**Fill in this information to identify the case:**

Debtor 1 GOLD'S ST. LOUIS, LLC

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of Texas

Case number 20-31333

Official Form 410

# Proof of Claim

04/19

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy** (Form 309) **that you received.**

## Part 1: Identify the Claim

1. **Who is the current creditor?**

Aerobic (MO) LLC
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

**Where should notices to the creditor be sent?**

Kevin Driscoll c/o Barnes & Thornburg
Name

1 N Wacker Dr., #4400
Number Street

Chicago IL 60606
City State ZIP Code

Contact phone 312-214-8322

Contact email kevin.driscoll@btlaw.com

**Where should payments to the creditor be sent?** (if different)

_____
Name

_____
Number Street

_____
City State ZIP Code

Contact phone _____

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

GGI HOLDINGS POC
00132

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 2,065,566.82 . **Does this amount include interest or other charges?**
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Lease Rejection

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.
**Nature of property:**
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____
**Basis for perfection:** _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
**Value of property:** $_____
**Amount of the claim that is secured:** $_____
**Amount of the claim that is unsecured:** $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
**Amount necessary to cure any default as of the date of the petition:** $_____
**Annual Interest Rate** (when case was filed)_____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☐ No
☑ Yes. **Amount necessary to cure any default as of the date of the petition.** $ 109,113.64

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

| | Amount entitled to priority |
|---|---|
| ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $_____ |
| ☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | $_____ |
| ☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | $_____ |
| ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $_____ |
| ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | $_____ |
| ☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies. | $_____ |

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

## Part 3: Sign Below

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/06/2020
MM / DD / YYYY

Chris Hayes (KD)
Signature

**Print the name of the person who is completing and signing this claim:**

Name: Christopher (First name) D. (Middle name) Hayes (Last name)

Title: EXECUTIVE DIRECTOR

Company: AEROBIC (MO) LLC BY PUMP (MO) QRS 14-52, INC., ITS MANAGING MEMBER
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 50 Rockefeller Plaza
Number Street

New York (City) NY (State) 10020 (ZIP Code)

Contact phone (212) 492-1195 Email chayes@wpcarey.com

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

| | |
|---|---|
| In re: | Case No. 20-31318-hdh11 |
| GGI HOLDINGS, LLC, et al, | Chapter 11 |
| Debtors. | Jointly Administered |

## RIDER TO PROOF OF CLAIM OF AEROBIC (MO) LLC

**Background and Relevant Lease Documents**

1. On or about October 16, 2000, Aerobic (MO) LLC, through its predecessor in interest TC Fitness, Inc. ("Landlord") and 24 Hour Fitness, Inc. ("Original Tenant") entered into a commercial lease (the "Lease") for approximately 38,432 square feet at 1095 Regency Parkway, St. Charles, MO 63303 to be used as a health club (the "Premises"). A copy of the Original Lease is attached hereto as Exhibit A.

2. Original Tenant and Landlord executed a First Amendment to Lease (the "First Amendment") in December 2000 and a Second Amendment to Lease (the "Second Amendment") in February 2001. The First and Second Amendments are not pertinent to matters herein and are thus not attached, but copies will be provided upon request.

3. On June 15, 2016, Original Tenant assigned its rights under the Lease to Genesis Health Clubs of the Midwest, LLC who in turned assigned its rights under the Lease to Gold's St. Louis, LLC ("Gold's St. Louis").

4. Effective November 30, 2016, Landlord and Gold's St. Louis entered into a Third Amendment to Lease Agreement (the "Third Amendment"). A copy of the Third Amendment is attached here as Exhibit B.

5. Pursuant to the Third Amendment:

a) The term of the Lease was extended for a twelve year period, beginning on December 1, 2016 and ending on November 30, 2028.

b) Rent currently is $58,333.33 per month, or $700,000 per year, subject to increase with cost of living adjustments (capped at 8%) on December 1, 2020 and December 1, 2024. Using a 365-day year, the current per diem rent is $1,917.81.

c) Gold's Gym International, Inc. ("Guarantor") guarantied Tenant Gold's St. Louis's obligations under the Lease, as amended.[1]

6. Additionally, Tenant paid the real taxes associated with the Premises and was obligated to Landlord pay this obligation as Additional Rent pursuant to the Lease. 2019 taxes have been paid. The annual real estate tax for 2020 is $132,538.40, due and payable in a single installment on or before December 31, 2020. The per diem for the current real estate taxes is $363.12. Landlord reasonably estimates an annual 0.62% escalation in the cost of annual real estate taxes.

7. Tenant also paid property insurance associated with the Premises and was obligated to Landlord pay this obligation as Additional Rent pursuant to the Lease. The current annual premium for this insurance is $18,977. Landlord reasonably estimates a 3% annual escalation in the cost of this insurance.

8. Finally, Tenant was obligated to maintain the Premises pursuant to the Lease. Currently, Tenant is obligated to mill and repave the Premises' 300,000 square foot parking lot. Landlord has estimates showing this as a $750,000 project at $2.50/sf.

[1] Thus, two claims have been filed in these cases: against Tenant and against Guarantor.

**Tenant's Bankruptcy and Rejection of the Lease**

9. On May 4, 2020, Tenant, Guarantor and other related entities or affiliates filed their Chapter 11 petition (the "Petition Date").

10. On May 14, 2020, the Bankruptcy Court entered an Order authorizing the rejection of the Lease with an effective date of rejection being the later of (i) May 4, 2020; or (ii) the date the Debtors surrendered the Premises to Landlord by delivery of the keys or key codes or providing notice in writing that Landlord may take possession of the leased premises and change the locks.

11. Landlord never received any notice in writing from Debtor indicating that Landlord was authorized to take possession of the Premises and change the locks. Landlord received the keys on May 6, 2020 which date Landlord reserves the right to assert as the rejection date.

**Pre-Petition Rent and Taxes**

12. For pre-Petition Date obligations, Tenant is obligated to Landlord as follows:

| | |
|---|---|
| April Rent | $58,333.33 |
| May 1-3 Rent ($1,917.81 per diem) | $5,753.43 |
| Real Estate Taxes (January 1 to May 3, 2020) (124 days at $363.12) | $45,026.88 |
| Total Pre-Petition Obligations | $109,113.64 |

13. Thus, Landlord asserts $109,113.64 for its claim under 11 U.S.C. § 502(b)(6)(B).

**Rejection Damages**

14. For the rent portion of its claim pursuant to 11 U.S.C. § 502(b)(6)(A), Landlord asserts of claim of $1,003,899.02 based on:

| Post-Petition Rent | |
|---|---|
| Year | Amount |
| 2020* | $ 465,740.10 |
| 2021 | $ 756,000.00 |

| | |
|---|---|
| 2022 | $ 756,000.00 |
| 2023 | $ 756,000.00 |
| 2024** | $ 761,040.00 |
| 2025 | $ 816,480.00 |
| 2026 | $ 816,480.00 |
| 2027 | $ 816,480.00 |
| 2028*** | $ 748,440.00 |
| Total | $ 6,692,660.10 |
| 15% | $ 1,003,899.02 |

*210 days @ $1,917.81 (May 4, 2020 Petition Date to November 30, 2020) + December 2020 rent of $63,000 (8% rent escalation)
**11 months @ $63,000 plus December 2024 rent of $68,040 (8% rent escalation)
*** 11 months @ $68,040

15. For the Additional Rent claim for real estate taxes pursuant to 11 U.S.C. § 502(b)(6)(A), Landlord asserts of claim of $174,901.19 based on:

| Post-Petition Tax | |
|---|---|
| Year | Amount |
| 2020* | $ 87,511.92 |
| 2021 | $ 133,360.14 |
| 2022 | $ 134,186.97 |
| 2023 | $ 135,018.93 |
| 2024 | $ 135,856.05 |
| 2025 | $ 136,698.36 |
| 2026 | $ 137,545.88 |
| 2027 | $ 138,398.67 |
| 2028** | $ 127,431.02 |
| Total | $ 1,166,007.94 |
| 15% | $ 174,901.19 |

*241 days @ $363.12 (Petition Date to December 31, 2020)
**334 Days @ $381.53 (January 1, 2028 to November 30, 2028, based on a $139,256.74 annual tax)

16. For the Additional Rent claim for property insurance pursuant to 11 U.S.C. § 502(b)(6)(A), Landlord asserts of claim of $27,652.97 based on:

| Insurance | |
|---|---|
| Year | Amount |
| 2020* | $ 12,544.05 |
| 2021 | $ 19,546.31 |
| 2022 | $ 20,132.70 |
| 2023 | $ 20,736.68 |
| 2024 | $ 21,358.78 |
| 2025 | $ 21,999.54 |
| 2026 | $ 22,659.53 |
| 2027 | $ 23,339.32 |
| 2028** | $ 22,036.19 |
| Total | $ 184,353.10 |
| 15% | $ 27,652.97 |

*241 days @ $52.05 ($18,977 annual premium)(Petition Date to December 31, 2020)
** 11 months @ 2,003.29 ($24,039.50 annual premium)

**Total Claim**

17. Thus, Landlord asserts the following as its claim for rejection of the Lease:

| | | |
|---|---|---|
| Pre-Petition/11 U.S.C. § 502(b)(6)(B) | $ | 109,113.64 |
| Rent Rejection Damages/11 U.S.C. § 502(b)(6)(A) | $ | 1,003,899.02 |
| Additional Rent (Real Estate Taxes) Rejection Damages/11 U.S.C. § 502(b)(6)(A) | $ | 174,901.19 |
| Additional Rent (Insurance) Rejection Damages/11 U.S.C. § 502(b)(6)(A) | $ | 27,652.97 |
| Parking Lot Repave | $ | 750,000.00 |
| **TOTAL** | **$** | **2,065,566.82** |

**Reservation of Rights**

18. Given that Landlord reserves the right to argue that the rejection date of the Lease was May 6, 2020, Landlord thusly reserves the right to assert an administrative claim in the amount of $5,753.43 for rent and $1,089.36 in taxes between May 4 and May 6, 2020. Should an application for this claim be granted or otherwise allowed, Landlord will reduce this claim by a commensurate amount.

19. Landlord reserves the right to further supplement or amend this Proof of Claim, including for the purpose of including specific or additional sums and to state a total amount that is or would be owed by the Debtor to Landlord as of the effective date of any plan of reorganization or liquidation in this jointly-administered case, the date of any distribution or payment with respect to this claim, or any other appropriate date(s). The claim stated on the face of this Proof of Claim is intended to be a present, good faith (non-binding) estimate of the amount of that claim, which ultimately may or will require revision to a higher or lower actual figure, as justice requires.

20. The filing of this Proof of Claim is not:

(a) a waiver or release of any right arising by operation of law or equity or Landlord's rights against any other person, entity or property;

(b) a waiver of the right to move for relief from the automatic stay or to withdraw the reference, or otherwise to challenge the jurisdiction of this Court with respect to the subject matter of the claims asserted and, by filing this claim, Landlord does not consent, and shall not be deemed to have consented, to the jurisdiction of this Court for any purpose including specifically any adversary proceeding filed against Landlord and files this proof of claim solely to avoid forfeiture of any claim or right, in law or equity;

(c) a waiver of any and all rights to seek entry of final orders in non-core matters only after a de novo review by a District Judge;

(d) a waiver of any and all rights to a trial by jury on any issue so triable in any contested matter or adversary proceeding arising in or related to the Debtor's jointly-administered bankruptcy case; or

(e) an election of any remedy to the exclusion, express or implied, or any other remedy.

**24 HOUR FITNESS LEASE**
**[Former AMC Theater, St. Charles, MO]**

**THIS 24 HOUR FITNESS LEASE** (the "Lease") dated _____, 2000, is entered into by and between **TC FITNESS, INC.**, a Delaware corporation ("Landlord") and **24 HOUR FITNESS, INC.**, a California corporation ("Tenant").

## ARTICLE 1
## BASIC LEASE PROVISIONS

Each reference in this Lease to this **Article 1** or any section hereof shall mean and refer to the following terms, the application of which shall be governed by the provisions in the remaining Articles of this Lease:

**1.1 Landlord's Address:**

TC Fitness, Inc.
c/o Trammell Crow BTS, Inc.
7535 East Hampden Avenue, Suite 650
Denver, CO 80231
Attention: Gregory B. Ham
Phone: (303) 843-1958
Fax: (303) 220-0900

With copy to:

Brownstein Hyatt & Farber, P.C.
410 Seventeenth Street
Twenty-Second Floor
Denver, CO 80202
Attention: Howard J. Pollack, Esq.
Phone: (303) 223-1100
Fax: (303) 223-1111

**1.2 Address of Premises:**

1095 Regency Parkway
St. Charles, MO 63303

**1.3 Tenant's Address:**

24 Hour Fitness, Inc.
2231 Rutherford Road
Carlsbad, CA 92008
Attention: Real Estate Department

Phone: (760) 931-5800
Fax: (760) 931-2535

With copy to:

24 Hour Fitness, Inc.
5020 Franklin Drive
Pleasanton, CA 94588
Attention: Legal Department

Phone: (925) 416-3100
Fax: (925) 416-3175

**1.4 Premises Acreage:** **[Intentionally Deleted]**





Ex A

| | | |
|---|---|---|
| 1.5 | **Building Square Footage**: | Approximately 38,432 of rentable square feet |
| 1.6 | **Anticipated Delivery Date**: | Within five (5) days of the Closing Date |
| 1.7 | **Outside Delivery Date**: | November 15, 2000 |
| 1.8 | **Term**: | Commencing on the Term Commencement Date and continuing for twenty (20) Lease Years after the Rent Commencement Date thereafter |
| 1.9 | **Options to Extend**: | Three (3) options of five (5) years each |
| 1.10 | **Monthly Rent**: | Fifty-Seven Thousand Six Hundred Forty-Eight Dollars – ($57,648) monthly ($1.50 per square foot per month); Six Hundred Ninety-One Thousand Seven Hundred Seventy-Six Dollars ($691,776) per year ($18.00 per square foot per year), subject to adjustment every twenty-four (24) months in accordance with **Section 4.2**; however, in no event shall any increase on any Rental Adjustment Date exceed four percent (4%). |
| 1.11 | **Broker**: | None |
| 1.12 | **Tenant Improvement Allowance**: | One Million Three Hundred Fifty Thousand Dollars ($1,350,000) |
| 1.13 | **Applicable Annual Interest Rate:** | Twelve percent (12%) per annum |

**EXHIBITS:**

| | |
|---|---|
| **A** | Description of Premises |
| **B** | Premises/Center Site Plan |
| **C** | Intentionally Omitted |
| **D** | Title Commitment |
| **E** | Term/Rent Commencement Memorandum |
| **F** | Tenant Estoppel Certificate |
| **G** | Landlord Estoppel Certificate |
| **H** | Intentionally Omitted |
| **I** | Subordination, Nondisturbance and Attornment Agreement |
| **J** | Guaranty of Lease |
| **K** | Completion Guaranty |

## ARTICLE 2
## DEFINITIONS

**2.1 Definitions.** The capitalized terms set forth below, unless the context clearly requires otherwise, shall have the following meanings in this Lease:

**"Additional Rent"** means any and all sums (whether or not specifically called "Additional Rent" in this Lease) other than Monthly Rent which Tenant is or becomes obligated to pay to Landlord under this Lease.

**"Alterations"** means any alterations, modifications, additions or improvements made in, on, about, under or contiguous to the Premises after the Rent Commencement Date, including, but not limited to, HVAC, pipes and conduits, and carpentry installations, but not including the initial Tenant Improvements, and not including such things as partitions, draperies, shelves, cabinet work, floor and wall coverings or the installation or relocation of trade fixtures or equipment.

**"Amendment"** is defined in Section 3.9(d).

**"Anticipated Delivery Date"** is defined in **Section 1.6**.

**"Applicable Annual Interest Rate"** is defined in **Section 1.13**.

**"Applicable Laws"** means the present and future laws, statutes, ordinances and regulations of all governmental authorities having jurisdiction over the Premises.

**"Approvals"** is defined in **Section 3.9**.

**"Authorized Representatives"** means a party's authorized agents, representatives, contractors, subcontractors, suppliers and consultants.

**"Broker"** means the person(s) or entity(ies) identified in **Section 1.11**, if any.

**"Building"** means the building on the Premises described in **Section 1.5**.

**"Building Square Footage"** is set forth in **Section 1.5**.

**"CC&Rs"** means that certain Declaration of Easements, Covenants and Restrictions dated December 30, 1985, recorded in the St. Charles County Recorder's Office in Book 1065 at Page 1483, modified by that Supplemental Agreement recorded in the St. Charles County Recorder's Office in Book 1211 at Page 64, pertaining to the Center, along with the Declaration.

**"Casualty"** means fire, explosion, lightning, flood, earthquake, or other peril.

**"Center"** means the shopping center commonly known as Regency Square Shopping Center, as shown in **Exhibit B**.

**"City"** means the city, if any, in which the Premises are located.

**"Closing Date"** means the date the date upon which escrow on Landlord's purchase of the Premises closes and Landlord acquires title to the Premises.

**"County"** means the county in which the Premises are located.

**"Event of Default"** is defined in **Section 15.1**.

**"Execution Date"** is the date this Lease is fully-executed and delivered to both parties.

**"Guarantor"** means Fitness Holdings, Inc., a Delaware corporation.

**"Hazardous Materials"** is defined in **Section 6.1**.

**"HVAC"** means the heating, ventilating and air conditioning system serving the Building.

**"Index"** means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (all items for the geographical statistical area in which the Premises are located on the basis of 1982-84=100).

**"Land Use Approvals"** means all necessary governmental approvals (e.g., conditional use permits) approving the use set forth in **Section 5.1** and necessary to operate the Premises 24 hours per day, 7 days per week.

**"Landlord Estoppel Certificate"** means an estoppel certificate in the form of **Exhibit G**.

**"Lease"** means this instrument together with all exhibits, amendments, and addenda attached hereto and made a part hereof.

**"Lease Year"** means a period of twelve (12) full calendar months, with the first Lease Year commencing on the Rent Commencement Date, provided that if the Rent Commencement Date is a day other than the first day of a calendar month, the first Lease Year shall end on the last day of the month in which the first anniversary of the Rent Commencement Date occurs.

**"Monthly Rent"** means the monthly rental set forth in **Section 1.10** which Tenant is to pay to Landlord pursuant to **Section 4.1**.

**"Mortgagee"** means any mortgagee of a mortgage, beneficiary of a deed of trust or lender having a lien on or covering the Premises or any part thereof.

**"Notice"** means each and every notice, communication, request, demand, reply or advice, or duplicate thereof, in this Lease provided or permitted to be given, made or accepted by either party to any other party, which shall be in writing and given in accordance with the provisions of **Section 19.3**.

**"Outside Delivery Date"** is set forth in **Section 1.7**.

**"Plans"** means the working drawings and specifications for the construction of the Tenant Improvements to be prepared by Tenant and approved by Landlord as set forth in **Section 3.8**.

**"Presale Activities"** means sales of memberships, marketing efforts, demonstrations and similar activities, including offering limited workouts, prior to opening for business, conducted by Tenant at the Premises or elsewhere in the Center, but directly related to such business.

**"Premises"** means those premises shown on/described in **Exhibit A**, and includes the Building. The Premises are located at the address set forth in **Section 1.1**.

