agree on a different location. To the extent that any of the above permitted installations are required to be located above the surface, then such installations shall be located so that there shall be an unimpeded access for vehicles and trucks to and from public streets from and to any buildings situated on any Parcel comprising the Subject Property. In no event, however, shall such facilities be located in such a manner as to hinder or impede the other uses and/or maintenance of any portion of the Common Access Drives provided for in this Declaration. No other Owner shall be obligated to pay for the provision or delivery of utilities to another Owner's Parcel, unless such Owners have entered into an explicit written agreement which allocates such obligation.

9. **Eminent Domain.**

(a) **Owner's Right to Award.** Nothing herein shall be construed to give any Owner any interest in any award of payment made to the other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting such other Owner's Parcel or giving the public or any government any rights in said parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Access Drives, the award attribution to the land and improvements of such portion of the Common Access Drives shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Access Drives.

(b) **Collateral Claims.** All other Owners of Parcels may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another Owner.

(c) **Restoration of Common Access Drives.** The Owner of any portion of the Common Access Drives or other improvements to a Parcel so condemned shall promptly repair and restore the remaining portion of the Common Access Drives and the improvement to its Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

10. **Mechanics Liens.** In the event any mechanics liens are filed against a Parcel of any Owner, the Owner permitting or causing such lien to be filed shall be obligated either to pay the same and have it discharged of record, promptly, or to take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from such Parcel, and in all events such Owner shall have such lien discharged prior to the entry of judgment for foreclosure of such lien.

11. **Term and Termination.**

(a) The covenants, conditions and restrictions contained in this Declaration shall run with the land and shall be binding upon each and all of the Owners of any part thereof and upon all persons claiming under them. Any easements granted or reserved herein regarding ingress, egress and utility installations shall be perpetual and shall not be affected by a termination of this Declaration.

(b) This Declaration may be canceled, changed, modified or amended in whole or in part only by a written and recorded agreement executed by all or the then record fee Owners of all of the lots or Parcels subject to this Declaration. Any such cancellation, change, modification or amendment to this Declaration shall not require the consent or execution by any mortgagee, lessee or subtenant.

(c) This Declaration, executed as of the date hereof shall take effect only upon, from and after its recording in the office of the County Recorder of Douglas County.

12. **Miscellaneous Provisions,**

- (a) Each and all of the foregoing covenants, conditions and restrictions:
- (i) shall apply to and bind the Owners of the Parcels subject to this declaration and each and all of the Owners of any and all portions of the Subject Property and each and all of their respective heirs, successors, assigns, grantees, mortgagees, tenants and subtenants;
 - (ii) are hereby imposed pursuant to a general plan for the improvements and use of the Subject Property and are designed for the mutual benefit of said Owners, tenants and occupants of any and all portions thereof; and
 - (iii) shall obligate, inure to and pass with each and every Parcel comprising the Subject Property or any portion thereof and shall remain in force and effect as hereinafter provided.

(b) The legal description of each of the Parcels shall be deemed to include any and all rights, title and interest in that portion of the street, roadway, highway or other public right-of-way abutting or bounding each of said Parcel now or hereafter owned by all persons or other entities who may own said Parcel or any portion thereof or any interest therein and the respective heirs, successors, assigns, grantees, mortgagees, tenants and subtenants thereof. Accordingly, such right, title and interest shall be, in all respects, subject and subordinate to the covenants, conditions and restrictions established by and the easements granted in this Declaration

(c) Breach of any of the covenants or restrictions contained in this Declaration shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Subject Property or any part thereof; but, all of the foregoing provisions, restrictions and covenants shall be binding and effective against any Owner of any Parcel subject to this Declaration or any part thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise. The term "mortgagee"

wherever used herein shall be construed to include beneficiaries and trustees under deeds of trust.

(d) Any person or persons owning or holding any portion of the Subject Property may prosecute any proceedings at law or in equity against any person or entity violation or attempting to violate any of the covenants, conditions and restrictions herein and either prevent it, him or them from so doing and to recover damages from or on account of such violation.

(e) Invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions hereof, and the same shall remain in full force and effect.

(f) This Declaration shall create privity of contracts and estate with and among all Owners and grantees of all or any part of the Subject Property and their respective heirs, executors, administrators, successors, assigns, mortgagees, tenants and subtenants thereof. In the event of a breach of attempted or threatened breach by any Owner of any part of the Subject Property of any of the terms, covenants and conditions hereof, any one or all such other Owners or a Parcel subject to this Declaration shall be entitled forthwith to full and adequate relief by injunction and all such other available legal and equitable remedies from the consequence of such breach. All costs and expenses of any such suit or proceedings, including attorneys' fees as hereinafter provided, shall be assessed against the defaulting Owner until paid, effective upon recording notice thereof in the Office of the Douglas County Recorder, but any such lien shall be subordinate to any bona fide mortgage or first deed of trust covering any portion of the Subject Property and any purchaser at any foreclosure or trustee's sale (as well as any grantee under a deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such lien, but, otherwise, subject to the provisions hereof. The remedies permitted at law or equity of any one or all such owners specified herein shall be cumulative as to each and as to all.

