

# EXHIBIT D

Leonard Gartner  
250 West 57<sup>th</sup> Street - Room 732  
New York, NY 10107

December 1, 1999

Cardio Ventures, LLC  
c/o Alan M. Swiedler, Esq.  
575 Lexington Avenue - 20<sup>th</sup> floor  
New York, NY 10022

Gentlemen:

**1. Subscription.** Subject to the terms and conditions hereof, the undersigned hereby irrevocably subscribes for and agrees to purchase a One and Five-Eighth Percent (1.625%) membership interest (the "Membership") in Cardio Ventures, LLC, a New York limited liability company, (the "Company") for the total sum of Fifty Thousand and 00/100 Dollars (\$50,000.00), and together with this Subscription Agreement delivers to the Company the said sum of \$50,000.00, receipt of which is hereby acknowledged, subject to collection and to acceptance of this Subscription by the Company as more fully set forth below.

**2. Receipt of Financial Statements.** I acknowledge that prior to the execution of this Subscription Agreement I received copies of the business proposals and *pro forma* financial statements (including budgeted revenue, expenses and profit analyses) of Innovative Sports Manhattan, LLC ("Innovative") and Cardio Fitness Center, Inc. ("Fitness"), the first two ventures in which the Company presently intends to invest, as well as copies of relevant legal documents relating to the businesses of both Innovative and Fitness and other information relevant to the formation, structure and officers of Innovative, Fitness and the Company.

**3. Representations and Warranties.** By executing this Subscription Agreement, I represent and warrant to the Company that:

(a) I have thoroughly read and understand the financial statements of Innovative and Fitness.

(b) I thoroughly understand the risks involved in the purchase of the Membership, including the highly speculative nature of the investments which the Company will undertake and the high degree of risk or

loss of my entire investment; financial risks involved in the investment; the lack of liquidity of the Membership; restrictions on transferability of the Membership; the background and qualifications of the principal Member/Managers and Officers of Innovative and the Company and the principal shareholders and executives of Fitness and the compensation payable to the executive officers of Fitness.

(c) I understand that any projections in the financial statements are estimates only, and there can be no assurance of their accuracy.

(d) I acknowledge that I have not engaged a "Purchaser Representative" (as defined in Regulation D promulgated by the Securities Act of 1933, as amended) in evaluating this investment.

(e) I acknowledge that I have had an opportunity (i) to ask questions of and receive answers from the principal Member/Managers and Officers of both Innovative and the Company and the principal shareholders and executives of Fitness concerning this investment; and (ii) to obtain any documents (contracts, reports, etc.) which I have requested to supplement or verify any of the matters referred to in the financial statements; and all such questions have been answered and all such documents have been furnished to my full satisfaction. I have heretofore received all such information as was deemed necessary and appropriate to evaluate the merits and risks inherent in this investment and to evaluate the business and financial affairs of Innovative, Fitness and the Company.

(f) My overall commitment to investments which are not readily marketable is not disproportionate to my net worth; my investment in the Membership will not cause such overall commitment to become excessive; I have adequate means of providing for my current needs and personal contingencies; I do not need liquidity in an investment in the Membership; I meet the applicable suitability standards and/or financial requirements set forth in Regulation D promulgated by the Securities Act of 1933, as amended; and, to the best of my knowledge, I qualify as an "Accredited Investor" (as defined in Regulation D promulgated by the Securities Act of 1933, as amended).

(g) I am purchasing the Membership for my own account or for the account or benefit of a member or members of my immediate family or in a fiduciary capacity for the account of another person or entity and not as an agent for another. I do not have any present intention of selling, offering to sell or otherwise disposing of or distributing my interest in the Membership.

(h) I understand that my purchase of the Membership may be completely exempt from registration by virtue of the availability of the so-called "private offering exemption" first announced by the U.S. Securities and Exchange Commission in Release No. 33-4552 dated November 6, 1962. I further understand that my purchase of the Membership sold by the Company hereunder will be qualified under the exemption provided by Section 4(2) of

the Securities Act of 1933, as amended (the "Act") and, if required, under Regulation D promulgated thereunder for transactions not involving a public offering.

(i) I am aware that this Subscription may be rejected in whole or in part by the Member/Managers of the Company in their sole and absolute discretion; that my investment, if accepted, is subject to certain risks and that there will be no public market for the Membership and, accordingly, it may not be possible for me readily to liquidate my investment in the Company.

(j) I have not received a representation, guaranty or warranty from any Member/Manager, shareholder, director, officer, employee or representative of Innovative, Fitness or the Company, or any of their agents, representatives or employees, or any other person, expressly or by implication, concerning any of the following: (i) the approximate or exact length of time that I will be required to remain as owner of the Membership; (ii) the percentage of profit and/or amount of or type of consideration, profit or loss (including tax write-offs and/or tax benefits) to be realized, if any, as a result of this venture and any investments to be made by the Company; or (iii) that the past performance or experience on the part of any of the Member/Managers principal shareholders, directors and/or executive officers, any securities broker or finder, their partners, salesmen, associates, agents or employees or of any other person, will in any way indicate the predictable results of the ownership of Membership or of the Investments by the Company in Innovative, Fitness or any other entity into which the Member/Managers of the Company may, in their sole discretion, elect to invest Company funds from time to time.