**"Premises/Center Site Plan"** means that site plan attached as **Exhibit B**.

**"Punch List"** is defined in **Section 3.7.**

**"Real Property Taxes"** are defined in **Section 7.2.**

**"Rent"** means Monthly Rent and Additional Rent, collectively.

**"Rent Commencement Date"** is defined in **Section 4.5**.

**"Tenant Estoppel Certificate"** means an estoppel certificate in the form of **Exhibit F**.

**"Tenant Improvements"** means those initial improvements, if any, to be constructed on the Premises as provided in **Section 3.8**.

**"Tenant Improvement Allowance"** is the amount specified in **Section 1.12**, and may be adjusted pursuant to **Section 3.11**.

**"Tenant's Personal Property"** means Tenant's removable trade fixtures, furniture, equipment and other personal property located in or on the Premises from time to time.

**"Term"** means the term of this Lease, as provided in **Section 3.2.**

**"Term Commencement Date"** is defined in **Section 3.2.**

**"Term/Rent Commencement Memorandum"** means a memorandum attached as **Exhibit E**.

**"Title Commitment"** means that title commitment described in or attached as **Exhibit D**.

**"Unavoidable Delay"** means any delay which is beyond a party's reasonable control, including, but not limited to, any delay due to inclement weather, strikes, acts of God, inability to obtain labor or materials, inability to secure government approval or permits, governmental restrictions, civil commotion, fire, earthquake, explosion, flood, hurricane, the elements or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, lockouts or any other cause whether similar or dissimilar to the foregoing which is beyond a party's control.

**Other Definitions**. Terms defined elsewhere in this Lease or the exhibits, schedules and attachments, unless the context clearly requires otherwise, shall have the meanings as there given.

## ARTICLE 3
## PREMISES AND TERM

### 3.1 Lease of Premises.

**(a) Lease of Premises**. Subject to and upon the terms and conditions set forth in this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, together with all rights and appurtenances thereto.

**(b) Remeasurement of Premises.** Tenant has the right within six (6) months of delivery of the Premises to Tenant to remeasure the Premises in accordance with ANSI 265.1-1996 promulgated by BOMA. If such remeasurement indicates square footage different from that set forth in **Section 1.5**, Premises Square Footage shall be adjusted to reflect the corrected square footage, and the Monthly Rent (but not the Tenant Improvement Allowance) shall be adjusted to reflect the corrected Premises Square Footage as follows: Monthly Rent shall be established by multiplying the newly determined Premises Square Footage by the per square foot monthly rent figure set forth in **Section 1.10**. The foregoing notwithstanding, Monthly Rent shall in no event be increased.

**3.2 Term Commencement.** The term of this Lease (the "Term") shall commence on the date (the "Term Commencement Date") which is the date upon which escrow on Landlord's purchase of the Premises closes and Landlord acquires title to the Premises and delivers possession thereof to Tenant. Once the Term Commencement Date has been determined, Landlord and Tenant shall execute a Term/Rent Commencement Memorandum. Unless sooner terminated as provided in this Lease, the Term shall expire twenty (20) calendar years after the Rent Commencement Date, subject to extension in accordance with any option or options to extend the Term granted in this Lease.

**3.3 Options to Extend Term.** Tenant shall have three (3) options to extend the Lease (the "Options") for an additional period(s) of five (5) years each (the "Extension Terms") on the same terms and conditions as set forth in this Lease, subject to **Section 4.2.**

**(a) Exercise of Option.** Tenant may exercise an Option only by written notice delivered to Landlord not less than one hundred twenty (120) days prior to the expiration of the initial Term of the lease, or, if Tenant has extended the Term by an Extension Term, not less than one hundred twenty (120) days prior to the expiration of the then existing Term. If Tenant fails to deliver notice of its exercise of an Option prior to the established deadline, the Option shall lapse, the Term shall expire at the end of the then existing Term, and there shall be no further right by Tenant to extend the Term. The effectiveness of Tenant's exercise of an Option shall be conditioned on there being no uncured Event of Default (after receipt of notice and the expiration of any applicable cure period) at the time of such exercise. If Tenant properly exercises an Option or Options, "Term" as used in this Lease, shall be deemed to include any Extension Term(s).

**(b) Notice of Option.** Landlord shall provide Tenant with written notice no less than sixty (60) days and no more than one hundred twenty (120) days prior to the expiration of any deadline by which Tenant is permitted to exercise any Option and anything in this Lease to the contrary notwithstanding, no such deadline shall be deemed to occur prior to the later of: (i) the deadline established pursuant to **Section 3.3(a)**; or (ii) thirty (30) days after such written notice is given to Tenant.

**3.4 Notice of Sale.** If Landlord intends to market the Premises for sale, Landlord shall use commercially reasonable efforts to give Tenant notice that the Premises are for sale. The preceding sentence does not constitute the grant to Tenant of a right of first offer or a right of first refusal. Landlord's failure to give Tenant notice that the Premises are for sale, or to accept or consider any offer Tenant might make to purchase the Premises, shall not constitute a default under this Lease and shall not preclude Landlord from selling the Premises without the giving of such notice to Tenant. The first sentence of this **Section 3.4** shall not apply to a one-time transfer of the Premises (or of Landlord's right to acquire title to the Premises in accordance with **Section 3.12)** to a newly-formed entity affiliated with Landlord.

**3.5 Early Entry.** Tenant and its employees and Authorized Representatives are hereby granted a license by Landlord to enter upon the Premises, at Tenant's sole risk and expense, prior to the Rent Commencement Date, for Tenant's preparation of the Plans, construction of the Tenant Improvements and the conduct of Presale Activities. Further, Tenant shall have the right to locate one or more trailers on the Premises or elsewhere in the Center as such location(s) as are mutually agreed to by Landlord and Tenant, at no cost to Tenant other than the cost of utilities used by Tenant, for the purpose of conducting Presale Activities, provided that Tenant has first obtained all necessary licenses and permits for such Presale Activities and further provided that Tenant's early entry and Presale Activities shall be subject to the terms and conditions set forth in the CC&Rs. Neither early entry by Tenant nor conducting Presale Activities pursuant to this **Section 3.5** shall constitute opening for business for purposes of establishment of the Rent Commencement Date.

**3.6 Delay in Possession.** Landlord and Tenant anticipate that Landlord will deliver the Premises on the Anticipated Delivery Date therefor set forth in **Section 1.6**, but the Anticipated Delivery Date shall in no event affect the actual Rent Commencement Date, which shall be determined as set forth in **Section 4.5**. Landlord covenants to use commercially reasonable efforts to deliver the Premises to Tenant by the Anticipated Delivery Date. Provided, however, that notwithstanding the provisions of **Section 19.15**, if delivery of the Premises has not occurred by the Outside Delivery Date, Tenant may, at its option, by written notice to the Landlord at any time thereafter and prior to delivery of the Premises, terminate this Lease, in which event the parties shall be discharged from all further obligations accruing hereunder.

**3.7 Delivery of Premises.** Landlord shall deliver the Premises to Tenant within five (5) days after the Closing Date. Tenant's acceptance of the Premises as delivered shall not affect Landlord's obligations with regard to latent defects nor Landlord's obligations specifically set forth elsewhere in this Lease (e.g., maintenance, repair, replacement and reconstruction obligations). Landlord covenants that the Building shall be, structurally sound and in good tenantable condition and free of patent and latent defects. A "latent defect" is a design or construction defect or error which is not apparent upon an ordinary and reasonable inspection of the Building. Landlord further covenants that if any such latent defects appear which resulted from faulty design, workmanship or materials and which are not attributable to work, materials or design provided by Tenant, then Landlord shall cause the same to be repaired and corrected with all reasonable speed at Landlord's expense; provided, however, that with respect to latent defects that do not affect the structural aspects or components of the Building, Landlord's repair obligation shall only extend to those latent defects of which Landlord is notified within ~~twelve (12) months following delivery of the Premises to Tenant~~ 1 Dec 2020. Landlord represents and warrants, to the best of Landlord's knowledge, that as of delivery of possession to Tenant, the Building shall be in compliance with Applicable Laws and the Building and HVAC system shall comply with the "as-built" plans for the Building which have been provided by Landlord to Tenant. For purposes of this Lease and without limitation, the slab floor shall constitute a structural component of the Building. Tenant shall have the benefit of all warranties accruing to Landlord pertaining to the Building and any installation of equipment by Landlord, and Landlord hereby assigns all such warranties to Tenant.

**3.8 Tenant Improvements.** Tenant shall be responsible for the design and construction of the Tenant Improvements in compliance with local code requirements, and the Uniform Building Code to the extent adopted by local code. Tenant shall contract for the preparation of the Plans for the Tenant Improvements, shall diligently pursue completion of such Plans for the Tenant Improvements within sixty (60) days after the Execution Date and shall deliver such Plans to Landlord for Landlord's review upon completion. The Plans shall be designed and detailed so that the Tenant Improvements will comply with all Applicable Laws. Within five (5) business days after Landlord's receipt of the Plans, Landlord shall either approve such Plans (with Landlord's approval not to be unreasonably withheld) or disapprove the Plans. Any disapproval shall include a detailed explanation of the rejected components of the Plans. If Landlord fails to respond in the established timeframe, the Plans shall be deemed to be approved by Landlord. If Landlord disapproves the Plans, Tenant shall submit a revised version of the Plans to Landlord for its review in the same manner described above. Tenant may continue such approval procedure until Landlord's approval of the Plans is obtained. Within two (2) days after the Plans have been approved (or deemed approved) by Landlord, Tenant, at Tenant's sole cost and expense, shall submit the Plans to the appropriate governmental agency(ies) for the necessary permits to construct the Tenant Improvements. Any nonmaterial change to the Plans required by a governmental agency shall be deemed approved by Landlord. If any governmental agency requires material changes to the Plans, Tenant shall immediately notify Landlord of such requested changes; the approval of both parties shall be required for any such material changes, such approvals not to be unreasonably withheld or delayed. Once the Plans are approved and Tenant has obtained the necessary construction permits for the Tenant Improvements, Tenant shall retain one or more reputable contractor(s) of Tenant's choice and approved

by Landlord (which approval shall not be unreasonably withheld), to perform the construction of the Tenant Improvements, Tenant to use commercially reasonable efforts to cause such construction to commence no later than January 1, 2001. Such construction shall be performed in substantial compliance with the approved Plans, provided that during the construction process Tenant shall be permitted to make nonmaterial changes to the Plans without Landlord's consent which Tenant, in its reasonable judgment, deems necessary or desirable. Tenant shall submit any proposed material changes to Landlord for its review in the manner described above, except that the timeframe on such event shall be three (3) days. Tenant shall have the Tenant Improvements constructed in a professional, workmanlike manner. Upon completion of the Tenant Improvements, Tenant shall notify Landlord of the total cost of constructing the Tenant Improvements.

**3.9 Contingencies.**

**(a) Approvals.** ~~Landlord represents~~ and warrants that the Premises are zoned for, and no conditional use permit is required for, Tenant's use of the Premises as a full service health/physical fitness club on a 24-hour per day, 7-day per week basis. Tenant, at its cost and expense, agrees to use commercially reasonable good faith efforts to obtain the building permits for the Tenant Improvements as promptly as possible following the submission of the Plans, and shall endeavor to keep Landlord informed as to the status of the approval process. If Tenant is unable to obtain such permits within thirty (30) days following the date of Tenant's submission of the Plans to the City or County with jurisdiction over the Premises, Tenant shall provide Landlord with written notice of such inability and Landlord, provided Landlord at all times proceeds diligently and in good faith, shall have the right, for a period of one hundred eighty (180) days, to assist Tenant in obtaining, or obtaining on Tenant's behalf, such permits. If the above-referenced building permits are not obtained within such one hundred eighty (180) day period, and provided there is not an uncured Event of Default (as defined in **Section 15.1**), Tenant, in its sole discretion, may elect to terminate this Lease by written notice to Landlord, delivered at any time after the expiration of the applicable time period and before the satisfaction of the applicable condition. If Tenant elects to terminate this Lease pursuant to this **Section 3.9(a)**, such termination shall become effective upon Landlord's receipt of Tenant's termination notice. Each party shall take reasonable steps to assist and cooperate with the other party's efforts to satisfy the conditions set forth in this **Section 3.9(a)**.

**(b) Condition of Title.** Tenant acknowledges having received the Title Commitment and agrees that, subject to Landlord's acquisition of title to the Premises as set forth in **Section 3.12** and the elimination of those title exceptions identified in **Exhibit D**, Tenant is satisfied with the state of title to the Premises.

**(c) Nondisturbance Agreements.** Tenant's obligations under this Lease are contingent upon the execution and delivery to Tenant of nondisturbance agreements in recordable form and in the form and content of **Exhibit I** within thirty (30) days of the Execution Date from each then-existing ground lessor and Mortgagee. If Landlord fails to deliver such nondisturbance agreements, Tenant may terminate this Lease by written notice to Landlord within fifteen (15) days after expiration of such thirty (30) day period. If Tenant elects to terminate this Lease pursuant to this **Section 3.9(c)**, such termination shall be effective upon Landlord's receipt of Tenant's termination notice.

**(d) Amendment to Declaration of Easements, Covenants and Restrictions.** Tenant's obligations under this Lease are contingent upon the delivery to Tenant, within thirty (30) days of the Execution Date, of a fully-executed and acknowledged Amendment ("Amendment") to the Declaration of Easements, Covenants and Restrictions dated December 30, 1985, and the Supplemental Agreement dated May 3, 1988, such Amendment to be in form and content acceptable to Tenant in its reasonable discretion. Landlord shall promptly record, with the St. Charles County Recorder's Office, the

Amendment. If Landlord fails to deliver the Amendment, Tenant may terminate this Lease by written notice to Landlord within fifteen (15) days after expiration of such thirty (30) day period. If Tenant elects to terminate this Lease pursuant to this **Section 3.9(d)**, such termination shall become effective upon Landlord's receipt of Tenant's termination notice.

**3.10 Tenant Improvement Allowance.** Landlord shall pay to Tenant, in cash and in accordance with the provisions of this **Section 3.10**, the Tenant Improvement Allowance set forth in **Section 1.12** (as possibly adjusted pursuant to **Section 3.11**). Tenant shall use the Tenant Improvement Allowance to pay for costs associated with Tenant's design and construction of the Tenant Improvements and its occupancy of the Premises, which costs may include, but shall not be limited to: (a) all costs charged to Tenant by contractors, subcontractors and suppliers for construction of the Tenant Improvements and installation of Tenant's equipment; (b) fees, assessments and costs associated with securing approvals, permits and licenses; (c) costs of construction insurance (including, without limitation, casualty, liability, theft and worker's compensation insurance); (d) utility hookup fees; (e) premiums for any bonds required by Tenant; and (f) architectural, design and engineering fees related to the Tenant Improvements. Landlord shall pay the amount of the Tenant Improvement Allowance to Tenant in progress payments (payable no more frequently than once a month) after the execution of this Lease. Such progress payments shall be made by Landlord not later than fifteen (15) days after receipt by Landlord from Tenant of copies of invoices evidencing completed work and/or services provided and conditional partial lien releases pertaining to the work for which payment is sought (from the general contractor and subcontractors with subcontracts in excess of Fifty Thousand Dollars ($50,000)). Each invoice shall be accompanied by a written statement verifying that the work evidenced by such invoice has been completed, and/or that services evidenced by such invoice have been performed; such verification shall be rendered by Tenant's architect, except that with regard to costs, fees and assessments not charged by contractors, subcontractors, or suppliers, such verification may be rendered by a representative of Tenant. The amount of each Tenant Improvement Allowance progress payment shall be equal to fifty percent (50%) of the amount of the invoice(s) for work completed and/or services provided, except that the amount of each Tenant Improvement Allowance progress payment for items under (f) above (architectural, design and engineering fees related to the Tenant Improvements) shall be equal to one hundred percent (100%) of the amount of invoices evidencing completed work and/or service; provided, however, the total of Landlord's progress payment contributions shall not exceed the Tenant Improvement Allowance. Landlord shall have no obligation to make any progress payment while an uncured Event of Default is continuing (provided that payment shall be subsequently made by Landlord once the Event of Default is cured) and the total of all such progress payments will in no event exceed the amount of the Tenant Improvement Allowance. Anything in this Lease to the contrary notwithstanding, in the event Landlord does not make one or more payments of the Tenant Improvement Allowance when required hereunder, and should such failure continue for a period of thirty (30) days, in addition to all other remedies available to Tenant, Tenant shall have the right to offset against Rent until paid in full that portion of the Tenant Improvement Allowance then payable hereunder which has not been paid by Landlord, together with interest on such unpaid amount. Such interest shall accrue at the Applicable Rate on the Tenant Improvement Allowance amount payable but unpaid from time to time. To the extent Tenant Improvements have been paid for by the Tenant Improvement Allowance, such Tenant Improvements shall be deemed at all times to be Landlord's property. Upon Tenant's request, Landlord shall demonstrate, to Tenant's reasonable satisfaction, Landlord's ability to fund the Tenant Improvement Allowance. Tenant shall provide to Landlord copies of construction contracts required to be provided to Landlord's lender.

**3.11 Additional Reimbursement by Landlord.** Tenant shall contract for all engineering and architectural services required to prepare the Plans or otherwise prepare for Tenant's use of the Premises pursuant to this Lease. If Landlord does not close escrow on the purchase of the Premises for any reason, Tenant shall be reimbursed by Landlord for the cost of all such services.

**3.12 Landlord's Title to Premises.** Landlord warrants, represents and covenants that Landlord is, or will be prior to delivery of the Premises to Tenant, the holder of good and marketable title in fee simple of the Premises. In addition to other conditions and contingencies set forth in this Lease, Tenant's obligations under this Lease are conditioned upon Landlord, through the use of its commercially reasonable good faith efforts and at Landlord's sole cost and expense, obtaining fee title to the Premises. If Landlord has not obtained fee title to the Premises by the Outside Delivery Date at a cost and under terms acceptable to Landlord, either party, in its sole discretion, may elect to terminate this Lease by written notice to the other, delivered at any time after such date and before the satisfaction of such condition. Each party warrants, represents and covenants to the other that such party has the full right, lawful authority and power to enter into this Lease and, subject to satisfaction of the condition set forth in this **Section 3.12**, to perform its respective obligations under this Lease.

**3.13 Commencement Fee**. Notwithstanding anything contained in this Lease to the contrary, Landlord hereby agrees to pay a fee (the "Commencement Fee") of a total amount equal to Three Hundred Twenty Thousand Seven Hundred Seventy-Two Dollars ($320,772). The Commencement Fee shall be paid by Landlord to Tenant in monthly installments, in amounts equal to Monthly Rent payable hereunder, with the payment applicable to and equal to a particular month's Monthly Rent to be received by Tenant at least five (5) days prior to the date such Monthly Rental is due. However, the prorata Monthly Rent for December 15, 2000 through December 31, 2000 shall be payable December 1, 2000, and the corresponding portion of the Commencement Fee shall be received by Tenant from Landlord at least five (5) days prior to December 1, 2000. Should Landlord fail to timely deliver all or any portion of the Commencement Fee, Tenant shall have the right, upon written notice to Landlord, to offset the amount of the Commencement Fee so owing against amounts next due under the Lease.

## ARTICLE 4
## RENT AND ADJUSTMENTS

**4.1 Monthly Rent.** From and after the Rent Commencement Date, Tenant shall pay to Landlord, for each calendar month of the Term, without demand, notice or set-off (except as expressly set forth otherwise in this Lease), the Monthly Rent set forth in **Section 1.10**. Monthly Rent shall be due and payable to Landlord in lawful money of the United States, in advance, on the first (1st) day of each calendar month of the Term occurring after the Rent Commencement Date at Landlord's address set forth in **Section 1.1** or at such other place as Landlord may from time to time designate.