(g) In the event that suit is brought for the enforcement of this Declaration or as the result of any alleged breach thereof, the prevailing party to such suit shall be entitled to be paid reasonable attorneys' fees and costs by the losing party, and any judgment or decree rendered shall include an award thereof.

(h) The captions heading the various sections of this Declaration are for convenience and identification only and shall not be deemed to limit or define the contents of their respective sections.

(i) All the provisions of this Declaration shall be covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the subject property or any part thereof [A] is for the benefit of the land of the covenantee, [B] runs with both the land owned by the covenantor and the land owned by the covenantee, and [C] shall benefit or be binding upon each successive Owner during its ownership of any portion of the land affected hereby.

(j) The provisions of this Declaration shall not be deemed to constitute a dedication for public use nor to create any rights in the general public.

(k) whenever any action or decision may be taken by the Owner pursuant to this Declaration [including modification of the minimum liability insurance applicable to the Common Access Drives pursuant to section 3(c)] such action or decision must be consented to by Owners of fee simple interest who hold, in the aggregate, more than fifty percent (50%) of the area of the subject property. Portions of subject property dedicated or otherwise transferred to a public body shall not be included within the subject property for purposes of this determination nor will such public or quasi-public body be entitled to vote on such action or decision.

IN WITNESS WHEREOF, this Declaration is executed by the undersigned as of the day and year first above written.

FITNESS, LLC., a Nevada Limited Liability Company

Gregory Painter

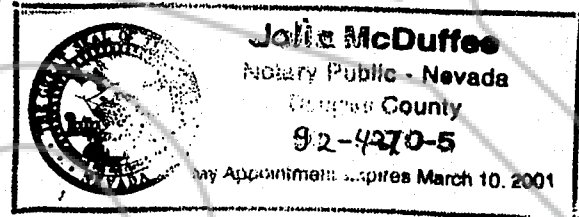
Gregory Painter, Managing Member

Subscribed and sworn to before me this

10th day of March, 2000

My Commission Expires: March 10, 2001

Jolie McDuffee
Notary Public



Patrick Fagen

Patrick Fagen, Managing Member

Subscribed and sworn to before me this

10th day of March, 2000

My Commission Expires: March 10, 2001

Jolie McDuffee
Notary Public

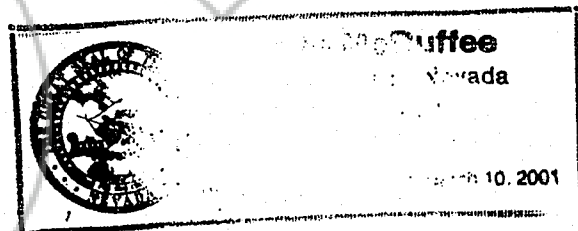


EXHIBIT "A"

DESCRIPTION

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of the Southwest 1/4 of Section 30, Township 3 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Parcel 2A as set forth on Parcel Map LDA 97-056 for PATRICK FAGEN, etal, filed for record in the Office of the County Recorder of Douglas County, State of Nevada, on March 25, 1998, in Book 398, Page 5528, as Document No. 435764.

A.P.N. 1320-30-411-002

OLD A.P.N. 17-330-070

COOPY

COOPY

A.P.N. 1320-31-410-013
TOWN OF MINDEN



COMMON ACCESS
DRIVE AREA

EXISTING 60' R/W
PER DOC. NO. 289447

EXISTING 20' STORM
DRAINAGE/IRRIGATION
MAINTENANCE EASEMENT
PER DOC. NO. 376827 & PER
DOC. NO. 461986

BASIS OF BEARING
S68°09'00"E

MAHOGANY
DRIVE

618.68'

S68°09'00"E

DRIVE

RESTRICTED ACCESS AREA

△ = 07°30'17"
L = 530.00'
R = 69.42'
T = 34.76'

A.P.N. 1320-30-411-001
ITILDO, INC.
WESTWOOD
VILLAGE NO. 5

184.62'

161.05'

N00°02'36"E

23.57'

N89°57'24"W

PARCEL 2A-1

245.72'

A.P.N. 1320-31-411-003
RIVERBEND RECREATION

20' NONBUILDABLE
FLOOD CONTROL
EASEMENT PER
DOC. NO. 435764

EXISTING BUILDING

A.P.N. 1320-31-000-001
DANGBERG HOLDINGS
NEVADA

226.93'

S00°02'36"W

PARCEL 2A-2

231.48'

S00°02'36"W

PRIVATE RECIPROCAL
DRAINAGE EASEMENT PER
BK. 398, PG. 5529

N89°57'24"W

240.00'

SCALE: 1" = 50'



EXHIBIT B
COMMON ACCESS DRIVE EASEMENT
FITNESS, LLC 0490760

1624 10th STREET • P.O. BOX 2294 • MINDEN, NV 89423
PH. (775) 782-2322 FAX (775) 782-7084
EMAIL: ROA@ROANDERSON.COM

03/08/00
48805EXB

BK0400PG5246

COPY

REQUESTED BY
Fitness LLC
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2000 APR 27 PM 2:33

LINDA SLATER
RECORDER

\$19⁰⁰ PAID *ka* DEPUTY

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BK0400PG5247