

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM443717

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Cornerstone Fitness - Texas LLC		09/19/2017	Limited Liability Company: TEXAS
RECEIVING PARTY DATA			
Name:	Merion Investment Partners III, L.P.		
Street Address:	555 East Lancaster Avenue, Suite 500		
City:	Radnor		
State/Country:	PENNSYLVANIA		
Postal Code:	19087		
Entity Type:	Limited Partnership: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	4573688	TRU FIT ATHLETIC CLUBS	
Registration Number:	4744227	I2T	
CORRESPONDENCE DATA			
Fax Number:	3105647794		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	4242147052		
Email:	ip@sycr.com		
Correspondent Name:	Dayan Rosen		
Address Line 1:	100 Wilshire Blvd., Fourth Floor		
Address Line 4:	Santa Monica, CALIFORNIA 90401		
ATTORNEY DOCKET NUMBER:	104982-0000		
NAME OF SUBMITTER:	Dayan Rosen		
SIGNATURE:	/Dayan Rosen/		
DATE SIGNED:	09/19/2017		
Total Attachments: 10			
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THIS INSTRUMENT OR AGREEMENT IS SUBJECT TO THE TERMS OF A SUBORDINATION AND INTERCREDITOR AGREEMENT DATED AS OF SEPTEMBER 19, 2017 IN FAVOR OF COBIZ BANK, A COLORADO CORPORATION, D/B/A COBIZ STRUCTURED FINANCE (OR ITS SUCCESSORS AND ASSIGNS AS PERMITTED BY SUCH SUBORDINATION AND INTERCREDITOR AGREEMENT), AS THE SAME MAY FROM TIME TO TIME BE AMENDED, MODIFIED, EXTENDED, RENEWED OR RESTATED, AND THE AGENT OR LENDER PARTY TO THIS INSTRUMENT OR AGREEMENT SHALL BE BOUND BY THE PROVISIONS OF SUCH SUBORDINATION AND INTERCREDITOR AGREEMENT.

PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this “Agreement”), dated as of September 19, 2017, is made by and between **Cornerstone Fitness – Texas LLC**, a Texas limited liability company having a business location at the address set forth below next to its signature (together with its successors and permitted assigns, “Borrower”), and **Merion Investment Partners III, L.P.**, a Delaware limited partnership, as agent (the “Agent”) for one or more lenders (such lenders, with the participants, successors and assigns of such lenders, collectively, “Lender”), having a business location at the address set forth below next to its signature.

Recitals

Borrower, Agent and Lender are parties to a Senior Subordinated Loan and Security Agreement (as amended, modified, supplemented or restated from time to time, the “Loan Agreement”) of even date herewith, setting forth the terms on which Lender may now or hereafter extend credit to or for the account of Borrower.

As a condition to extending credit to or for the account of Borrower, Agent has required the execution and delivery of this Agreement by Borrower.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement that are not otherwise defined herein shall have the meanings given to them in the Loan Agreement. In addition, the following terms have the meanings set forth below:

“Patents” means all of Borrower’s right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

“Security Interest” has the meaning given in Section 2.

“Trademarks” means all of Borrower’s right, title and interest in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with

each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, and (iv) licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. Borrower hereby irrevocably pledges and assigns to, and grants Agent, on behalf of itself and Lender, a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations, provided that, Patents and Trademarks shall not in any event include Excluded Property. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of Borrower, other than Excluded Property. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. Borrower represents, warrants and agrees as follows:

(a) Existence; Authority. Borrower is a duly organized limited liability company, validly existing under the laws of its state of organization, and this Agreement has been duly authorized by all necessary action on the part of Borrower.

(b) Patents. Other than Available Software, Exhibit A accurately lists all Patents owned or controlled by Borrower as of the date hereof, or to which Borrower has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Borrower owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A (other than Available Software), then Borrower shall provide, concurrently with any update provided by Borrower pursuant to the Loan Agreement with respect to Schedule 5.15 to the Loan Agreement, written notice to Agent with a replacement Exhibit A, which upon acceptance by Agent shall become part of this Agreement.