**4.2 Periodic Cost of Living Adjustments.** The Monthly Rent shall be increased on the first day of the third (3rd) Lease Year and on the first day of every second (2nd) Lease Year thereafter throughout the Term (each such date being a "Rental Adjustment Date"), in accordance with the Index as follows:

**(a)** The Monthly Rent (the "Comparison Monthly Rent") in effect immediately before a particular Rental Adjustment Date shall be increased by the percentage that the Index has increased from the date (the "Comparison Date") that is three (3) months before the date on which payment of the Comparison Monthly Rent began through the date that is three (3) months before the applicable Rental Adjustment Date. The Monthly Rent shall not be reduced by reason of such computation. Landlord shall notify Tenant of each increase by a written statement which shall include the Index for the applicable Comparison Date, the Index for the date three (3) months before the applicable Rental Adjustment Date, the percentage increase between those two Indices, and the new Monthly Rent. Any increase in the Monthly Rent provided for in this **Section 4.2** shall be subject to any maximum increase set forth in **Section 1.10**.

**(b)** Tenant shall pay the new Monthly Rent from the applicable Rental Adjustment Date until the next Rental Adjustment Date. Landlord's notice may be given after the applicable Rental Adjustment

Date of the increase, and Tenant shall pay Landlord the accrued rental adjustment for the months elapsed between the effective date of the increase and Landlord's notice of such increase within thirty (30) days after Landlord's notice. If the format or components of the Index are materially changed after the Rent Commencement Date, the parties shall reasonably agree upon a substitute index which is published by the Bureau of Labor Statistics or similar agency and which is most nearly equivalent to the Index in effect on the Rent Commencement Date. The substitute index shall be used to calculate the increase in the Monthly Rent. If the parties cannot agree upon the substitute index, Landlord and Tenant shall submit the selection of the substitute index for binding arbitration in accordance with the rules and regulations of the American Arbitration Association at its office closest to the Property. The costs of arbitration shall be borne equally by Landlord and Tenant.

**4.3 [Intentionally deleted]**

**4.4 Additional Rent.** From and after the Rent Commencement Date, (except as expressly set forth otherwise in this Lease) all Additional Rent shall be due and payable to Landlord in lawful money of the United States, at Landlord's address set forth in **Section 1.1** or at such other place as Landlord may from time to time designate, without demand, notice or set-off (except as expressly set forth otherwise in this Lease), within thirty (30) days of Tenant's receipt of Landlord's invoice or statement for same or, if this Lease provides another time for the payment of certain items of Additional Rent, then at such other time. With regard to regularly recurring items of Additional Rent, Landlord may reasonably estimate the amount thereof from time to time, and, upon receipt of notice from Landlord, Tenant shall pay such estimated amount in equal monthly installments, in advance, on or before the first (1st) day of each month concurrent with its payment of Monthly Rent. If Landlord provides a new estimate to Tenant, Tenant shall, at the next monthly payment date, commence paying the newly estimated amount to Landlord. Within a reasonable period of time after the end of each calendar year (in no event less than one hundred twenty (120) days after the end of each calendar year unless sooner completed by Landlord), Landlord shall furnish Tenant a statement showing in reasonable detail the actual Additional Rent payable owed by Tenant for the period in question. If Tenant's payments of Additional Rent for that calendar year are less than the actual amount owed by Tenant, Tenant shall pay the difference to Landlord within thirty (30) days thereafter. If Tenant shall have overpaid Landlord, Landlord shall credit such overpayment toward Tenant's next installment payment or, if the Term of this Lease has expired or terminated, any overpayment shall be rebated by Landlord to Tenant.

**4.5 Rent Commencement Date.** The "Rent Commencement Date" shall be December 15, 2000.

**4.6 Prorations.** If the Rent Commencement Date does not occur on the first (1st) day of a calendar month, or if the termination of the Term is not the last day of a calendar month, a prorated installment of Rent based on a per diem calculation shall be paid for the fractional calendar month during which the Rent commences or the Term terminates.

**4.7 Late Payment Charges.** Tenant acknowledges that late payment by Tenant to Landlord of Rent under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Therefore, if any installment of Monthly Rent or any payment of Additional Rent due from Tenant is not received by Landlord within ten (10) days of Tenant's receipt after the original date due of a written notice of nonpayment, Tenant shall pay to Landlord a one-time additional sum equal to five percent (5%) of the amount overdue as a late charge for each such overdue payment. The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant and that such late charge is in addition to any interest which may accrue on such late payment pursuant to the terms of **Section 15.8.**

## ARTICLE 5
## USE

**5.1 Tenant's Use.** Tenant may operate on the Premises a health/physical fitness club which may include, without limitation, the following: aerobic classes, weight training, basketball, volleyball, racquetball, swimming, cardiovascular and resistance machines, and spa services. Tenant shall also be permitted to operate related activities, including without limitation the following: weight loss advising and related programs, chiropractic services, tanning, therapeutic massage, sports and rehabilitation therapy, babysitting, the sale of juice, sports beverages, yogurt, vitamins, supplements, nutrition bars, sports and workout apparel and spa-related products, and limited food service. Tenant shall procure, maintain and make available for Landlord's inspection throughout the Term, all governmental approvals, licenses and permits required for the proper and lawful conduct of Tenant's permitted use of the Premises. Tenant shall have the right to change or modify its use of the Premises with the consent of the Landlord, and such consent shall not be unreasonably withheld. Tenant shall have the right to change the trade name under which the Premises (and/or one or more portions thereof) are operated.

**5.2 Compliance with Applicable Laws.** Throughout the Term, Tenant and its employees and Authorized Representatives, at Tenant's expense, shall comply with all Applicable Laws in its use and operation of the Premises, provided, however, that Tenant shall not (and Landlord shall) be required to make any structural or capital modifications, alterations or repairs to the Premises necessary to comply with Applicable Laws, unless such modifications, alterations or repairs are necessitated by Tenant's specific use of the Premises. Landlord represents and warrants that, upon obtaining all Land Use Approvals, the uses set forth in **Section 5.1** will be allowable uses for the Premises 24 hours per day, seven days per week, under Applicable Laws, under all restrictions of record as identified in the Title Commitment, and under any other restrictions affecting the Premises. If Tenant is required by applicable governmental authorities to make any structural or capital modifications to the Premises pursuant to this **Section 5.2** during the last two (2) years of the Term that would cost in excess of Twenty-Five Thousand Dollars ($25,000), Tenant may terminate this Lease by giving three (3) months' prior written notice to Landlord, if and only if Landlord elects not to make such structural or capital modifications in excess of Twenty-Five Thousand Dollars ($25,000) itself, at its sole expense, provided, however, that if Landlord promptly makes such modifications, Tenant may not terminate. If Tenant elects to terminate this Lease pursuant to this **Section 5.2,** Tenant shall not be required to make such modifications and such termination shall become effective on the date set forth in the termination notice.

**5.3 Landlord's Right of Entry.** Landlord shall have the right upon notice to Tenant as required in this **Section 5.3,** to enter the Premises at reasonable times to inspect the Premises, perform required maintenance, replacement and repairs. Landlord shall provide not less than forty-eight (48) hours notice if Landlord's entry is for the purpose of inspection and not less than the one (1) week's notice if Landlord's entry is for purposes of maintenance or repair; no notice shall be required in the event of an emergency. Notice to Tenant pursuant to this **Section 5.3** shall be provided to Tenant at the Premises and at the addresses set forth in **Section 1.3**. The above rights are subject to Tenant's reasonable security regulations, and in exercising its rights set forth herein, Landlord shall endeavor to cause the least possible interference with Tenant's business activities. Landlord shall retain a key which unlocks all of the exterior doors to the Building. Landlord shall have the right to use reasonable means to open the doors in an emergency to obtain entry to the Building and any such reasonable entry to the Building so obtained by Landlord shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises.

**5.4 Tenant's Business Operations.** Subject to the provisions of **Section 5.5**, Tenant may operate up to twenty-four (24) hours per day, seven (7) days per week.

and subject to Applicable laws

"50 days"

**5.5 Continuous Operation.** Tenant shall continuously operate its business at the Premises for two (2) years after it opens for business to the public. At any time after such two-year period, Tenant shall have the right to cease operations at the Premises provided Tenant shall continue to pay Monthly Rent and Additional Rent due under this Lease and to perform all other terms and conditions of this Lease. If at any time while this Lease is in effect (excluding the period consisting of Tenant's initial building and build-out, any period following a Casualty, or any other period when Tenant is precluded from operating due to factors outside of Tenant's control) Tenant ceases operating its business in the Premises for a period of one hundred eight (180) consecutive days or more, Landlord may, after the expiration of such one hundred eighty (180) day period, at its option, terminate this Lease by (i) giving written notice of such termination to Tenant if the failure to operate continues for thirty (30) days following notice and (ii) paying to Tenant with such termination notice, the unamortized cost of the Tenant Improvements not funded with the Tenant Improvement Allowance, as amortized over the initial Term of this Lease. The termination of this Lease in accordance with this **Section 5.5** shall be Landlord's sole remedy in the event Tenant ceases to operate for the time periods set forth in this **Section 5.5**.

**5.6 Quiet Enjoyment.** Landlord covenants that Tenant shall have quiet and peaceful possession of the Premises as against any person or entity claiming the same by, through or under Landlord.

**5.7 Exclusive Covenant.**

**(a)** To the extent permitted by law, and subject to the other provisions of this Section, Landlord covenants that during the Term Landlord and its "Affiliates" (as defined below) shall not operate nor permit any other tenant on premises owned by Landlord or its Affiliates to operate a health/physical fitness club within a three (3) mile radius of the Premises (a "**Competing Use**"). Provided, however: (i) in the event the Premises are transferred by Landlord to a new owner, any health/physical fitness club operating on other property owned by the new owner at the time of transfer shall not be deemed to violate this provision; and (ii) in the event Landlord acquires other property, any health/physical fitness club operating at the time of such acquisition on such property shall not be deemed to violate this provision.

**(b)** Landlord shall not have any liability or obligation under this Section unless (i) Landlord or its Affiliates operates a Competing Use, (ii) Landlord or its Affiliates executes a lease allowing a tenant to operate a Competing Use, or (iii) Landlord or its Affiliates fails to act in a commercially reasonable manner to prevent a tenant from operating a Competing Use in violation of its lease.

**(c)** If any tenant of Landlord or its Affiliates within the three (3) mile radius shall violate its lease by operating a Competing Use, Landlord shall act in a commercially reasonable manner to prevent such Competing Use, including, if appropriate, by diligently instituting and prosecuting a legal action (including, without limitation, an action for injunction and an action for breach of contract and other appropriate relief). The foregoing notwithstanding, if a court of competent jurisdiction rules that the exclusive granted herein is unenforceable or invalid because of issues under antitrust, restraint of trade, or similar laws (collectively "antitrust laws"), Tenant shall not be required to pursue such action further.

**(d)** Any determination that this exclusive covenant is unenforceable or invalid shall not affect the remainder of this Lease and the enforceability of every other provision hereof.

**(e)** This Section shall not apply to any operation or lease in effect prior to the date of this Lease, or to any extension, renewal or modification (provided the modification does not permit a Competing Use) of such lease.

**(f)** For purposes of this Section, the term "Affiliates" means (i) a parent entity of Landlord; (ii) any subsidiary entity of Landlord; or (iii) an affiliated entity in which Landlord, or its subsidiaries or parent entity holds a majority of the outstanding shares or ownership interest.

**(g)** Landlord hereby warrants that, with respect to property(ies) owned or operated by Landlord or its Affiliates: (i) no existing lease for premises within such three (3) mile radius allows a use which would conflict with the exclusive use rights set forth in this **Section 5.7**; and (ii) all future leases and extensions of existing or future leases within such three (3) mile radius will specifically prohibit such uses.

**5.8 [Intentionally deleted]**

## ARTICLE 6
## HAZARDOUS MATERIALS AND ASBESTOS

**6.1 Definition of Hazardous Materials.** For purposes of this Lease, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state in which the Premises are located or the United States. Hazardous Materials include, without limitation, the following: (i) any pollutant, oil or hazardous substance, identified or listed pursuant to Sections 307, 311 or 502 of the Federal Water Pollution Control Act (33 U.S.C. §1317, §1321 and §1362); (ii) any element, compound, mixture, solution or substance designated pursuant to Section 102 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 U.S.C. §9602); (iii) any substance or material having the characteristics identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. §6921) or equivalent law or regulation in the state in which the Premises are located; (iv) any petroleum, crude oil, or any fraction of either which is not otherwise specifically listed or designated under items (i)-(iii); (v) any hazardous waste, extremely hazardous waste, hazardous substance or hazardous material, as defined or listed under Applicable Laws; and (vi) any waste or material, including asbestos and lead, which is listed or meets any identification or toxicity criterion under Applicable Laws.

**6.2 Use of Hazardous Materials.** Tenant shall not cause or permit any Hazardous Materials to be brought upon, stored, used or disposed on the Premises; provided, however, that Tenant shall have the right to utilize chlorine, bromine and muriatic acid and similar materials in connection with any pool or spa which is operated at the Premises, and to utilize standard cleaning and other materials which are typically used in the operation of health/athletic clubs, provided that Tenant shall comply with all Applicable Laws pertaining to the use, storage and disposal of such materials.

**6.3 Landlord's Warranty.** Landlord warrants and represents that, to the best of its knowledge and except as disclosed in that Phase I Environmental Site Assessment dated July 28, 2000, prepared by EMG Corporation: (a) as of the date of Landlord's delivery of the Premises to Tenant, the Premises are free of asbestos, lead-based paint, and all other Hazardous Materials and any underground storage tanks, (b) prior to the date of this Lease, Landlord has delivered to Tenant complete and accurate copies of all environmental reports, findings, studies, assessments, and other documents related to the environmental condition of the Premises (collectively "environmental documentation") in Landlord's possession or of which Landlord has knowledge, and (c) Landlord shall deliver to Tenant all environmental documentation obtained by Landlord at any time prior to termination of this Lease. Landlord represents and warrants that to the best of its actual knowledge, upon delivery of possession of the Premises to Tenant, the Premises shall be free of all asbestos and lead based paint, and of all other Hazardous Materials required to be removed by Applicable Law. If Tenant determines that asbestos, lead based paint or other Hazardous Materials exist on the Premises and were present upon delivery of possession to Tenant, Landlord shall remove any such asbestos and lead based paint and shall remove any such other Hazardous

Materials if removal is required by Applicable Law, at Landlord's sole cost and shall do so in a manner so as to minimize any interference with Tenant's operations at the Premises.

**6.4 Indemnifications.** Tenant hereby agrees to indemnify, protect, defend and hold harmless Landlord from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or related to the use, generation, storage, treatment, disposal or transportation of Hazardous Materials brought onto the Premises by Tenant. Landlord hereby agrees to indemnify, protect, defend and hold harmless Tenant from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or related to the use, generation, storage, treatment, disposal or transportation, or migration of Hazardous Materials in, onto or about the Premises or due to the presence of any underground storage tanks under or about the Premises, except to the extent such Hazardous Materials are brought onto the Premises by Tenant, its employees, Authorized Representatives, members or invitees. Landlord further agrees that if the remediation or abatement of any Hazardous Material (including, without limitation, asbestos or lead-based paint) is required by Applicable Law, then, except if such Hazardous Material was brought onto the Premises by Tenant or its employees, Authorized Representatives, members of invitees, Landlord shall at its sole cost and expense remediate all such Hazardous Materials at the Premises in accordance with Applicable Laws. Such remediation shall be performed so as to minimize any interference with Tenant's operations at, and the access to and visibility of the Premises. Monthly Rent shall be abated during any such remediation to the extent that despite Landlord's efforts, the remediation interferes with Tenant's operations, access or visibility. Landlord shall coordinate with Tenant the scheduling of such work.

## ARTICLE 7
## TAXES, OPERATING EXPENSES AND UTILITIES

**7.1 Tenant's Real Property Taxes.** Tenant shall pay to Landlord, or, at Landlord's option, directly to the applicable taxing authority, Real Property Taxes applicable to the Premises accruing on and after January 1, 2001. Periodically, Landlord shall submit to Tenant an invoice showing Real Property Taxes that are owing; Tenant shall pay to Landlord the Real Property Taxes shown on such invoice within thirty (30) days after receipt of the invoice (including a copy of the applicable tax bill) from Landlord, but in no event sooner than fifteen (15) days before such payment is delinquent. If Landlord elects to have Tenant pay Real Property Taxes directly to the taxing authority, Tenant shall provided Landlord with evidence of payment at least ten (10) days before the delinquency date. Landlord shall keep or cause to be kept separate and complete books of accounting covering the Real Property Taxes and shall preserve for at least three (3) years after the close of each fiscal tax year all material documents evidencing said Real Property Taxes for that fiscal tax year. Tenant, at its sole cost and expense, shall have the right, during reasonable business hours and not more frequently than once during any calendar year, either itself or through its accountants or other Authorized Representatives, to examine and/or audit the books and documents mentioned above evidencing such Real Property Taxes for previous calendar years. If such audit should disclose that Tenant has been overcharged for Real Property Taxes, Tenant shall be credited for such overpayment, or if this Lease has expired, Landlord shall refund such amount to Tenant. If the amount of any such overcharge exceeds two percent (2%) of Real Property Taxes for a particular fiscal tax year, Landlord shall promptly reimburse Tenant for the reasonable costs of such audit.

**7.2 Definition of Real Property Taxes.** The term "Real Property Taxes" means any real property tax or assessment now or hereafter imposed with respect to the Premises or any part thereof by an authority having the direct or indirect power to tax, or by any city, county, state or federal government or any improvement district or other district or division thereof. In no event shall Tenant be responsible for any increase in taxes or assessments attributable to a change of ownership involving the Premises during

the first five years of the Term, and thereafter Tenant shall not be responsible for any increase in taxes or assessments attributable to more than one change of ownership involving the Premises during any five year period during the Term. With regard to assessments which Landlord has the option of either retiring by payment of a lump sum or alternatively paying over a period of years, Landlord shall be deemed to have elected to pay such assessment over a period of years, and only the then current year's payment shall be included as an item of Real Property Taxes. The foregoing notwithstanding, in no event shall any gross or net income taxes, gross receipts taxes, franchise taxes, inheritance taxes, estate, successor or gift taxes, rental taxes, transfer taxes, business, business license or business location taxes or fees, late payment fine, penalty, interest, or any supplemental taxes and assessments which accrued or were incurred prior to the Term be included as a component of Real Property Taxes. Furthermore, Real Property Taxes shall not include costs incurred by Landlord to negotiate or contest taxes or assessments, except to the extent that Real Property Taxes are actually reduced as a result of such efforts.

**7.3 Permitted Contests.** Tenant may contest the amount or validity of any Real Property Taxes by appropriate proceedings; provided that Tenant gives the Landlord reasonable prior notice of any such contest and keeps Landlord advised as to all proceedings, and provided further that Tenant shall continue to reimburse Landlord for such Real Property Taxes unless such proceeding shall operate to prevent or stay such payment and the collection of the tax or assessment so contested. Landlord shall join in any proceedings if any Applicable Laws shall so require.