I acknowledge that the foregoing representations, warranties and undertakings are made with the intent that they be relied upon in determining my suitability as an Accredited Investor in the Company and I agree that such representations, warranties and undertakings shall survive my purchase of the Membership in the Company. I hereby agree to notify the Company immediately if any of the representations made by me herein shall become untrue.

4. Transferability. I agree not to transfer or assign this Agreement, or any interest herein; and further agree that I will not sell, assign, transfer or otherwise dispose of or encumber the Membership acquired pursuant hereto without registration under the Securities Act of 1933, as amended, or exemption therefrom and without compliance with all applicable laws.

5. Indemnification. I acknowledge and understand the meaning and legal consequences of the representations and warranties contained in Section 3. of this Subscription Agreement and hereby agree to indemnify and hold harmless the Company and each Member/Manager, shareholder, director, and executive officer of the Company, Innovative and Fitness from and against any and all loss, damage or liability due to or arising out of a breach of any

representation, warranty or acknowledgment made by me and contained in this Subscription Agreement.

**6. Adoption of Operating Agreement.** In the event the subscription is accepted, I hereby consent to and agree to execute a Operating Agreement in a form substantially as that delivered to me with this Subscription Agreement which will set forth the respective rights, duties and obligations of the members of the Company and which will contain, among other things, the restrictions placed upon the transferability of the Membership interest of the Company acquired pursuant hereto.

**7. Ownership Documents.** I further understand that legends may be placed on any certificates or other documents representing the Membership subscribed for hereunder. Such legends shall read as follows:

- (i) "ANY UNAUTHORIZED ASSIGNMENT OR TRANSFER SHALL BE VOID AB INITIO."
- (ii) "THE TRANSFER OF THE INTEREST IN THE LIMITED LIABILITY COMPANY REPRESENTED BY THIS DOCUMENT IS RESTRICTED BY THE OPERATING AGREEMENT OF THE LIMITED LIABILITY COMPANY, A COPY OF WHICH IS ON FILE AT THE OFFICE OF THE COMPANY."
- (iii) "THE MEMBERSHIP INTEREST IN THE LIMITED LIABILITY COMPANY REPRESENTED BY THIS DOCUMENT HAS BEEN PURCHASED BY MEANS OF A PRIVATE PLACEMENT EXEMPTION FROM FEDERAL SECURITIES REGISTRATION, PURSUANT TO SECTION 4(2) OF THE SECURITIES ACT OF 1933, AS AMENDED, AND, IF REQUIRED, REGULATION D PROMULGATED THEREUNDER. THIS SECURITY HAS NOT BEEN REVIEWED BY, OR REGISTERED WITH, THE SECURITIES AND EXCHANGE COMMISSION. THE MEMBERSHIP INTEREST IN THE LIMITED LIABILITY COMPANY REPRESENTED BY THIS DOCUMENT MAY NOT BE SOLD, ASSIGNED, TRANSFERRED OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY NOT A MEMBER OF THE COMPANY UNTIL THE SECURITY IS FIRST SUBJECT TO AN EFFECTIVE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR UNTIL AN OPINION OF COUNSEL ACCEPTABLE TO THE MEMBER/MANAGERS OF THE COMPANY HAS BEEN OBTAINED TO THE EFFECT THAT SUCH DISPOSITION DOES NOT VIOLATE ANY OF THE APPLICABLE PROVISIONS OF THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY OF THE REGULATIONS PROMULGATED THEREUNDER."

**8. Payment of Subscription Amount; Acceptance of Subscription.** I understand and agree that I am not entitled to cancel, terminate or revoke this subscription or any other agreements hereunder and that such

subscription and agreements shall survive the death or disability of the undersigned.

I understand that you are not obligated to accept this application, but if you do accept it, you will return to me a copy of this Subscription Agreement with the acceptance portion filled out below. I UNDERSTAND THAT ACCEPTANCE OF THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL ACCEPTED BY THE MEMBER/MANAGERS OF THE COMPANY AND UNTIL THE CONSIDERATION FOR THE SUBSCRIPTION EVIDENCED HEREBY HAS BEEN DULY PAID. If this application is not accepted, this Subscription Agreement and the consideration therefor will be returned to me.

9. Governing Law. This Subscription Agreement shall be construed in accordance with and governed in all respects by the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has executed and agrees to be bound by this Subscription Agreement on the day and year indicated below.

Dated: December 1, 1999

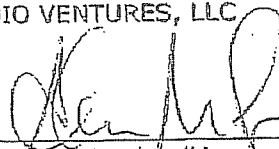
  
\_\_\_\_\_  
Leonard Gartner

Soc. Security # \_\_\_\_\_

SUBSCRIPTION FOR 1.625% MEMBERSHIP INTEREST ACCEPTED:

**REDACTED**

CARDIO VENTURES, LLC

By:   
\_\_\_\_\_  
Member/Manager

Dated: December 27, 1999