(c) Trademarks. Other than Available Software, Exhibit B accurately lists all Trademarks owned or controlled by Borrower as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list (i) common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Borrower's business(es) or (ii) Available Software. If after the date hereof, Borrower owns or controls any Trademarks not listed on Exhibit B (other than (i) common law marks which are not material to Borrower's business(es) and (ii) Available Software), then Borrower shall promptly provide, concurrently with any update provided by Borrower pursuant to the Loan Agreement with respect to Schedule 5.15 to the Loan Agreement, written notice to Agent with a replacement Exhibit B, which upon acceptance by Agent shall become part of this Agreement.

(d) [Reserved.]

(e) Title. Borrower has valid title to or valid licenses to use each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. Borrower (i) will have, at the time Borrower acquires any rights in Patents or Trademarks hereafter arising, valid title to or valid licenses to use each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) No Sale. Except as permitted in the Loan Agreement, Borrower will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Agent's prior written consent.

(g) Defense. Borrower will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks, in each case which are material to the operation of the Borrower's business, against all claims or demands of all Persons other than those holding Permitted Liens.

(h) Maintenance. Borrower will at its own expense maintain the Patents and the Trademarks, in each case, to the extent such Patents and Trademarks are material to the operation of the Borrower's business, including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals with respect to letters patent, trademark registrations and applications therefor, in each case to the extent it is commercially reasonable to do. Borrower covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark which is material to the operation of the Borrower's business, nor fail to file any required affidavit or renewal in support thereof, without first providing Agent: (i) sufficient written notice, of at least 30 days, to allow Agent to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks which are material to the operation of the Borrower's business, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(i) Agent's Right to Take Action. If Borrower fails to perform or observe any of its covenants or agreements set forth in this Section 3, or if Borrower notifies Agent that it intends to abandon a Patent or Trademark which is material to the operation of the Borrower's business, Agent may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Borrower (or, at Agent's option, in Agent's own name) and may (but need not) take any and all other actions which Agent may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(j) Costs and Expenses. Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Borrower shall pay Agent's reasonable costs and expenses incurred in connection with this Agreement and its enforcement to the extent and in accordance with Section 10.3 of the Loan Agreement.

(k) Power of Attorney. To facilitate Agent's taking action under subsection (i) and exercising its rights under Section 6, Borrower hereby irrevocably appoints (which appointment is coupled with an interest) Agent, or its delegate, as the attorney-in-fact of Borrower with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Borrower, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Borrower under this Section 3, or, necessary for Agent, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the cash payment in full and performance by Borrower of all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted).

4. Borrower's Use of the Patents and Trademarks. Borrower shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. Events of Default. The occurrence of an Event of Default, as defined in the Loan Agreement, shall constitute an event of default under this Agreement (herein called "Event of Default").

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, Agent may, at its option, take any or all of the following actions:

(a) Agent may exercise any or all remedies available under the Loan Agreement.

(b) Agent may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) Agent may enforce the Patents and Trademarks and any licenses thereunder, and if Agent shall commence any suit for such enforcement, Borrower shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (other than conflict laws).

8. Severability of Invalid Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9. Duplicate Originals; Counterpart Execution. Two or more duplicate originals of this Agreement may be signed by the parties, each duplicate of which shall be an original but all of which together shall constitute one and the same instrument. This Agreement may be executed in several counterparts, without the requirement that all parties sign each counterpart. Each of such counterparts shall be an original, but all counterparts together shall constitute one and the same instrument. The delivery of an executed counterpart of a signature page to this Agreement by telecopier or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement. Borrower shall promptly send its original of each counterpart to Agent, but Borrower's failure to do so shall not affect the validity, enforceability, and binding effect of this Agreement. Agent may execute this Agreement if appropriate for the purpose of filing, but the failure of Agent to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement.

10. WAIVER OF JURY TRIAL. EACH OF BORROWER AND AGENT WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, BETWEEN AGENT AND BORROWER ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith. BORROWER AND AGENT HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

11. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Agent. A waiver signed by Agent shall be effective only in the specific instance and for the specific purpose given. No course of dealing or delay or failure to assert any Event of Default shall constitute a waiver of that Event of Default or of any prior or subsequent Event of Default. All rights and remedies of Agent are cumulative and not exclusive of any other rights or remedies, and shall be in addition to every other right, power, and remedy that Agent may have, whether specifically granted herein or hereafter existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Agent may deem expedient in its sole discretion. All notices to be given to Borrower under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. Agent shall not be obligated to preserve any rights Borrower may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of the Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Borrower and Agent and their respective participants, successors and assigns and shall take effect when signed by Borrower and delivered to Agent, and Borrower waives notice of Agent's acceptance hereof. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Borrower shall have the same force and effect as the original for all purposes of a financing statement. All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and shall continue in effect so long as any Obligation (other than contingent indemnification obligations to the extent no claim giving rise thereto has


been asserted) is outstanding, unpaid, or unperformed, notwithstanding any termination of this Agreement or any other Loan Document.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

Cornerstone Fitness – Texas LLC
1201 E. Ridge Rd. Ste E
McAllen TX 78503
Attention: Tony Dahmen, CEO
Email: tdahmen@clubtrufit.com

CORNERSTONE FITNESS – TEXAS LLC

By: 
Name: Tony Dahmen
Title: _____

with copies (which shall not constitute notice)
to:

Cornerstone Fitness – Texas LLC
3300 E. 1st Avenue
Denver, CO 80206
Attention: David Duro
Email: dduro@clubtrufit.com

Cornerstone Fitness – Texas LLC
1201 E. Ridge Rd. Ste E
McAllen TX 78503
Attention: Matt Kraus
Email: Mkraus@celeritypartners.com

Merion Investment Partners III, L.P.
555 East Lancaster Avenue
Suite 500
Radnor, PA 19087
Attn: Anthony Caringi

**MERION INVESTMENT PARTNERS III,
L.P.**

By: Merion Financial Partners III, L.P.
Its: General Partner

By: Phineas Management, LLC
Its: General Partner

By: _____
Name: Anthony Caringi
Title: Member

Signature Page to Patent and Trademark Security Agreement (Subordinated)

**TRADEMARK
REEL: 006156 FRAME: 0911**

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

Cornerstone Fitness -- Texas LLC
1201 E. Ridge Rd. Ste E
McAllen TX 78503
Attention: Tony Dahmen, CEO
Email: tdahmen@clubtrufit.com

CORNERSTONE FITNESS -- TEXAS LLC

By: _____
Name: _____
Title: _____

with copies (which shall not constitute notice)
to:

Cornerstone Fitness -- Texas LLC
3300 E. 1st Avenue
Denver, CO 80206
Attention: David Duro
Email: dduro@clubtrufit.com

Cornerstone Fitness -- Texas LLC
1201 E. Ridge Rd. Ste E
McAllen TX 78503
Attention: Matt Kraus
Email: Mkraus@celeritypartners.com

Merion Investment Partners III, L.P.
555 East Lancaster Avenue
Suite 500
Radnor, PA 19087
Attn: Anthony Caringì

**MERION INVESTMENT PARTNERS III,
L.P.**

By: Merion Financial Partners III, L.P.
Its: General Partner

By: Phineas Management, LLC
Its: General Partner

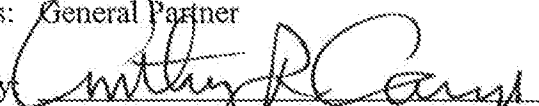
By: 
Name: Anthony Caringì
Title: Member

EXHIBIT A

UNITED STATES ISSUED PATENTS

<u>Title</u>	<u>Patent Number</u>	<u>Issue Date</u>
NONE		

UNITED STATES PATENT APPLICATIONS

<u>Title</u>	<u>Serial Number</u>	<u>Filing Date</u>
NONE		

FOREIGN ISSUED PATENTS

<u>Title</u>	<u>Country</u>	<u>Patent Number</u>	<u>Issue Date</u>
NONE			



FOREIGN PATENT APPLICATIONS

<u>Title</u>	<u>Serial Number</u>	<u>Filing Date</u>
NONE		

EXHIBIT B

**UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS
AND COLLECTIVE MEMBERSHIP MARKS**

REGISTRATIONS

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
	4,573,688	July 22, 2014
	4,744,227	May 26, 2015

APPLICATIONS

<u>Mark</u>	<u>Application Number</u>	<u>Application Date</u>
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NONE

COLLECTIVE MEMBERSHIP MARKS

NONE

UNREGISTERED MARKS

NONE

Exh. B

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RECORDED: 09/19/2017

**TRADEMARK
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