**7.4 Personal Property Taxes.** Tenant shall pay to the appropriate governmental authority any assessments, license fees and public charges levied, assessed or imposed at any time and which become payable during the Term upon Tenant's Personal Property whether or not such assessment is made against Tenant or against Landlord, either separately or as a part of the assessment of the Premises.

**7.5 Utilities and Services.** Tenant shall, as part of the Tenant Improvements, distribute utility services in the Premises, and Tenant shall, at its cost and expense following delivery of the Premises to Tenant, arrange and pay for any and all utilities and other services required by Tenant in connection with its use of the Premises, including, without limitation, electricity, water, gas, telephone, telecommunications and janitorial services.

**7.6 Operating Expenses.** During the Term, Tenant shall pay all operating expenses, allocated to Landlord for the Premises in accordance with the provisions of the CC&Rs provided that Landlord shall ensure that Tenant receives invoices for such operating expenses directly from the issuing entity. Landlord hereby agrees that it will not (except with Tenant's written approval, which Tenant may withhold in its sole discretion) initiate, consent to nor approve any modification to the CC&Rs, or the adoption of new covenants, conditions or restrictions, that will increase any existing operating expenses or impose any additional operating expenses.

## ARTICLE 8
## ALTERATIONS

**8.1 Tenant Alterations.** Tenant shall have the right at all times to make, at its own expense, such Alterations to the Premises as Tenant may desire; provided, however, such work when completed will not impair the structural integrity or soundness of the Building, will not cause any applicable warranties (including, without limitation, any roof warranty) to become void, and if any of Tenant's proposed work (other than signage) would affect the structural elements of the Building or materially change the exterior appearance of the Building, then before undertaking such work, Tenant shall obtain Landlord's consent to such work, which consent Landlord agrees shall not be unreasonably withheld. Landlord agrees upon request by Tenant to execute or join in the execution of any application for such permits and licenses as may be necessary in connection with any work which Tenant is authorized to perform under the

provisions of this **Section 8.1**. Tenant shall also have the right at all times to install, at its own cost, new floor and wall coverings and trade fixtures and equipment. Before commencing work on any Alteration to be performed by third parties, Tenant shall give Landlord at least five (5) days' written notice of the proposed commencement of such work and will allow Landlord to post appropriate notices of nonresponsibility. All Alterations shall be performed in a professional, workmanlike manner and Tenant, at Tenant's cost, shall repair any damage to the Premises caused by Tenant or Tenant's contractors during performance of Alterations in or on the Premises. Any provision of this Lease to the contrary notwithstanding, Tenant shall have the right to remove its trade fixtures, furnishings, equipment, signage and inventory from the Premises.

**8.2 Communication Devices; Pay Phones.** Tenant shall have the right to install satellite dishes and/or other antennae, and/or other facilities for telecommunications in connection with the operation of Tenant's business in the Premises ("Communications Equipment") on, and affix Communications Equipment to, the roof of the Building. In the event Tenant installs Communications Equipment, Tenant shall do so at its sole cost and expense, and Tenant shall obtain, at its sole cost and expense, any and all permits, authorizations and certificates, including, without limitation, zoning variances or changes, as may be required with respect to such Communications Equipment from all governmental agencies (provided that Landlord agrees to reasonably cooperate with Tenant to obtain same if required by applicable governmental agencies). Tenant's right to install Communications Equipment is subject to the following: (i) the installation shall be performed by a licensed contractor who is experienced in the installation of such equipment; (ii) Tenant shall be responsible for all costs of repairs and improvements, including, without limitation, any patching or strengthening of the roof of the Building, which may be necessary on account of, or be necessary for, the installation of the Communications Equipment; (iii) Tenant shall repair any damage to the Premises resulting from such installation; (iv) Tenant shall obtain Landlord's prior approval of the location on the Communications Equipment, which approval shall not be unreasonably withheld; and (v) Tenant's installation shall not cause any applicable warranties (including, without limitation, any roof warranty) to become void. Tenant shall have the exclusive right to install pay phones and communication devices on or at the Premises.

**8.3 Mechanics' Liens.** Tenant agrees that any mechanic's lien filed against the Premises for work done by, or materials furnished to, Tenant will be discharged by Tenant, by bond or otherwise, within sixty (60) days after Tenant is notified thereof. Landlord shall have the right at all appropriate times to post and keep posted on the Premises notices of nonresponsibility for protection from such liens. If any such liens are filed and Tenant fails to have such liens released within the required timeframe, Landlord may cause such liens to be released by any reasonable means it shall deem proper, including payment in satisfaction of the claim giving rise to such liens. Tenant shall pay to Landlord promptly, upon notice by Landlord, any reasonable sum paid by Landlord to remove such liens, including, without limitation, attorney's fees and premiums for lien release bonds.

## ARTICLE 9
## MAINTENANCE AND REPAIR

**9.1 Landlord's Maintenance and Repair Obligations.** Landlord shall, subject to Tenant's obligations pursuant to **Section 9.2** and subject to the provisions of **Article 12** and **Article 13**: (i) replace the roof (if and when necessary) with a roof having a fifteen (15) year warranty and further, prior to the replacement of the roof, Landlord shall maintain and/or repair the roof to the extent the costs of maintenance and/or repair exceed Two Thousand Five Hundred Dollars ($2,500) in any twelve (12)-month period, and (ii) maintain in good condition, repair and replace (when necessary) exterior walls, and all structural members and components, floor slabs, subfloors and foundations of the Building. Costs and expenses incurred by Landlord in effecting its maintenance, repair and replacement obligations under this **Section 9.1** shall be borne solely by Landlord. Except as otherwise expressly set forth in this **Section 9.1**

15 year roof

and elsewhere in this Lease (including, without limitation, **Sections 3.7, 6.4** and **9.3, Articles 12** and **13** and **Exhibit C**) Landlord shall have no obligation to maintain, repair or replace any portion of the Premises.

**9.2 Tenant's Maintenance and Repair Obligations.** Tenant shall, during the Term and subject to Landlord's obligations pursuant to **Section 9.1** and elsewhere in this Lease and subject to the provisions of **Article 12** and **Article 13**, maintain in good condition, repair and replace (when necessary) all portions of the Premises that Landlord is not otherwise obligated to maintain, repair and replace, including, without limitation, the roof (subject to Landlord's obligations to perform any necessary replacement as provided in **Section 9.1** and to perform any maintenance and/or repair the cost of which exceeds Two Thousand Five Hundred Dollars ($2,500) in any twelve (12) month period as provided in **Section 9.1**), and perform exterior painting and cleaning of the exterior windows of the Building as and when such painting or window cleaning, as the case may be, becomes necessary, and maintain the HVAC and fire sprinkler systems which service the Building. In addition, Tenant shall maintain all gas, electric, water, telephone and sanitary or storm sewer systems required to provide the Premises with utilities, and shall clean and maintain the interior exposed surfaces in the Building, including floor and wall coverings and the interior surface of windows and Tenant shall keep the Premises in good and sanitary order and condition, normal wear and tear excepted. In the event of any dispute as to whether the roof requires repair (by Tenant) or replacement (by Landlord), such dispute shall be determined by arbitration in accordance with the provisions of **Section 19.22**. Tenant shall also be responsible for the routine cleaning, painting and striping of the parking surface within the Premises, and for the replacement of light bulbs in the lighting fixtures thereon.

**9.3 Citations.** Landlord agrees that if any authority cites the Premises or any part thereof as being unsafe, or not in conformity with Applicable Laws, Landlord, at its own cost and expense, will promptly make such changes, alterations or repairs (which are structural or are to the roof or roof membrane) as may be necessary to comply with such Applicable Laws, or with the requirements of the applicable authority; provided, however, that nothing herein shall impair or defeat Landlord's right to contest or to defend against such citation so long as Tenant's operations and use of the Premises are not impaired thereby. If, during the time such unsafe, nonconforming or noncomplying condition exists or changes, alterations or repairs are being performed to the Premises, the Building is rendered, in Tenant's reasonable business judgment, unsuitable for occupancy and use by Tenant, Monthly Rent and Additional Rent shall abate. If only a portion of the Building is rendered unsuitable for such occupancy and use because of such unsafe, nonconforming or noncomplying condition, then the Monthly Rent and Additional Rent shall abate proportionately to Tenant's loss of use of the Building. In the event the Premises or any part thereof are cited as being unsafe or not in conformity with the applicable laws and regulations due to (i) the defective condition or use of supplies, materials, and/or equipment owned or used by Tenant, or (ii) a defective condition of any part of the Premises Tenant is required to maintain pursuant to this Lease, or (iii) Tenant's specific and unique use of the Premises or (iv) Alterations by Tenant, then, notwithstanding the foregoing, Tenant, at its own cost and expense agrees to make such changes, alterations and repairs in the Premises and equipment or the use of the same as may be necessary to comply with such laws and regulations, or with the requirements of the applicable authority; provided, however, that nothing herein shall impair or defeat Tenant's right to contest or defend against such citation.

**9.4 Tenant's Self-Help.** If Landlord refuses or fails to repair, replace and maintain the Premises as required by this Lease within thirty (30) days from the date on which Tenant makes a written demand on Landlord to effect such repair, replacement or maintenance, or at any time in the event of an emergency, Tenant may make such repairs or perform such maintenance or replacement. All sums reasonably disbursed, deposited or incurred by Tenant in connection with such repairs or maintenance or replacement, plus ten percent (10%) for Tenant's overhead and with interest at the Applicable Rate from

Bnt affect

the date of Tenant's expenditure until repaid, shall be paid by Landlord to Tenant within fifteen (15) days of demand, or alternatively, Tenant at its election may offset such amounts against Rent. The foregoing to the contrary notwithstanding, in no event shall the amount so offset by Tenant against any particular installment of Rent exceed fifteen percent (15%) of the total amount of the installment of Rent otherwise due, except that with respect to any amount that has been confirmed as being due and unpaid by an arbitration award rendered pursuant to **Section 19.22**, Tenant may offset the amount of such award against up to fifty percent (50%) of any particular installment of Rent.

## ARTICLE 10
## PARKING

**10.1 Parking.** Tenant, its customers and employees shall have the right to park on the Premises, and the non-exclusive right to park throughout the common area of the Center in accordance with the provisions of the CC&Rs. No parking shall be permitted in any driveways, accessways or in any which would prohibit or impede the free flow of traffic on the Premises or in the common area of the Center.

## ARTICLE 11
## INDEMNITY AND INSURANCE

**11.1 Indemnification.** Tenant hereby agrees to defend, indemnify, protect and hold harmless Landlord and any successors to all or any portion of Landlord's interest in the Premises and their directors, officers, partners, employees and Authorized Representatives, from and against any and all damage, loss, claim, liability and expense incurred by reason of any claim, suit or judgment brought by or on behalf of any person or persons for damage, loss or expense to the extent occasioned by, or attributable to, Tenant's design and construction of the Tenant Improvements and/or other Alterations, Tenant's use or occupancy of the Premises, or the negligent acts or omissions of Tenant or its employees, except to the extent any such damage, loss, claim, liability or expense is attributable to the negligence or willful misconduct of Landlord. Landlord hereby agrees to defend, indemnify, protect and hold harmless Tenant and any successors, assignee or subtenant to all or any portion of Tenant's interest in the Premises and their directors, officers, partners, employees and Authorized Representatives (collectively, "Tenant Indemnitees"), from and against any and all damages, loss, claim, liability and expense incurred by reason of any claim, suit or judgment brought by or on behalf of any person or persons for damage, loss or expense due to, but not limited to, bodily injury or property damage sustained by such person or persons which arise out of, are occasioned by, or attributable to Landlord's use or ownership of the Premises, or the negligent acts or omissions of Landlord or its employees, except to the extent any such damage, loss, claim, liability or expense is attributable to the negligence or willful misconduct of Tenant or any of the Tenant Indemnitees. Each party to this Lease shall promptly notify the other of any claim asserted against such party with respect to which such party is indemnified against loss by the other party hereunder, and the party giving such notice shall promptly deliver to the other party the original or a true copy of any summons or other process, pleading, or notice issued or served in any suit or other proceeding to assert or enforce any such claim.

**11.2 Property Insurance.** Tenant shall obtain and keep in force at all times during the Term following Landlord's delivery of the Premises to Tenant a policy or policies of insurance, with commercially reasonable deductible limits, covering loss or damage to the Premises, including, without limitation, the Tenant Improvements, at least in the amount of the full replacement cost thereof, and in no event less than the total amount required by Mortgagees, and to Tenant's Personal Property, against all perils included within the classification of "special form" coverage (as such term is used in the insurance industry), excluding flood and earthquake insurance unless the same is available at commercially reasonable rates as determined by Tenant and Tenant carries such insurance on its other similar clubs in the same geographic region in which the Premises are located. A stipulated value or agreed amount

endorsement deleting any co-insurance provision of such policy or policies shall be procured with the insurance. All insurance required to be carried by Tenant may be carried under a blanket policy covering the Premises and other locations, provided that the coverage afforded by reason of the use of such blanket policy shall not be reduced or diminished from the requirements for such insurance set forth in this **Section 11.2**. The cost of such insurance policies shall be paid by Tenant. Such insurance policies under this **Section 11.2** shall provide for payment of loss thereunder (with respect to the Premises) to Landlord or, at Landlord's election, to the Mortgagees, and, with respect to Tenant's Personal Property, to Tenant. Tenant shall also obtain and keep in force during the Term a policy or policies of insurance covering objects owned by Landlord which are normally covered under a "Boiler and Machinery" policy (as such term is used in the insurance industry), with policy limits which are reasonable under prudent industry standards for similar commercial structures in the region in which the Premises are located. Notwithstanding the foregoing, Tenant may elect to self-insure against damage to plate glass. Tenant shall also maintain the following policies of insurance:

**(a)** Business interruption insurance in an amount equal to all Rent payable under this Lease for a minimum period of twelve (12) months at the then current rate of charges; and

**(b)** Worker's compensation coverage in an amount adequate to comply with Applicable Laws, and employer's liability coverage with a limit of not less than One Million Dollars ($1,000,000); and

**(c)** Builder's risk insurance during the period of construction of the Tenant Improvements.

If Tenant is in default of any of its obligations to maintain insurance under this **Section 11.2** for more than thirty (30) days following receipt of notice of such default from Landlord, Landlord, at its option, may obtain such required insurance on Tenant's behalf and the cost thereof shall be paid by Tenant as Additional Rent.

**11.3 Tenant's Liability Insurance.** Tenant shall maintain in full force and effect at all times during the Term, at its sole cost and expense, for the protection of Tenant (with Landlord named as an additional insured), general liability insurance with a minimum combined single limit of Five Million Dollars ($5,000,000) (such coverage to be afforded utilizing one or more commercial general liability and/or umbrella liability policies). Tenant shall be permitted to carry the insurance required in this Lease under a blanket policy which also covers other locations of Tenant, provided that the coverage afforded by reason of the use of such blanket policy shall not be reduced or diminished from the amount set forth in this **Section 11.3**.

**11.4 Policy Requirements.** Any policy of insurance required of Landlord or Tenant: (i) shall be issued by financially responsible insurance companies licensed and authorized to do business in the state in which the Premises are located and with a General Policy Holder's Rating of at least A-/X in the most current issue of "Best's Insurance Guide"; (ii) shall provide that such policies, shall not be subject to cancellation except after at least thirty (30) days (ten (10) days in the event of cancellation due to nonpayment of premium) prior written notice to Landlord, Tenant and any Mortgagee; (iii) shall be primary, and any insurance carried by the other party shall be noncontributing; and (iv) shall, in the case of liability insurance, include a cross-liability endorsement. Tenant shall provide Landlord with reasonable evidence of the existence of the insurance coverages required by this Lease.

**11.5 Waivers of Subrogation.** Landlord and Tenant each hereby waive all rights of recovery against the other on account of loss and damage occasioned to such waiving party to the extent that such loss or damage is insured or is required to be insured against under any insurance policies required by this **Article 11**. Tenant and Landlord shall, upon obtaining policies of insurance required in this Lease or

otherwise covering the Premises, give notice to the insurance carriers that the foregoing waiver of subrogation is contained in this Lease. Each party shall cause each insurance policy(ies) required of it pursuant to this Lease or otherwise carried by such party to provide that the insurance company acquiesces to the waiver of claims (i.e., waiver of subrogation) under this **Section 11.5** and each party shall provide the other with written evidence of an endorsement of such waiver of subrogation by the insurer.

## ARTICLE 12
## DAMAGE OR DESTRUCTION

**12.1 Landlord's Obligation to Rebuild.** If the Premises and/or the Building are damaged or destroyed by a Casualty, upon receipt of the proceeds of the insurance required to be maintained by Tenant pursuant to **Section 11.2**, Landlord shall promptly commence the process of obtaining necessary permits and approvals for the repair of the Premises and/or Building, and shall commence such repair and diligently prosecute the same to completion as soon thereafter as is commercially practicable at Landlord's expense, unless Landlord has the right to terminate this Lease as provided in **Section 12.2** and Landlord elects to so terminate.

**12.2 Landlord's Right to Terminate.** Landlord shall have the right to terminate this Lease following a Casualty if the cost to repair such damage exceeds the available insurance proceeds (whether due to an uninsured or underinsured Casualty) by more than ten percent (10%) of the full replacement cost of the Premises and the Building (such ten percent (10%) of full replacement cost being referred to herein as the "Casualty Threshold Amount"). If Landlord elects to terminate this Lease following a Casualty pursuant to this **Section 12.2**, Landlord shall give Tenant written notice of its election to terminate within thirty (30) days after Landlord has knowledge of such Casualty and of the cost or repair and amount of available insurance proceeds, and this Lease shall terminate thirty (30) days after the date of such notice. However, Tenant shall have the right to fund the uninsured or underinsured portion of any such Casualty in excess of the Casualty Threshold Amount. Tenant may exercise such right by providing Landlord with written notice thirty (30) days from the date of receipt of Landlord's notice of termination. If Tenant does not elect to fund the uninsured or underinsured portion of the Casualty in excess of the Casualty Threshold Amount, this Lease shall terminate thirty (30) days after the date of Landlord's notice of termination. If Landlord does not elect to so terminate this Lease or if Tenant provides Landlord with notice of its intent to fund the uninsured or underinsured portion in excess of the Casualty Insurance Amount, together with payment of such excess, this Lease will continue in full force and effect, and Landlord shall promptly commence the process of obtaining necessary permits and approvals for the repair of the Premises and/or Building, and shall commence such repair and diligently prosecute the same to completion as soon thereafter as is commercially practicable at Landlord's expense. Tenant shall fully cooperate with Landlord in removing Tenant's Personal Property and any debris from the Premises to facilitate the making of such repairs.

**12.3 Landlord's Repair Obligations.** Landlord's obligation, should it elect or be obligated to repair the Premises and/or Building following a Casualty, shall be limited to the basic building components and the Tenant Improvements and Tenant shall, at its expense, be responsible for repair and replacement of Tenant's Personal Property and Alterations (above and beyond the Tenant Improvements) installed by Tenant and existing at the time of such Casualty.

**12.4 Abatement of Rent.** During any period when there is material interference with Tenant's use of the Premises by reason of a Casualty or repair of a Casualty or reconstruction of the Premises or Building and Landlord fails to commence and/or diligently prosecute the repair of such Casualty to completion as soon thereafter as is commercially practicable, Rent and Additional Rent shall be equitably abated in proportion to the degree of such interference during any period of delay caused by such failure. Such

abatement shall commence upon the date on which repair of such Casualty should have been completed but for such failure and shall end upon the date of completion of the repair of the Premises, except that Rent and Additional Rent shall not abate to the extent covered by the business interruption insurance required under **Section 11.2(a)**.

**12.5 Extension of Term.** If Landlord is obligated or elects to repair or rebuild the Premises and/or Building pursuant to this **Article 12**, the Term shall be extended by a period of time equal to the time between the date of the Casualty and the date which is one hundred fifty (150) days after Landlord completes such repairs or restoration.

**12.6 Tenant's Right to Terminate.** If following any damage to the Premises and/or the Building that Landlord is obligated to or elects to repair, Landlord either has not: (i) commenced the repair work within nine (9) months, or (ii) completed the repair work within eighteen (18) months after the date of damage, Tenant may terminate this Lease by written notice to Landlord at any time after such nine-month or eighteen-month period, as the case may be, and before Landlord materially commences or completes such repair work, as the case may be. In the event a Casualty occurs during the last two (2) years of the Term, Tenant may terminate this Lease upon written notice to Landlord within ninety (90) days after the date of Casualty. If Tenant elects to terminate this Lease pursuant to this **Section 12.6**, this Lease shall terminate thirty (30) days after Landlord's receipt of such termination notice.

**12.7 Reconstruction After Termination.** If Landlord terminates this Lease pursuant to this **Article 12** as a result of a Casualty and then subsequently, within the eighteen (18) months following such termination, repairs and/or reconstructs the Premises and/or the Building to a reasonably usable condition, then Tenant shall have the option to reinstate this Lease, provided that Tenant shall notify Landlord in writing of such election within twenty (20) months of the date this Lease was terminated. If Tenant elects to reinstate the Lease pursuant to this **Section 12.7**, the Term shall be extended for a period equal to the period of time which expired between the Lease termination date and the Lease reinstatement date. The provisions of this **Section 12.7** shall survive early termination of this Lease due to a Casualty.

## ARTICLE 13
## EMINENT DOMAIN

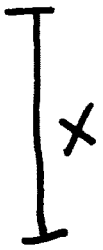
**13.1 Taking Resulting in Termination.** If title to all of the Premises is taken or so much of the Premises is taken for any public or quasi-public use under any statute or by right of eminent domain (or is transferred in lieu thereof) so that reconstruction of the Premises will not result in the Premises being suitable for Tenant's continued occupancy for the uses and purposes permitted by this Lease, as determined by Tenant in its reasonable business judgment, this Lease shall terminate as of the date possession of the Premises or such part of the Premises is so taken.

**13.2 Taking Not Resulting in Termination.** If any part of the Premises is taken for any public or quasi-public use under any statute or by right of eminent domain (or is transferred in lieu thereof) and the remaining part is reasonably suitable for Tenant's continued occupancy for the uses permitted by this Lease, as determined in Tenant's reasonable business judgment, this Lease shall, as to the part so taken, be modified as of the date that possession of such part of the Premises is taken and the Monthly Rent and Additional Rent shall be reduced in the same proportion that the floor area of the portion of the Building so taken, if any, bears to the original floor area of the Building immediately prior to such taking. Landlord shall, at its own cost and expense, promptly make all necessary repairs or alterations to the Premises and/or Building so as to make the portion of the Premises and/or Building not taken a complete architectural unit. Monthly Rent and Additional Rent due and payable hereunder shall be temporarily abated during any such restoration period in proportion to the degree to which there is interference with Tenant's use of the Premises and/or the Building. Each party hereby waives any present or future law

allowing either party to petition the court to terminate this Lease in the event of a partial taking of the Premises.

**13.3 Temporary Taking.** No temporary taking of the Premises (which for purposes of this **Section 13.3** shall mean a taking of all or any part of the Premises for ninety (90) days or less) shall terminate this Lease, or give Tenant any right to any abatement of Rent; any award made to Tenant or Landlord by reason of such temporary taking shall belong entirely, to Tenant and Landlord shall not be entitled to share therein. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this **Section 13.3**.

**13.4 Business Closure.** If a taking of either the Premises, the Building, the Center or portion of either is of such a nature that it creates a condition that causes Tenant, in its reasonable business judgment, to determine that it is economically impractical to operate the Premises, and such conditions continue for more than ninety (90) days, Tenant shall have the right to terminate this Lease upon written notice to Landlord at any time after such ninety (90) day period and prior to the remediation of such condition. If Tenant elects to terminate the Lease pursuant to this **Section 13.4**, this Lease shall terminate thirty (30) days after Landlord's receipt of such termination notice.



**13.5 Taking Awards.** In the event the condemning authority awards one lump sum to Landlord for any taking, Landlord shall be entitled to such award, except that Tenant shall be entitle to a reasonable and equitable portion of such sum for the value of the Tenant Improvements and Alterations paid for by Tenant (and not reimbursed by Landlord) and Tenant shall have the right to maintain a separate action for Tenant's loss of leasehold and removal and relocation of its personal property.

## ARTICLE 14
## ASSIGNMENT, SUBLETTING AND CONCESSIONAIRES

**14.1 Assignment and Subletting** Tenant, with Landlord's consent (such consent not to be unreasonably withheld), may assign or sublet its interest in this Lease or the Premises. Tenant shall also have the right, without Landlord's consent, to enter into an assignment or sublease with: (i) a parent corporation or entity; (ii) any subsidiary corporation or entity of Tenant or Tenant's parent corporation or entity; or (iii) an affiliated entity in which Tenant, or its subsidiaries or parent corporation or entity holds a majority of the outstanding shares or ownership interest, or (iv) any person or entity which holds or acquires Tenant's similar clubs in the region of the Premises. Tenant shall promptly notify Landlord of any assignment or sublease not requiring Landlord's consent.

**14.2 Concessionaires.** Tenant shall have the right, without Landlord's consent, to sublet a portion of the Premises and/or allow the use of a portion of the Premises by concessionaires, provided that: (i) the subtenant or concessionaire uses the Premises to operate an incidental activity (e.g., physical therapy, sports rehabilitation and/or food operations); and (ii) the total area of the Building devoted to all concessionaires and subtenants does not exceed twenty percent (20%) of the Building Square Footage. Each such subtenant and/or concessionaire shall be subject to the provisions of this Lease.

**14.3 Landlord's Consent.** If Tenant requests Landlord's consent to an assignment or subletting and Landlord fails to respond within thirty (30) days of such request, Landlord will be deemed to have consented to the proposed assignment or subletting. In the event Landlord consents to any assignment or subletting, such consent shall not constitute a waiver of any of the restrictions of this **Article 14** and the same shall apply to each successive assignment of this Lease or subletting of the Premises (or portion of the Premises), if any.

**14.4 Effect of Assignment or Subletting.** In no event shall an assignment or subletting affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee(s)), or relieve Tenant or Guarantor of any of its obligations hereunder without an express written release being given by Landlord. Any such assignment or subletting agreement shall be duly executed and a fully executed copy thereof shall be delivered by Tenant and Guarantor to Landlord.

**14.5 Notice and Opportunity to Cure.** In the event that Tenant has assigned its interest in this Lease pursuant to this **Article 14**, thereafter contemporaneously with Landlord's delivery of a notice of default to any assignee, Landlord shall provide Tenant with a copy of such notice and Tenant shall have the right to cure such default within the cure period set forth in this Lease, commencing on Tenant's receipt of such notice.

**14.6 Transfer of the Premises by Landlord.** If Landlord's interest in or under this Lease shall be assigned, in whole or in part, to a third party or if any third party other than Landlord shall ever be entitled to collect any sum payable by Tenant under this Lease, then in any such event written notice thereof shall be given immediately by Landlord to Tenant. In the event Landlord shall have given Tenant notice that a third party is entitled to receive payment of any sum and if Tenant thereafter pays such sum to the third party named in such notice, such payment to the third party named in the notice shall fully discharge Tenant of any further obligation for any such sum. In addition, if any Mortgagee requests Tenant to pay such Mortgagee any sum accrued or to accrue hereunder, Tenant shall be entitled to pay such Mortgagee such sums until otherwise directed in writing by such Mortgagee or by a court of competent jurisdiction. Furthermore, in the event that there is any dispute as to who shall be entitled to receive any sum payable hereunder, Tenant shall, at its option, have the additional right to pay such sum into a court of appropriate jurisdiction and venue, in connection with a bill of interpleader or similar proceedings filed by Tenant, naming Landlord and such other claimant as parties. The making of any such payment to any Mortgagee or in connection with the filing of such proceeding shall discharge Tenant from any further obligation for payment of the installment of Rent so paid or deposited. If during the Term hereof Landlord's interest in this Lease shall be acquired by more than one person, firm, corporation, or other entity, whether by conveyance, operation of law or otherwise, then Landlord shall by notice to Tenant signed by all of the then landlords hereunder appoint one such landlord to whom Monthly Rent and Additional Rent payable hereunder may be paid by Tenant and upon whom all notices which Tenant may give hereunder may be served; provided further, that until such appointment shall be made, Tenant shall be authorized from time to time to select any one of such landlords and to pay all Monthly Rent and Additional Rent coming due hereunder to, and serve all notices upon, the landlord so selected until such time as such appointment shall have been made. The service of any notice upon, and the payment of any Monthly Rent and Additional Rent payable hereunder to the appointed or selected landlord as herein provided shall constitute service of notice upon, and payment of any such sums to, Landlord.

## ARTICLE 15
## DEFAULTS AND REMEDIES

**15.1 Tenant's Default.** At the option of Landlord, a default under this Lease by Tenant shall exist if any of the following events shall occur (each, an "Event of Default"):

**(a)** Tenant defaults in the due and punctual payment of the Monthly Rent or Additional Rent, and such default continues for ten (10) business days after written notice from Landlord;

**(b)** This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant and (if involuntary) such execution or other process is not discharged or disposed or within ninety (90) days, or this Lease or the Premises are taken upon or subject

to any attachment by any creditor of Tenant or claimant against Tenant, and said attachment is not discharged or disposed of within ninety (90) days after its levy;

**(c)** Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United Sates or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;

**(d)** Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of the property of Tenant, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment; or

**(e)** Tenant breaches any of the other agreements, terms, covenants or conditions which this Lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after written notice from Landlord to Tenant or, if such breach cannot be cured reasonably within such thirty (30)-day period, if Tenant fails to diligently commence to cure such breach within such thirty (30)-day period to diligently complete such cure within reasonable time thereafter.

**15.2 Landlord's Remedies.** If any one or more Events of Default set forth in **Section 15.1** occurs, then Landlord may, at its election, cumulative or separately, exercise any of the following remedies:

**(a)** To give Tenant written notice of Landlord's intention to terminate this Lease on the earliest date permitted by law or on any later date specified in such notice (but in no event sooner than an additional ten (10) days from Tenant's receipt of such notice), in which case Tenant's right to possession of the Premises will cease and this Lease will be terminated if the Event of Default is not cured within such additional ten (10)-day period, except as to Tenant's liability for all obligations under this Lease accrued to such date and those which expressly survive the expiration or termination of this Lease, as of the expiration of the term fixed in such notice were the end of the Term;

**(b)** Without further demand or notice and following a termination of this Lease in accordance with **Section 15.2(a)**, to reenter and take possession of the Premises or any part of the Premises, repossess the same, expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty or any manner of trespass, and without prejudice to any remedies for arrears of Monthly Rent, Additional Rent or other amounts payable under this lease or as a result of any preceding breach of covenants or conditions;

**(c)** Without further demand or notice, to cure any Event of Default and to charge Tenant for the cost of effecting such cure, including, without limitation, reasonable attorney's fees and interest on the amount so advanced at the Applicable Rate, provided that Landlord will have no obligation to cure any such Event of Default of Tenant; or

**(d)** At any time after an Event of Default, and provided that Landlord shall have terminated the Lease in accordance with **Section 15.2(a)**, Landlord shall be entitled to recover from Tenant, and Tenant shall upon demand pay to Landlord, an amount equal to the present worth (discounted by the then current Prime Rate as published in the Wall Street Journal) of: (i) the aggregate of the Monthly Rent, Additional Rent and other charges to be paid by Tenant under this Lease for the unexpired portion of the term (assuming this Lease had not been terminate), less the fair market rental value of the Premises during such period as proved by Tenant, and (ii) all other damages suffered by Landlord, which shall include,

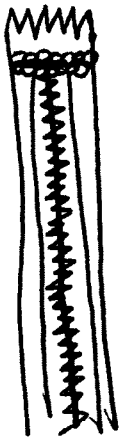
without limitation, all costs of renovating (but not improving) the Premises and re-letting the same, and reasonable attorney's fees.

Should Landlord elect to reenter as provided in subsection (b), or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, after terminating this Lease in accordance with **Section 15.2(b)**, re-let the Premises or any part of the Premises in Landlord's or Tenant's name, but for the account of Tenant, for such terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions and upon such other terms (which may include concessions of free rent and alteration and repair of the Premises) as Landlord, in its reasonable discretion, may determine and Landlord may collect and receive the rent. Landlord will in no way be responsible or liable for any failure to re-let the Premises, or any party of the Premises, or for any failure to collect any rent due upon such re-letting. No written notice from Landlord under this Section or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by Landlord to terminate this Lease unless such notice specifically so states.

**15.3 Right of Redemption.** Any provision of this Lease to the contrary notwithstanding, if within thirty (30) days after the termination of this Lease, pursuant to **Section 15.2(a)**, Tenant cures or offers to cure immediately the default, Landlord shall accept such cure as if the same occurred prior to expiration of the applicable cure period and the Lease shall continue in full force and effect.

**15.4 Lien Waiver.** Landlord hereby agrees that any lien or security interest in Tenant's inventory, equipment, trade fixtures, furnishings, accounts and any other property of Tenant at the Premises that Landlord might otherwise have at law or in equity is and shall be subject and subordinate to any lien or security interest on any such property held by Tenant's lender, equipment lessor or supplier, and Landlord shall, upon Tenant's request, execute and deliver such subordination agreement or other instrument effecting such subordination as may be reasonably requested by Tenant's lender, equipment lessor or supplier.

**15.5 Landlord's Default.** Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it under this Lease unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Tenant to Landlord (and the Mortgagees who have provided Tenant with notice) specifying the nature of such default; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The foregoing grace periods to the contrary notwithstanding, Landlord shall act immediately to cure any default on its part that results in an emergency constituting a threat of imminent damage to persons or property.



**15.6 Tenant's Remedies.** If Landlord, after expiration of any applicable cure period, is in default of any of its obligations under this Lease, Tenant, at its option, may: (i) if the default is not susceptible of being cured or if the amount necessary to cure the default is greater than Fifty Thousand Dollars ($50,000) and occurs during or continues into the last two (2) years of the Lease Term (and Landlord has not cured same), declare the Term ended and vacate the Premises and be relieved from all further obligations under this Lease; (ii) pay any sum necessary to perform any obligation of Landlord hereunder and obtain reimbursement of the cost thereof from Landlord; (iii) deduct from Monthly Rent and Additional Rent due and to become due any amount Landlord owes Tenant under this Lease (including, without limitation, **Section 3.10** and **Section 9.4**) which is due and unpaid, subject to the provisions of those Sections and **Section 19.22**; and/or (iv) sue for injunctive relief, specific performance, and/or damages as the case may be. The foregoing to the contrary notwithstanding, in no event shall the amount

so offset by Tenant against any particular installment of Rent exceed fifteen percent (15%) of the total amount of the installment of Rent otherwise due, except that with respect to any amount that has been confirmed as being due and unpaid by an arbitration award rendered pursuant to **Section 19.22**, Tenant may offset the amount of such award against up to fifty percent (50%) of any particular installment of Rent.

**15.7 Mortgages.** Landlord shall make all payments required to be made under the terms of any agreement which is secured by Landlord's interest in the Premises in a timely manner. Landlord warrants and represents that as of the date of this Lease, Landlord is not in default under any mortgage, deed of trust, ground lease or other security instrument which is secured by Landlord's interest in the Premises. Landlord shall provide Tenant with a list of all Mortgagees and Landlord shall give Tenant prompt notice of any revisions to that list.

**15.8 Interest on Late Payments**. Any Rent due under this Lease that is not paid to Landlord within ten (10) days of Tenant's receipt after the original date due of a written notice of nonpayment shall bear interest at the Applicable Rate from the date due until paid. Neither the accrual nor the payment of interest shall cure any default by Tenant under this Lease.

## ARTICLE 16
## SUBORDINATION; ESTOPPEL CERTIFICATE

**16.1 Subordination, Attornment and Nondisturbance.** This Lease shall be subject and subordinate at all times to: (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises; and (ii) the lien of any mortgage, deed of trust or other security device which may now exist or hereafter be executed in any amount for which the ground lease(s) or underlying lease(s), or Landlord's interest or estate in any of said items, is specified as security. Landlord or any such Mortgagee or ground lessor shall have the right, at its election, to subordinate or cause to be subordinated any such mortgage, deed of trust, other security device, ground lease or underlying lease to this Lease. No subordination shall permit interference with Tenant's rights hereunder, and any ground lessor or Mortgagee shall formally recognize in writing Tenant and its permitted successors and assigns as the tenant of the Premises and shall not disturb Tenant's right to quiet possession of the Premises during the Term, provided no Event of Default exists following Tenant's receipt of notice and the expiration of any applicable cure period. If Landlord's interest in the Premises is acquired by any ground lessor or Mortgagee, or in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage, deed of trust or other security device made by Landlord covering the Premises or any part thereof, or in the event a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination and upon the request of such successor in interest to Landlord, attorn to and become the tenant of the successor in interest to Landlord and recognize such successor in interest as the Landlord under this Lease, provided that such successor in interest agrees to formally recognize in writing Tenant and its permitted successors and assigns as the tenant of the Premises and shall not disturb Tenant's right to quiet possession of the Premises during the Term, provided no Event of Default exists following Tenant's receipt of notice and the expiration of any applicable cure period. Tenant covenants and agrees to execute and deliver, upon Landlord's request and in a form reasonably acceptable to Tenant, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases or underlying leases or the lien of any such mortgage, deed of trust, or other security device.

**16.2 Estoppel Certificates.** Tenant shall, within fifteen (15) business days following written request by Landlord, execute and deliver to Landlord a Tenant Estoppel Certificate: (i) certifying that this Lease is unmodified and in full force and effect or, if this Lease has been modified, attaching a copy of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which

the Rent and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord or stating the nature of any uncured defaults; (iii) certifying the current Monthly Rent amount; and, (iv) certifying to such other information as Landlord, Mortgagees and prospective purchasers may reasonably request. Similarly, Landlord shall, within fifteen (15) business days following written request by Tenant, execute and deliver to Tenant a Landlord Estoppel Certificate: (i) certifying that this Lease is unmodified and in full force and effect or, if this Lease has been modified, attaching a copy of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant or stating the nature of any uncured defaults; (iii) certifying the current Monthly Rent amount; and, (iv) certifying to such other information may be reasonably requested.

## ARTICLE 17
## SIGNS, GRAPHICS AND ADVERTISING

**17.1 Tenant's Signage.** Tenant shall have the right to install and maintain in, on and about the Premises signage consistent with Tenant's national or regional signage program. In addition, Tenant shall have the right to install and maintain signs on the pylon/monument signs for the Center. Tenant shall have the right to use all portions of the Center's pylon signs utilized by the previous tenant in the Premises, including but not limited to the reader board space. All such signage shall be in compliance with Applicable Laws and the CC&Rs. The cost of all signs and graphics, including the installation, maintenance and removal thereof, shall be at Tenant's sole cost and expense. If Tenant fails to maintain its signs, or if Tenant fails to remove same upon termination of this Lease and repair any damage caused by such removal (including, but not limited to, repainting the affected area, if required by Landlord), Landlord may do so at Tenant's expense. All sums reasonably disbursed, deposited or incurred by Landlord in connection with such removal and repair, shall be due and payable by Tenant to Landlord within thirty (30) days after demand by Landlord. Any signage used by Tenant at the Premises shall be prepared in a professional manner. Tenant may utilize any portion of its signage on the Center and/or the Premises to advertise or otherwise promote incidental uses in the Premises.

**17.2 Marketing and Promotion.** Tenant shall not be required to participate in any joint promotional program for the Center or in any merchants association and Tenant shall not be required to comply with any minimum advertising requirements for the Premises.

**17.3 Special Promotions.** To the extent allowed by Applicable Laws and applicable CC&Rs, Tenant shall have the right to advertise its business at the Premises by utilizing banners and promotional items during its pre-opening and Grand Opening and from time to time during the Term, but not more often than once every calendar quarter for up to ten (10) days each quarter.

## ARTICLE 18
## SURRENDER; HOLDING OVER

**18.1 Surrender of the Premises.** Subject to the provisions of **Article 12, Article 13** and **Section 9.1**, upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and in good condition, except for normal wear and tear, Casualties and acts of God and any items which Landlord is obligated to repair, maintain or replace. Tenant shall remove from the Premises all of Tenant's Personal Property, and shall repair any damage and perform any restoration work necessitated by such removal. The Tenant Improvements and any Alterations not removed by Tenant shall become the property of Landlord upon the expiration or earlier termination of this Lease.

**18.2 Holding Over.** If Tenant continues to occupy the Premises following the expiration or termination of this Lease, such holding over shall constitute renewal of the Lease on a month to month basis, at Monthly Rent equal to one hundred fifty percent (150%) of the Monthly Rent which was in effect on the date of such expiration or termination, and otherwise on the terms of this Lease. Such monthly tenancy shall be terminable by either party upon one month's notice. Tenant shall also indemnify and hold Landlord harmless from any loss or liability resulting from delay by Tenant in surrendering the Premises, including, without limitation, any claims made by any succeeding tenant founded on such delay.

**18.3 [Intentionally deleted]**

## ARTICLE 19
## MISCELLANEOUS PROVISIONS

**19.1 [Intentionally deleted]**

**19.2 Broker.** Landlord and Tenant each warrant and represent to the other that neither has had any dealings with any real estate broker, agent or finder in connection with the negotiation of this Lease or the introduction of the parties to this transaction, except for the Broker (whose commission shall be paid by Landlord pursuant to a separate agreement between Landlord and Broker), and that it knows of no other real estate broker, agent or finder who is or might be entitled to a commission or fee in connection with this Lease. In the event of any such additional claims for brokers' or finders' fees with respect to this Lease, Tenant shall indemnify, hold harmless, protect and defend Landlord from and against such claims if they shall be based upon any statement or representation or agreement by Tenant, and Landlord shall indemnify, hold harmless, protect and defend Tenant if such claims shall be based upon any statement, representation or agreement made by Landlord.

**19.3 Notice.** Any notice required or desired to be given under this Lease shall be in writing and shall be addressed to the address of the party to be served. The addresses of Landlord and Tenant are as set forth in **Section 1.1** and **Section 1.3**, respectively. Each notice shall be deemed effective and given: (i) upon receipt, if personally delivered (which shall include delivery by courier, expedited or overnight delivery service); (ii) upon being telephonically confirmed as transmitted, if sent by telegram, telex or telecopy; (iii) two (2) business days after deposit in the United States mail in the County, certified and postage prepaid, properly addressed to the party to be served; or (iv) upon receipt if sent in any other way. Either party to this Lease may from time to time, by written notice to the other in accordance with this **Section 19.3**, designate a different address than that set forth above for the purposes of notice.

**19.4 Memorandum of Lease.** At Tenant's request, Landlord shall execute a Memorandum of Lease setting forth such material terms of this Lease as reasonably determined by Tenant, in recordable form reasonably satisfactory to Tenant and Landlord, for recordation in the official records of the County. Upon expiration or earlier termination of this Lease and at Landlord's request, Tenant shall execute, acknowledge and deliver to Landlord a document pursuant to which Tenant quitclaims any right, title and interest in and to the Premises, which Landlord may record in the County at Landlord's expense. Tenant's obligation under this **Section 19.4** shall survive the expiration or earlier termination of the Lease.

**19.5 Attorneys' Fees.** In the event that any action shall be instituted by either of the parties to this Lease (or their successors) for the enforcement of any of their rights in and under this Lease, or if either party is involuntarily joined in an action or proceeding involving the other party, the party in whose favor judgment shall be rendered in such action shall be entitled to recover from the other party all costs reasonably incurred by the prevailing party in such action, including actual costs and attorneys' fees.

**19.6 Captions.** The captions and headings used in this Lease are for the purpose of convenience only and shall not be construed to limit or extend the meaning of any part of this Lease.

**19.7 Counterparts; Facsimile Signatures.** This Lease may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument. A signed copy of this Lease transmitted via facsimile to the other party hereto shall be binding upon the signatory thereto.

**19.8 Time of the Essence.** Time is of the essence for the performance of each term, condition and covenant of this Lease.

**19.9 Severability; Construction.** If any of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Lease. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

**19.10 Choice of Law.** This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located.

**19.11 Gender; Singular, Plural.** When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership, corporation or joint venture, the singular includes the plural and the plural includes the singular.

**19.12 Nonagency.** It is not the intention of Landlord or Tenant to create by this Lease a relationship of master-servant or principal-agent, and under no circumstance shall either party be considered the agent of the other, it being the sole purpose and intent of the parties to this Lease to create a relationship of landlord and tenant.

**19.13 Successors.** The terms, covenants, conditions and agreements contained in this Lease shall, subject to the provisions as to assignment, subletting, and bankruptcy contained herein and any other provisions restricting successors or assigns, apply to and bind the heirs, successors, legal representatives and assigns of the parties to this Lease.

**19.14 Waiver.** Any waiver by Landlord or Tenant of any term, covenant, agreement or condition contained in this Lease must be in writing, and shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition contained in this Lease.

**19.15 Unavoidable Delay.** Landlord shall not be chargeable with, liable for, or responsible to Tenant for anything or in any amount for any Unavoidable Delay and any Unavoidable Delay shall not be deemed a breach of or default in the performance of this Lease, it being specifically agreed that any time limit provision contained in this Lease, at Landlord's option, shall be extended for the same period of time lost by such Unavoidable Delay; provided, however, in no event shall the Outside Delivery Date be extended for any reason, including an Unavoidable Delay. Tenant shall not be chargeable with, liable for, or responsible to Landlord for anything or in any amount for any Unavoidable Delay and any Unavoidable Delay shall not be deemed a breach of or default in the performance of this Lease, it being specifically agreed that any time limit provision contained in this Lease, at Tenant's option, shall be extended for the same period of time lost by such Unavoidable Delay.

**19.16 Entire Agreement.** This Lease is the entire agreement between the parties, and supersedes any prior agreements, representations, negotiations or correspondence between the parties except as expressed herein. Except as otherwise provided in this Lease, no subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties to this Lease.

**19.17 Authority.** If Landlord or Tenant is not a natural person, each individual executing this Lease on behalf of an entity represents and warrants that: (i) he or she is duly authorized to execute and deliver this Lease on behalf of the entity in accordance with its governing documents; (ii) this Lease is binding upon such entity in accordance with the terms hereof; (iii) such entity is a duly organized and legally existing entity, in good standing under the laws of the state where it was organized, and if different from the state where the Premises are located, is duly qualified to conduct business in such state, and is in good standing under the laws of the state where the Premises are located; and (iv) the execution and delivery of this Lease shall not result in any breach of or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which such entity is a party or by which such entity may be bound. If requested, a party, within thirty (30) days of the request, will deliver to the other party evidence of the authority of such party to enter into and deliver this Lease, which evidence shall be certified by an officer, partner or member of the entity, as appropriate.

**19.18 Exhibits, References.** All exhibits, attachments, amendments, riders and addenda attached to this Lease are hereby incorporated into and made a part of this Lease. All references in this Lease to Articles, Sections, Exhibits and clauses are made, respectively, to Articles, Sections, Exhibits and clauses of this Lease, unless otherwise specified.

**19.19 Basic Lease Provisions.** In the event of any inconsistency between the Basic Lease Provisions contained in **Article 1** and the specific provisions of this Lease, the specific provisions of this Lease shall prevail.

**19.20 Joint and Several Obligations.** If Landlord is constituted of more than one person or entity, the obligations imposed on each such person or entity shall be joint and several.

**19.21 Landlord's Approval.** Except with respect to any provision of this Lease that expressly sets forth a different standard for Landlord's consent applicable thereto, in every instance in which Landlord's approval or consent is required pursuant to this Lease, Landlord shall not unreasonably withhold or delay its consent and any disapproval of Landlord shall include a reasonably detailed explanation of the basis of that disapproval.

**19.22 Alternative Dispute Resolution.** In the event that any controversy or dispute shall arise under **Article 9** of this Lease or with regard to any other default (or alleged default) by Landlord under this Lease with respect to which Tenant exercises its right to offset amounts owed (or allegedly owed) by Landlord to Tenant against Rent, and in the event that the parties have been unable to resolve such dispute or controversy within thirty (30) days, any remaining unresolved controversy or dispute arising out of or relating to such controversy or dispute shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Unless otherwise agreed to by the parties, the matter shall be submitted to three (3) arbitrators and shall be heard in Denver, Colorado. The arbitrators shall resolve the controversy in accordance with applicable law and the terms and conditions of this Lease. All discovery disputes shall be resolved by the arbitrators. The costs of the arbitration shall be shared equally between the parties provided, however, that such costs along with other costs and expenses, including attorneys' fees shall be subject to award in full or in part by the arbitrators to the prevailing party.

**19.23 Guaranties of Lease.** Upon execution of this Lease, Tenant shall deliver to Landlord a Guaranty of Lease in the form and content of **Exhibit J**, executed by Guarantor, and a Completion Guaranty in the form and content of **Exhibit K**, executed by Guarantor.

**THIS LEASE** is effective as of the date the last signatory necessary to execute this Lease shall have executed this Lease.

**TENANT:**

24 HOUR FITNESS, INC., a California corporation

By: _____
Anthony J. Bakos II, Sr. Vice President
General Counsel and Secretary

Date: October 12, 2000

**LANDLORD:**

TC FITNESS, INC., a Delaware corporation

By: _____
Name: Gregory B. Ham
Its: Executive Vice President
Date: _____

**EXHIBIT A**
**DESCRIPTION OF PREMISES**

[See Attached]

# EXHIBIT A

## Legal Description

Parcel 4 of Regency Square as recorded in Plat Book 26 pages 93 and 94 of the Saint Charles County Recorder's Office and being more particularly described as follows:

Description of an 9.083 acre tract being part of Lots 10 and 11 of Block 2 of Evans Survey of the Commons of St. Charles, Township 47 North, Range 4 East of the Fifth Principal Meridian, St. Charles County, Missouri, and being more particularly described as follows:

Beginning at an old axle marking the common corner of Lots 9, 10, 11 and 12 of Block 2 of Evans Survey of the Commons of St. Charles; thence with the South line of Lot 10, North 33 degrees 01 minutes 51 seconds West, 553.17 feet; thence departing from said South line North 52 degrees 36 minutes 09 seconds East, 366.28; thence North 42 degrees 27 minutes 15 seconds East, 358.84 feet to the South right-of-way line of Interstate Highway 70; thence with said South right-of-way line, North 82 degrees 25 minutes 49 seconds East, 181.10 feet to an old right-of-way marker, thence along an arc of a curve to the rights, having a radius of 11,284.19 feet, an arc length of 15.00 feet and a chord of South 70 degrees 21 minutes 23 seconds East, 15.00 feet; thence departing from said South right-of-way line, South 20 degrees 53 minutes 52 seconds West, 12.64 feet; thence along an arc of a curve to the right, having a radius of 215.00 feet, an arc length of 80.71 feet and a chord of South 31 degrees 39 minutes 08 seconds West, 80.24 feet; thence South 42 degrees 24 minutes 23 seconds West, 5.29 feet; thence along an arc of a curve to the left, having a radius of 20.00 feet, an arc length of 34.91 feet and a chord of South 07 degrees 35 minutes 37 seconds East, 30.64 feet; thence North 57 degrees 35 minutes 37 seconds West, 74.61 feet; thence South 42 degrees 24 minutes 23 seconds East, 200.00 feet; thence North 42 degrees 24 minutes 23 seconds East, 206.00 feet; thence South 47 degrees 35 minutes 37 seconds East, 341.61 feet to the Northwest right-of-way line of Regency Parkway; thence With said right-of-way line the following: South 32 degrees 24 minutes 23 seconds West 345.30 feet; thence along an arc of a curve to the right, having a radius of 375.00 feet, an arc length of 161.65 feet and a chord of South 44 degrees 45 minutes 19 seconds West, 160.40 feet; South 57 degrees 06 minutes 15 seconds West, 156.96 feet to the South line of Lot 11 of Block 2 of Evans Survey of the Commons of St. Charles; thence with said South line, North 32 degrees 53 minutes 45 seconds West, 191.07 feet to the beginning point.

**EXHIBIT B**
**PREMISES/CENTER SITE PLAN**

[See Attached]

# EXHIBIT B
## PREMISES/CENTER SITE PLAN

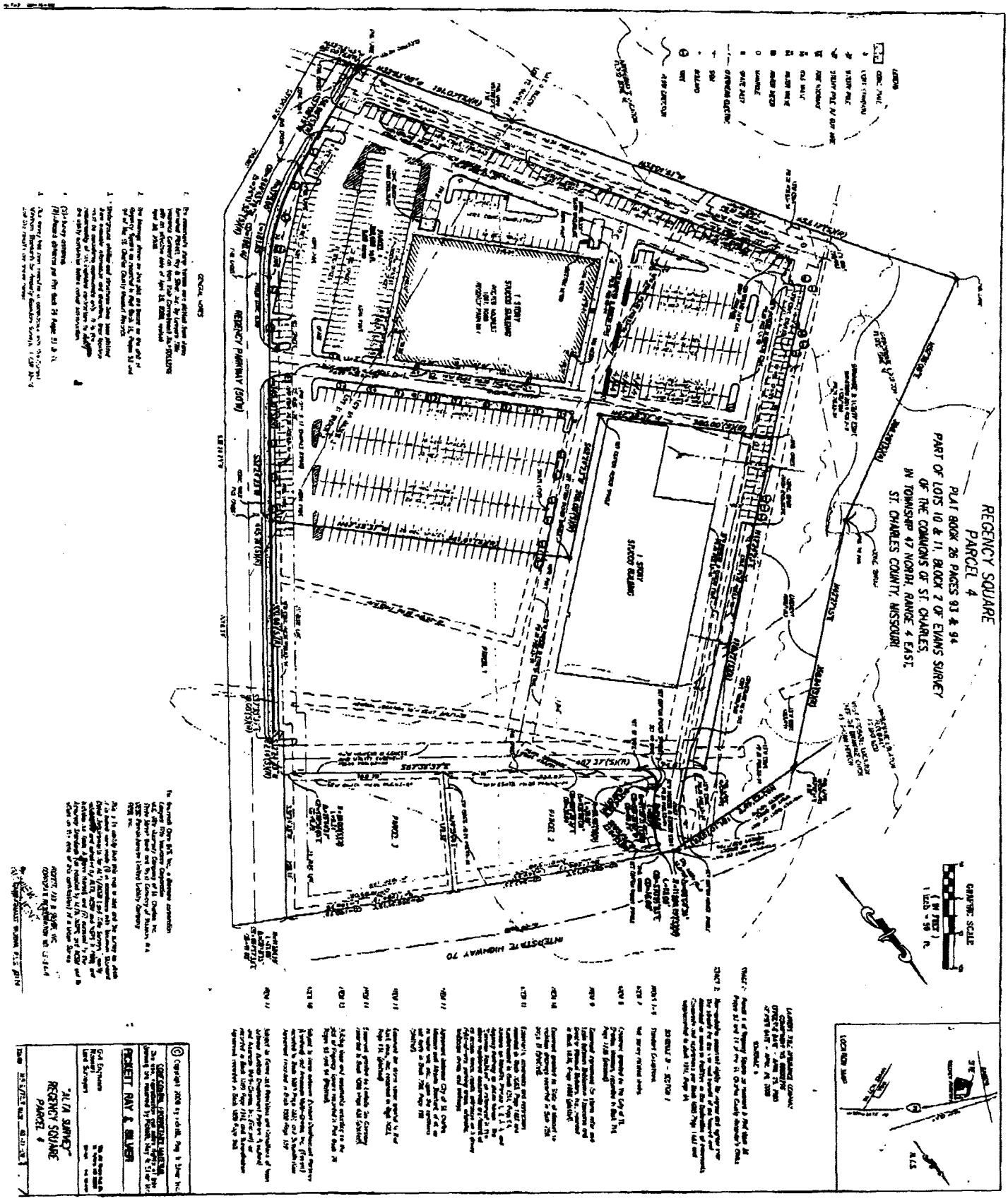


**EXHIBIT C**
**Intentionally Omitted**

**EXHIBIT D**
**TITLE COMMITMENT**

The Title Commitment consists of that Commitment for Title Insurance issued by Lawyers Title Insurance Corporation with an Effective Date of April 25, 2000, with a revised schedule B-1 dated June 5, 2000, bearing Commitment No. 00S52296.

Title exceptions to be eliminated: None.

**EXHIBIT E**
**TERM/RENT COMMENCEMENT MEMORANDUM**

**LANDLORD:** TC Fitness, Inc., a Delaware corporation

**TENANT:** 24 HOUR FITNESS, INC., a California corporation

**PREMISES:** 1095 Regency Parkway, St. Charles, MO 63303

**DATE:** _____

Landlord and Tenant hereby agree and stipulate that the Term Commencement Date, as defined in and determined in accordance with the Lease, dated _____ between _____ for the Premises described above is hereby stipulated for all purposes to be _____ and that the Rent Commencement Date is hereby stipulated for all purposes to be _____. Landlord and Tenant further hereby agree and stipulate that the date Tenant has opened for business in the Premises hereby stipulated for all purposes to be _____.

| **LANDLORD:** | **TENANT:** |
|---|---|
| TC FITNESS, INC., a Delaware corporation | 24 HOUR FITNESS, INC., a California corporation |
| By: _____ | |
| Name: _____ | By: _____ |
| Its: _____ | Name: _____ |
| | Its: _____ |

**EXHIBIT F**
**TENANT ESTOPPEL CERTIFICATE**

_____
_____
_____
_____

Ladies and Gentlemen:

The undersigned, _____, a _____ ("Tenant"), as tenant under a lease (the "Lease") of certain premises (the "Premises") dated _____, executed by Tenant and _____, a _____ ("Landlord"), hereby states, declares, represents and warrants to the addressee of this Estoppel Certificate and its successors and assigns as follows:

**1.** The copy of the Lease (with all amendments, riders or side agreements attached thereto) attached to this Estoppel Certificate as **Attachment A** is a true and correct copy of the Lease, constitutes the only agreement between Landlord and Tenant with respect to the Premises, is in full force and effect, and has not been otherwise amended, supplemented or modified except, if at all, as follows:

_____
_____
_____

**2.** Tenant has accepted possession of the Premises and any improvements required by the terms of the Lease to be made by Landlord have been completed to the satisfaction of Tenant.

**3.** Rental and other amounts due and payable under the Lease have been paid to the date of Tenant's execution of this Estoppel Certificate.

**4.** To the best of Tenant's knowledge, Landlord is not in default under any of the terms, conditions or covenants of the Lease, except, if at all, as follows:

_____
_____
_____

**5.** To the best of Tenant's knowledge, no notice has been received or given by Tenant of any default under the Lease by either Landlord or Tenant that has not been cured, and there are no circumstances that with the passage of time or giving of notice, or both, would constitute a default by Landlord or Tenant in the performance of any of the terms, conditions and/or covenants under the Lease, except, if at all, as follows:

_____
_____
_____

**6.** The address for notices to Tenant is set forth in the Lease.

**7.** To the best of Tenant's knowledge, Tenant has no charge, lien, or claim of offset under the Lease or against rent or other charges due under the Lease, and Tenant has no outstanding claim for credit or reimbursement on account of Tenant's improvements to the Premises, except as follows:

_____
_____
_____

**8.** Tenant has no right or option to purchase the Premises or any part or all of the Building of which they are a part, or to renew or extend the Lease, or to expand the Premises, except, if at all, as follows:

_____
_____
_____

**9.** Tenant has not received notice of any assignment, hypothecation, mortgage or pledge of Landlord's interest in the Lease or the rents or other amounts payable under the Lease, except, if at all, as follows:

_____
_____
_____

**10.** The amount of any security or other deposit returnable to Tenant pursuant to the Lease is set forth in the Lease and the amount of any Rent and other amounts paid more than thirty (30) days prior to the date on which they are due under the Lease are also set forth in the Lease.

**EXECUTED:**_____

_____
_____

By: _____
Name: _____
Its: _____

**ATTACHMENT A**
**TO TENANT ESTOPPEL CERTIFICATE**

[Tenant to attach copy of Lease with all amendments, riders and side agreements.]

**EXHIBIT G**
**LANDLORD ESTOPPEL CERTIFICATE**

_____
_____
_____
_____

Ladies and Gentlemen:

The undersigned, _____, a _____ ("Landlord"), as Landlord under a lease (the "Lease") of certain premises (the "Premises") dated _____, executed by Landlord and _____, a _____ ("Tenant"), hereby states, declares, represents and warrants to the addressee of this Estoppel Certificate and its successors and assigns as follows:

**1.** The copy of the Lease (with all amendments, riders or side agreements attached thereto) attached to this Estoppel Certificate as **Attachment A** is a true and correct copy of the Lease, constitutes the only agreement between Landlord and Tenant with respect to the Premises, is in full force and effect, and has not been otherwise amended, supplemented or modified except, if at all, as follows:

_____
_____
_____

**2.** Landlord has delivered possession of the Premises to Tenant and any improvements required by the terms of the Lease to be made by Landlord have been completed in accordance with the terms of the Lease.

**3.** Rental and other amounts due and payable from Tenant under the Lease have been paid to the date of Landlord's execution of this Estoppel Certificate.

**4.** Tenant is not in default under any of the terms, conditions or covenants of the Lease, except, if at all, as follows:

_____
_____
_____

**5.** No notice has been received or given by Landlord of any default under the Lease by either Landlord or Tenant that has not been cured, and there are no circumstances that with the passage of time or giving of notice, or both, would constitute a default by Landlord or Tenant in the performance of any of the terms, conditions and/or covenants under the Lease, except, if at all, as follows:

_____
_____
_____

**6.** The address for notices to Landlord is set forth in the Lease.

**7.** Tenant has no charge, lien, or claim of offset under the Lease or against rent or other charges due under the Lease, and Tenant has no outstanding claim for credit or reimbursement on account of Tenant's improvements to the Premises, except as follows:

_____
_____
_____

**8.** Tenant has no right or option to purchase the Premises or any part or all of the Building of which they are a part, or to renew or extend the Lease, or to expand the Premises, except, if at all, as follows:

_____
_____
_____

**9.** Landlord has not received notice of any assignment, sublease, hypothecation, mortgage or pledge of Tenant's interest in the Lease, except, if at all, as follows:

_____
_____
_____

**10.** The amount of any security or other deposit returnable to the Tenant pursuant to the Lease is set forth in the Lease and the amount of any Rent and other amounts paid more than thirty (30) days prior to the date on which they are due under the Lease are also set forth in the Lease.

**11.** Landlord is not in default under any mortgage, deed of trust, ground lease or other security instrument secured by Landlord's interest in the Premises.

**EXECUTED:**_____

_____
_____

By: _____
Name: _____
Its: _____

**ATTACHMENT A**
**TO LANDLORD ESTOPPEL CERTIFICATE**

[Landlord to attach copy of Lease with all amendments, riders and side agreements.]

**EXHIBIT H**
**APPROVED SIGNAGE**

[Intentionally Omitted]

**EXHIBIT I**
**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

**EXHIBIT I**
**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

THIS AGREEMENT made as of this _____day of _____, 2000, between **TC FITNESS, INC.**, a Delaware corporation, having an office at 7535 East Hampden Avenue, Suite 650, Denver, CO 80231 (hereinafter called "Landlord"), **GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.**, a Delaware corporation, having an office at 600 Steamboat Road, Greenwich, Connecticut 06830 (hereinafter called "Lender"), and **24 HOUR FITNESS, INC.**, a California corporation, having an office at 2231 Rutherford Road, Carlsbad, California 92008 (hereinafter called "Tenant").

**WITNESSETH:**

WHEREAS, by a lease (the "Lease") dated _____ (the "Lease"), between TC Fitness, Inc., a Delaware corporation ("Landlord"), as landlord, and Tenant, as tenant, Landlord leased to Tenant certain premises known as 24 Hour Fitness (the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and additions thereto, is referred to as the "Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof), is, shall be and shall at all Times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination, which instruments shall be in form and substance reasonably acceptable to Lender and Tenant.

2. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect; provided that subject to the Terms and provisions of this Agreement, Lender and Tenant do hereby agree that the Lease and all of the terms, provisions, covenants and agreements thereof shall survive any default or possession or foreclosure action under the Instrument: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered

with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Instrument or to enforce any rights or remedies of Lender under the Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent necessary to preserve and effect a Successor-Landlord's rights under **Section 3(B)** below). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. **(A)** After notice is given by Lender that the Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Under, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Upon receipt of the foregoing notice from Lender, Tenant shall be entitled to pay all amounts due under the Lease to Lender without any obligation to investigate the accuracy of such notice and all amounts paid by Tenant to Under shall be credited to Tenant under the Lease as if the same had been paid to Landlord.

**(B)** In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a "Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment, which instrument shall be in form and substance reasonably acceptable to Successor-Landlord and Tenant. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

**(i)** subject to the terms of **Subsection 3(B)(ii)** below, be liable for any previous act or omission of Landlord under the Lease;

**(ii)** be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord prior to Successor-Landlord taking title to the Premises; provided, however, that subject to the terms of **Sections 5** and **13** hereof, Successor-Landlord shall be subject to offsets accrued to Tenant under Section 3.10 of the Lease (whether accrued prior to or after Successor-Landlord takes title to the Premises);

**(iii)** be bound by any previous prepayment of rent or additional rent for more than one (1) month which Tenant might have paid to Landlord, unless such prepayment shall have been expressly approved in writing by Lender;

**(iv)** be liable for any security deposited under the Lease unless such security has been physically delivered to Under or Successor-Landlord; and

**(v)** be personally liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for the construction of, improvements on or about the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items; provided, however, that nothing contained herein shall prevent the Tenant from exercising its remedies under the Lease in connection with the failure of such construction obligations to be satisfied in accordance with the terms of the Lease;

**4.** Tenant agrees that without the prior written consent of Lender, it shall not (a) except as allowed under the Lease or at law on account of a default by Landlord, terminate or cancel the Lease or any extensions or renewals thereof except in accordance with, and pursuant to, the terms of the Lease, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Instrument, unless Tenant is required to do so by, and in accordance with, the terms of the Lease. Any such purported action without such consent shall be void as against the holder of the Instrument.

**5. (A)** Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within thirty (30) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such thirty (30) day period, Lender fails to commence such cure within such thirty (30) day period and diligently prosecute the same to completion within a reasonable period of time for remedying such default, act or omission, provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the I-ease or claim a partial or total eviction by reason of such default, act or omission until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises, provided Lender commences such action within such thirty (30)-day period and diligently pursues the same to completion. Any provision in this **Section 5** to the contrary notwithstanding, Tenant shall have the right to exercise its rights to terminate the Lease pursuant to **Sections 3.6, 3.9, 3.12, 5.2, 12.6, 13.1, 13.4** and **15.6** of the Lease in accordance with the terms thereof and time limits set forth therein and such time limits shall not be extended.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Instrument and Lender.

7. Subject to the terms of this Agreement, upon and after the occurrence of a default under the Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property and the income and/or rents, if any, therefrom and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. Intentionally Omitted.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of **Sections 3.9(c)** (provided this Agreement is executed and delivered within the time period set forth in said Section) and 16.1 of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Sections and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Instrument.

**(B)** Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Under as lender with respect to the Property, or any portion thereof, provided such agreement is on the same terms and conditions as this Agreement.

**13. (A)** Any notice of default required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender. Performance by Lender within the time required under the Lease but subject to the terms of **Paragraph 5(B)** hereof, shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have time to complete such performance as provided in **Paragraph 5** hereof.

**(B)** All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be. in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as set forth below or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith:

If to Lender:
Greenwich Capital Markets, Inc.
19200 Von Karman, Suite 950
Irvine, California 92612
Attn: Gary Swon

Lender's Counsel:
Sidley & Austin
555 West Fifth Street, 40th Floor
Los Angeles, California 90013-1010
Attn: Lisa N. Le, Esq.

If to Tenant:
24 Hour Fitness, Inc.
2231 Rutherford Road
Carlsbad, California 92008
Attention: Real Estate Department

With a copy to:
24 Hour Fitness, Inc.
5020 Franklin Drive
Pleasanton, California 94588
Attention: Legal Department

If to Landlord:
TC Fitness, Inc.
c/o Trammell Crow BTS, Inc.
7535 East Hampden Avenue, Suite 650
Denver, CO 80231

With a copy to:
Brownstein Hyatt & Farber, P.C.
410 Seventeenth Street
Twenty-Second Floor
Denver, CO 80202
Attn: Howard J. Pollack, Esq.

Except as otherwise provided in this Agreement, all such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

**14.** This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term "person" shall mean an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

**15.** BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**16.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**LENDER:**

**GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.**, a Delaware corporation

By: _____
Name: Gary E. Swon
Title: Senior Vice-President

**TENANT:**

**24 HOUR FITNESS, INC.**, a California corporation

By: _____
Name: _____
Title: _____

**LANDLORD:**

**TC FITNESS, INC.**, a Delaware corporation

By: _____
Name: _____
Title: _____

**EXHIBIT J**
**GUARANTY OF LEASE**

**FITNESS HOLDINGS, INC.**, a Delaware corporation ("Guarantor"), whose address is 5020 Franklin Drive, Pleasanton, California, as a material inducement to and in consideration of TC Fitness, Inc., a Delaware corporation ("Landlord") executing that 24 Hour Fitness Lease of even date herewith between Landlord, as landlord, and 24 Hour Fitness, Inc., a California corporation ("Tenant"), as tenant (the "Lease"), covering premises located at 1095 Regency Parkway, St. Charles, MO 63303, unconditionally guarantees and promises to and for the benefit of Landlord that Tenant shall perform the provisions of the Lease that Tenant is to perform.

If Guarantor is more than one person, Guarantor's obligations are joint and several and are independent of Tenant's obligations. A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against any other Guarantor or Tenant, or all, or whether any other Guarantor or Tenant, or all, are joined in the action.

The provisions of the Lease may be changed by agreement between Landlord and Tenant at any time, or by course of conduct, without the consent of or without notice to Guarantor. This Guaranty shall guarantee the performance of the Lease as changed. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty.

This Guaranty shall not be affected by Landlord's failure or delay to enforce any of its rights.

If Tenant defaults under the Lease, Landlord can proceed immediately against Guarantor or Tenant, or both, or Landlord can enforce against Guarantor or Tenant, or both, any rights that it has under the Lease, or pursuant to applicable laws. If the Lease terminates and Landlord has any rights it can enforce against Tenant after termination, Landlord can enforce those rights against Guarantor without giving previous notice to Tenant or Guarantor, or without making any demand on either of them.

Guarantor waives the right to require Landlord to: (1) proceed against Tenant; (2) proceed against or exhaust any security that Landlord holds form Tenant; or (3) pursue any other remedy in Landlord's power. Guarantor waives any defense by reason of any disability of Tenant. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty, and waives all notices of the existence, creation, or incurring of new or additional obligations.

If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors.

If either party brings an action to enforce or interpret this Guaranty, the prevailing party may recover its attorneys' fees and costs of court from the non-prevailing party.

Guarantor's obligations under this Guaranty shall be binding on Guarantor's successors.

FITNESS HOLDINGS, INC., a
Delaware corporation

By: _____
Name: _____
Its: _____
Dated: _____

**EXHIBIT K**
**COMPLETION GUARANTY**

THIS COMPLETION GUARANTY ("Guaranty"), is entered into as of _____, 2000, by FITNESS HOLDINGS, INC., a Delaware corporation ("Guarantor"), in favor of TC FITNESS, INC., a Delaware Corporation ("Landlord").

**RECITALS**

**A.** Guarantor is the parent corporation of 24 HOUR FITNESS, INC., a California corporation ("Tenant"). Landlord and Tenant have entered into a written 24 Hour Fitness Lease dated on or about the date hereof, for the leasing of certain real property located in the City of St. Charles, Missouri (the "Lease"). Pursuant to the Lease, Tenant is to construct certain Tenant Improvements, as defined in the Lease, and Landlord has agreed to fund a portion thereof. All capitalized terms herein, unless specifically defined herein, shall have the same meaning as set forth in the Lease.

**B.** Landlord is willing to fund a portion of the Tenant Improvements if it receives this Guaranty from Guarantor.

NOW, THEREFORE, in order to induce Landlord to fund a portion of the Tenant Improvements, Guarantor hereby certifies, represents, warrants, guarantees and agrees as follows:

1. **Guaranty.** Guarantor hereby irrevocably, absolutely and unconditionally guarantees and agrees to or for the benefit of Landlord, the prompt and complete performance of the obligations of Tenant, as set forth in the Lease, to construct the Tenant Improvements in substantial compliance with the Plans, as required in the Lease, and otherwise in accordance with the terms of the Lease.

The liability of Guarantor under this Guaranty shall also include any attorneys' fees, costs and other expenses incurred by Landlord in the enforcement of this Guaranty. The obligations of Guarantor under this Section 1 are collectively referred to herein as the "Guaranteed Obligations."

2. **Remedies.**

**2.1** Upon the occurrence and during the continuation of an event of default by Tenant under the Lease with respect to its obligations to construct and complete the construction of the Tenant Improvements, Landlord shall have the option, to be exercised in its sole discretion, without having any obligation to do so, and with the further right to suspend or terminate such actions at any time, to (a) pursue whatever remedies it may have under the Lease, or (b) require Guarantor to perform the Guaranteed Obligation. No such actions by Landlord shall release or limit the liability of Guarantor.

3. **Waivers by Guarantor.**

**3.1** Except as otherwise provided in this Guaranty, Guarantor hereby waives presentment for payment, demand, protest, notice of protest, dishonor and notice of dishonor, notice of acceptance of this Guaranty and the guaranty herein, notices of default, notice of enforcement of any right or remedy with respect to the Guaranteed Obligations, notices of the creation, renewal, extension, modification or accrual of any of the Guaranteed Obligations, and all other notices to Guarantor.

**3.2** Guarantor waives all right to require Landlord to proceed against the Tenant or against any other guarantor (including any other Guarantor named herein) or against any other person,

firm or corporation or to resort to, apply or exhaust any security Landlord may hold at any time or to pursue any judicial, nonjudicial and/or provisional remedy. In the event Tenant is in default of its obligations under the Lease with respect to the construction of the Tenant Improvements, Landlord may proceed against Guarantor with respect to the Guaranteed Obligations without taking any action against Tenant or against any other guarantor (including any other Guarantor named herein) or against any other person, firm or corporation and without proceeding against or applying any security Landlord holds.

**3.3** Until the Guaranteed Obligations have been fully satisfied, Guarantor shall not have, and Guarantor hereby waives, any and all rights of reimbursement, contribution and subrogation. Guarantor waives any benefit of and any right to participate in any collateral or security held by Landlord for the performance of the Guaranteed Obligations.

**3.4** Guarantor agrees that Landlord may enforce this Guaranty upon the occurrence and during the continuation of any default by Tenant of its obligations under the Lease with respect to the construction of the Tenant Improvements; provided, however, that if there is a dispute between Landlord and Tenant with respect to a Guaranteed Obligation, Guarantor shall have no obligation with regard to such disputed Guaranteed Obligation until such dispute is resolved, and then only to the extent it is agreed between Landlord and Tenant or determined that Tenant is obligated under such disputed Guaranteed Obligation. In the event of any default by Tenant under the Lease with respect to its obligations with respect to the construction of the Tenant Improvements, Landlord may maintain an action upon this Guaranty whether or not action is brought against Tenant and whether or not Tenant is joined in any such action. Landlord may maintain successive actions for other defaults, and Landlord's rights hereunder shall not be exhausted or waived, and Landlord shall not be estopped to proceed against Guarantor pursuant to this Guaranty, by the exercise of, or failure to exercise, any of Landlord's rights or remedies or by any such action or by any number of successive actions, until and unless the Guaranteed Obligations have been fully satisfied and each of Guarantor's obligations hereunder has been fully performed or otherwise satisfied.

**3.5** Guarantor hereby fully and completely waives, releases and relinquishes any statute of limitations affecting any Guarantor's liability hereunder or the enforcement thereof.

**3.6** Guarantor expressly waives any defense or benefits arising out of any federal or state bankruptcy, insolvency, or debtor relief laws, including without limitation, under Section 364 or 1111(b)(2) of the United States Bankruptcy Code.

**3.7** Guarantor expressly waives any and all benefits, rights and/or defenses based on principles of suretyship and/or guaranty.

**3.8 Acknowledgment of Waivers.** Guarantor acknowledges that it has relied on the advice of its own counsel entering into this Guaranty and has reviewed the waivers of rights contained herein with its counsel. Guarantor further acknowledges that it understands and accepts as a necessary part of this Guaranty the waivers of rights set forth above, after reviewing the extent and effect of the waivers in this Guaranty with its counsel.

**4. Guarantor's Warranties.** Guarantor warrants and acknowledges a financial interest in and relationship to Tenant. Guarantor further warrants and acknowledges that it will receive a benefit from the existence of the Lease.

**5. No Release.**

**5.1** Until the Guaranteed Obligations have been fully satisfied, and until all of the terms, covenants and conditions of this Guaranty are fully performed, Guarantor shall not be released by any act or thing which might, but for this paragraph, be deemed a legal or equitable discharge of a surety (including any act by Landlord which might have the effect of destroying Guarantor's rights of subrogation against Tenant), or by reason of any waiver, extension, modification, forbearance or delay of Landlord or its failure to proceed promptly or otherwise, or by reason of any further obligation or agreement between any then owner of the subject property and the then Tenant relating to the completion of the Tenant Improvements, and Guarantor hereby expressly waives and surrenders any defense to this liability under this Guaranty based upon any of the foregoing acts, things, agreements or waivers.

**5.2** Guarantor's liability under this Guaranty shall continue until full and satisfactory performance of all of the Guaranteed Obligations. Upon full and satisfactory performance of all of the Guaranteed Obligations, and provided there remains no uncured default under this Guaranty, Guarantor's Obligations under this Guaranty shall terminate and be of no further force or effect. Upon the satisfaction of such conditions, and upon Guarantor's request, Landlord will acknowledge in writing that Guarantor has no further obligations under this Guaranty.

**6. Miscellaneous.**

**6.1** This Guaranty shall be governed and construed in accordance with Texas law, without regard to conflict of laws principles. Guarantor irrevocably agrees that any legal action or proceeding, with respect to this Guaranty, may be brought in a court of competent subject matter jurisdiction of any Federal or State Court within the State of Texas, as Landlord may elect, and by execution and delivery of this Guaranty, Guarantor hereby irrevocably submits to the personal jurisdiction of each such court.

**6.2** Time is of the essence hereof.

**6.3** This Guaranty shall inure to the benefit of Landlord and its lenders and their successors and assigns and shall be binding upon the heirs, personal representatives, successors and assigns of Guarantor. This Guaranty is solely for the benefit of Landlord and its lenders, and the term "Landlord" shall include Landlord's successors and/or assigns, and this Guaranty is not intended to nor shall it be deemed to be for the benefit of any other third party (other than Landlord's lenders).

**6.4** Every provision of this Guaranty is intended to be severable. If any term, provision, section or subsection of this Guaranty is declared to be illegal or invalid, for any reason whatsoever, by a court of competent jurisdiction, such illegality or invalidity shall not affect the other terms, provisions, sections or subsections of this Guaranty, which shall remain binding and enforceable.

**6.5** All remedies afforded to Landlord by reason of this Guaranty are separate and cumulative remedies and none of such remedies, whether exercised by Landlord or not, shall be deemed to be in exclusion of any one of the other remedies available to Landlord, and shall not in any way limit or prejudice any other legal or equitable remedy available to Landlord.

**6.6** If any legal action, arbitration or other proceeding is brought by either Guarantor or Landlord in order to enforce or construe a provision of this Guaranty, the unsuccessful party in such action or proceeding, whether or not such action or proceeding is settled or prosecuted to final judgment, shall pay all of the reasonable attorneys' fees and costs incurred by the prevailing party (including without

limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)).

**6.7** If there is more than one Guarantor executing this Guaranty, the obligations of all Guarantors hereunder shall be joint and several, and all words used herein in the singular shall be deemed to have been used in the plural when the context and construction so require.

**6.8** Guarantor's performance of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for the Guaranteed Obligations which are not performed. Without in any way limiting the generality of the foregoing, in the event that Landlord is awarded a judgment in any suit brought to enforce Guarantor's covenant to perform a portion of the Guaranteed Obligations, such judgment shall in no way be deemed to release Guarantor from its covenant to perform any portion of the Guaranteed Obligations which is not the subject of the suit.

**7. Notices.** All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand, or sent by registered or certified mail, postage prepaid, through the United States Postal Service to the addresses shown below or such other addresses which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given three (3) days after deposit in the United States mail, and if delivered by hand shall be deemed given when delivered.

| | |
|---|---|
| To Guarantor: | Fitness Holdings, Inc.<br>5020 Franklin Drive<br>Pleasanton, CA 94588<br>Attn: General Counsel |
| To Landlord: | TC Fitness, Inc.<br>c/o Trammell Crow BTS, Inc.<br>7535 East Hampden Avenue, Suite 650<br>Denver, CO 80231<br>Attention: Gregory B. Ham |
| With copy to: | Brownstein Hyatt & Farber, P.C.<br>410 Seventeenth Street<br>Twenty-Second Floor<br>Denver, CO 80202<br>Attention: Howard Pollack, Esq. |

IN WITNESS WHEREOF, Guarantor has executed this Completion Guaranty as of the date first above written.

FITNESS HOLDINGS INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

# THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to Lease Agreement (this "Amendment") is dated November 30, 2016 (the "Effective Date") by and between Aerobic (MO) LLC, a Delaware limited liability company ("Landlord"), and Gold's St. Louis, LLC, a Delaware limited liability company ("Tenant").

## RECITALS

**WHEREAS,** Landlord, as successor by assignment from TC Fitness, Inc., and Tenant, as successor by assignment from Genesis Health Clubs of the Midwest, LLC, are parties to that certain Lease dated October 16, 2000 (as amended, the "Lease"); and

**WHEREAS,** pursuant to this Amendment, Landlord and Tenant desire to, among other things, extend the Term of the Lease and modify Monthly Rent;

## AGREEMENT

**NOW, THEREFORE,** in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Capitalized Terms**. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease.

2. **Extension**. Landlord and Tenant agree to extend the term of the Lease for a twelve (12) year period, beginning on December 1, 2016 and ending November 30, 2028 (the "New Term"). In accordance with Section 3.3 of the Lease, Tenant shall have three (3) options to extend the Lease for an additional period of five (5) years each on the same terms and conditions as set forth in the Lease, except as expressly modified by this Amendment.

3. **Minimum Rent**.

a. Section 1.10 of the Lease is deleted in its entirety and replaced with the following:

> "**Monthly Rent**: Fifty-Eight Thousand Three Hundred Thirty Three and 33/100 Dollars ($58,333.33); Seven Hundred Thousand Dollars ($700,000.00) per year subject to adjustment every forty eight (48) months in accordance with Section 4.2, however, in no event shall any increase on any Rental Adjustment Date exceed eight percent (8%).

b. The first sentence of Section 4.2 of the Lease is deleted in its entirety and replaced with the following:

> "**Periodic Cost of Living Adjustments.** The Monthly Rent shall be increased on December 1, 2020 and every four years thereafter during the Term (each such date being a "Rental Adjustment Date"), in accordance with the Index as follows:"

4. **Tenant's Work**. Tenant wishes to complete the scope of work more particularly described on Exhibit C, attached hereto and made a part hereof ("Tenant's Work"). Landlord hereby



EX B

consents to Tenant's Work. If, in connection with the performance of Tenant's Work, Tenant is required to seek a permit or other governmental or municipal approval, Tenant shall submit Tenant's plans and applications to Landlord for Landlord's prior written consent, which shall not be unreasonably withheld, in accordance with Article 8 of the Lease. Tenant shall have the right to select all contractors, project managers, architects and space planners for Tenant's Work, so long as same are reputable, licensed, bonded and/or insured. Tenant shall also have the right to install a temporary opening in the exterior of the Building at a mutually agreed upon location to facilitate the performance of Tenant's Work. All of Tenant's Work shall be performed in a professional, workmanlike manner and Tenant, shall repair any damage to the Premises caused by Tenant or Tenant's contractors during performance of Tenant's Work in or on the Premises.

5. **Tenant Improvement Allowance**.

a. Landlord shall provide Tenant an improvement allowance ("TI Allowance") equal to $912,000 in connection with Tenant's Work. Landlord shall reimburse Tenant after the completion of the Tenant's Work in accordance with the following.

i. Tenant's Work eligible for reimbursement from the TI Allowance may be performed at any time after the Effective Date but the TI Allowance shall only be made available to Tenant in two phases: (i) the first to occur upon completion by Tenant of fifty percent (50%) of Tenant's Work. Upon completion of 50% of Tenant's Work, Tenant may make one request in accordance with Section 5(a)(ii) hereof (any such request, a "Reimbursement Demand") which shall not exceed $456,000; and (ii) the second to occur when Tenant has completed Tenant's Work. Upon completion of the Tenant's Work, Tenant may make one Reimbursement Demand which shall not exceed the difference between $912,000 and the first Reimbursement Demand.

ii. Tenant shall submit to Landlord the following documentary evidence (the "TI Documents") with each Reimbursement Demand: (i) invoices; (ii) proof of payment by Tenant of such invoices; (iii) a lien waiver that Tenant's contractor executes in respect of the alterations and improvements described in Tenant's contract with contractor and a copy of a lien waiver executed in respect of the alterations and improvements described in that contract by each subcontractor who provides goods and services in connection with the making of the alterations and improvements described in that contract and who is entitled to receive $10,000 or more in connection with the furnishing of those goods and services; and (iv) certification in writing by Tenant delivered to Landlord stating that all Tenant's Work was completed in connection with the TI Allowance has been completed in workmanlike manner in accordance with the terms of the Lease in a manner acceptable to Tenant. Landlord shall distribute to Tenant the funds requested in the Reimbursement Demand within thirty (30) days of Landlord's receipt of the TI Documents in accordance with the terms hereof.

b. If the aggregate amount of the cost for Tenant's Work exceeds the amount of the TI Allowance, Landlord will have no liability for the excess. Tenant acknowledges and agrees that any and all work, including, without limitation, Tenant's Work, performed shall be performed or made by Tenant in accordance with applicable provisions of the Lease.

6. **Landlord's Work**. Subject to any delays attributed to force majeure, Landlord shall (i) repair and paint the stucco on all sides of the Building's exterior between April 1 and June 30, 2017, and (ii) clean and prepare the existing roof, according to manufacturer's requirements, to receive new roof materials, and install a new roof system according to manufacturer's requirements by February 28, 2017. Between April 1 and June 30, 2017, Landlord shall seal and stripe the parking lot that services the Premises. Landlord shall ensure that all materials, skill and workmanship in Landlord's Work shall be performed in a professional, workmanlike manner in accordance with the terms of the Lease.

7. **Roof Repair and Maintenance**.

a. Section 9.1(i) of the Lease is hereby deleted in its entirety and replaced with the following:

> " replace the roof (if and when necessary) with a roof having a fifteen (15) year warranty and further, throughout the New Term and any extensions thereof, Landlord shall maintain and/or repair the roof at its sole cost and expense, and"

b. Section 9.2 of the Lease is hereby amended by deleting the first sentence in its entirety and replacing it with the following:

> "Tenant shall, during the Term and subject to Landlord's obligations pursuant to **Section 9.1** and elsewhere in this Lease and subject to the provisions of **Article 12** and **Article 13**, maintain in good condition, (i) repair and replace, as applicable, all portions of the Premises that Landlord is not otherwise obligated to maintain, repair and replace pursuant to Section 9.1 and (ii) perform exterior painting and cleaning of the exterior windows of the Building as and when such painting or window cleaning, as the case may be, becomes necessary, and maintain the HVAC and fire sprinkler systems which service the Building."

8. **Pool Area Remediation**. Tenant shall investigate the condition of the pool and pool area and notify Landlord of its findings, including, without limitation, if any remedial or restoration work is required (which may include mold or other environmental issues). In the event Tenant believes it is required to remediate under Applicable Law and pursuant to the Lease, Landlord shall review and approve such remediation plans provided by Tenant in accordance with the terms of the Lease. Tenant shall not conduct any remediation work without the prior written consent of Landlord which is not to be unreasonably withheld, conditioned or delayed. Upon approval by Landlord of such remediation plans submitted by Tenant, Tenant shall, at its sole cost and expense, conduct such remediation work as approved by Landlord. For any remediation or restoration work arising out of the 24 Hour Fitness, Inc.'s ("24 Hour") obligations or breach thereof while tenant under the Lease, Tenant may request that Landlord, on behalf of Tenant, seek reimbursement of Tenant's costs incurred in connection with such remedial or restoration work and, upon such request, Landlord, at its sole cost and expense, agrees to diligently pursue reimbursement of Tenant's costs from 24 Hour, including without limitation, by making a demand for payment from and an indemnity claim against 24 Hour. Notwithstanding the foregoing, Landlord shall not be directly responsible for any costs and expenses incurred in connection with such remediation work.

9. **Signage**. Tenant shall be entitled to all signage opportunities previously afforded to 24 HR Fitness as tenant, including but not limited to, the installation of channel lettering and logo on all four sides of the building and a panel on all monuments and pylons in the Center. Tenant shall also have the right to affix promotional banners to the exterior of the Premises periodically during the New Term and Extension Terms.

10. **Guaranties**.

a. Existing Guaranties. Simultaneously with the execution of this Amendment, Landlord shall execute a full, unconditional release of Fitness Holdings, Inc., a Delaware corporation, 24 Hour, and any other guarantors of the Tenant's obligations under the Lease. The form of the release is attached hereto as Exhibit A.

b. GGI Guaranty. Simultaneously with the execution of this Amendment, Tenant shall cause Gold's Gym International, Inc., a Delaware corporation, to execute a guaranty, the form of which is attached hereto as Exhibit B, of Tenant's obligations under the Lease.

11. **Landlord**. During the New Term and Extension Terms, Landlord may not modify the parking lot that serves the Premises without Tenant's prior written consent, which Tenant may withhold if Tenant, in good faith, determines that the modification could adversely affect Tenant's business.

12. **Brokers**. Tenant acknowledges that it has not engaged any brokers with respect to this extension of the Lease.

13. **Ratification.** Except as expressly stated herein, the Lease shall remain in full force and effect. If there is any conflict between the Lease and the terms of this Amendment, the terms of this Amendment shall control.

14. **Successors and Assigns**. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. **Counterparts**. The parties may execute this Amendment in electronic counterparts (PDF), each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument. The parties agree that transmission of a party's original signature to this Amendment by telecopy or electronic mail shall be deemed a transmission of the original Amendment for all purposes.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned parties have executed and delivered this Amendment as of the date first written above.

**LANDLORD:**

AEROBIC (MO) LLC,
a Delaware limited liability company

By: PUMP (MO) QRS 14-52, INC.,
a Delaware corporation, its managing member

By: _____
Name: Tripp Bailey
Title: Vice President

**TENANT:**

Gold's St. Louis, LLC

By: _____
Name: _____
Its: CEO

**EXHIBIT "A"**

**FORM OF RELEASE**

**RELEASE**

This Release (the "Release") is executed by Aerobic (MO) LLC, a Delaware limited liability company ("Landlord") in favor of Fitness Holdings, Inc., a Delaware corporation ("Holdings") and 24 Hour Fitness, Inc., a California corporation ("24 Hour" and together with Holdings, the "Released Parties").

**RECITALS**

**WHEREAS**, Landlord, as successor by assignment from TC Fitness, Inc., a Delaware corporation, and Gold's St. Louis, LLC, a Delaware limited liability company ("Gold's"), as successor by assignment from Genesis Health Clubs of the Midwest, LLC, a Kansas limited liability company ("Genesis"), are parties to that certain lease dated October 16, 2000 (as amended, the "Lease");

**WHEREAS**, Genesis is successor by assignment from 24 Hour, pursuant to that certain Assignment and Assumption Agreement dated June 15, 2016, and Holdings is the guarantor of 24 Hour's obligations under the Lease pursuant to that certain Guaranty of Lease dated October 13, 2000 (the "Holdings Guaranty"); and

**WHEREAS**, Landlord and Tenant have agreed pursuant to that certain Third Amendment to Lease dated November 30, 2016, among other things, that Gold's will provide a parent guaranty of tenant's obligations under the Lease in exchange for Landlord's release of the Released Parties.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord agrees as follows:

16. **Release**. Landlord hereby fully and unconditionally releases the Released Parties from any obligations or liability under the Lease and Holdings Guaranty, including without limitation, liability for the payment of Rent, as defined in the Lease, and for the due performance of all terms, covenants and conditions of the "Tenant" pursuant to the Lease arising or accruing from and after November 30, 2016.

17. **Successors and Assigns**. This Release shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Release as of November 30, 2016.

**LANDLORD:**

Aerobic (MO) LLC

By: _____

Name: Tripp Bailey

Its: Vice President

**EXHIBIT "B"**

**FORM OF GUARANTY**

**GUARANTY**

This Guaranty (the "Guaranty") is executed as of November 30, 2016 by Gold's Gym International, Inc., a Delaware corporation (the "Guarantor"), in favor of Aerobic (MO) LLC, a Delaware limited liability company (the "Landlord").

**RECITALS**

WHEREAS, Landlord, as successor by assignment from TC Fitness, Inc., and Gold's St. Louis, LLC, a Delaware limited liability company ("Tenant"), as successor by assignment from Genesis Health Clubs of the Midwest, LLC, are parties to that certain Lease dated October 16, 2000 (as amended, the "Lease");

WHEREAS, "Obligations" shall mean all obligations, liabilities, and indebtedness of Tenant to Landlord, now or hereafter existing under the Lease from and after the date hereof or with respect to the Premises (including, without limitation all Rent payable by Tenant to Landlord), together with all: (a) interest accruing thereon; and (b) costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in the enforcement or collection thereof; and

WHEREAS, Landlord, as a condition to entering into that certain Third Amendment to Lease Agreement dated November 30, 2016, has required that Guarantor enter into this Guaranty;

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Guarantor covenants and agrees as follows:

1. Guaranty.

(a) Guarantor absolutely and unconditionally guarantees the full and prompt payment and performance when due of the Obligations. This Guaranty shall continue, in full force and effect throughout the Term and thereafter, until all of the Obligations are paid and performed in full.

(b) This Guaranty shall not be affected by Landlord's failure or delay to enforce any of its rights.

(c) If Tenant defaults under the Lease, Landlord can proceed immediately against Guarantor or Tenant, or both, or Landlord can enforce against Guarantor or Tenant, or both, any rights that it has under the Lease, or pursuant to applicable laws. If the Lease terminates and Landlord has any rights it can enforce against Tenant after termination, Landlord can enforce those rights against Guarantor without giving previous notice to Tenant or Guarantor, or without making any demand on either of them.

(d) Guarantor waives the right to require Landlord to: (1) proceed against Tenant; (2) proceed against or exhaust any security that Landlord holds form Tenant; or (3) pursue any other remedy in Landlord's power. Guarantor waives any defense by reason of any disability of Tenant. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of

protest, notices of dishonor, and notices of acceptance of this Guaranty, and waives all notices of the existence, creation, or incurring of new or additional obligations.

2. Representations. Guarantor hereby represents and warrants to Landlord that: (a) this Guaranty is the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms and conditions; (b) there is no action or proceeding at law or in equity, or by or before any court or governmental instrumentality or agency, now pending against or, to the knowledge of Guarantor, threatened against, Guarantor that may materially and adversely affect the financial condition of Guarantor; (c) all balance sheets, earnings statements, and other financial data that have been or hereafter may be furnished to Landlord in connection with this Guaranty do and shall represent fairly the financial condition of Guarantor as of the dates on which, and for the periods for which, such balance sheets, earning statements, and other data are furnished; (d) all other information, reports, and other papers and data furnished to Landlord shall be accurate and correct in all material respects at the time given; and (e) Guarantor is solvent.

3. Sublease or Assignment of Lease. In the event the Tenant's interest in the Lease is sublet or assigned, unless Guarantor is expressly released by Landlord under the terms of the Lease or otherwise, Guarantor's obligations under this Guaranty shall continue and the term "Tenant" shall be deemed to include any assignee(s) of Tenant's interest through the full Term of the Lease.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

"GUARANTOR"

**Gold's Gym International, Inc.,**
a Delaware corporation

By: _____
Name: Brandon Bean
Title: CEO

**EXHIBIT "C"**

**SCOPE OF WORK**

[Tenant to provide; subject to review and approval by Landlord.]