

Fill in this information to identify the case:

Debtor 1 Gold's Alabama, LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 20-31321-hdh11

E-Filed on 08/31/2020
Claim # 274

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?	
<u>Birmingham Realty Company, Inc.</u> Name of the current creditor (the person or entity to be paid for this claim)	
Other names the creditor used with the debtor <u>Barber Companies</u>	
2. Has this claim been acquired from someone else?	
<input checked="" type="checkbox"/> No <input type="checkbox"/> 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?
	Where should payments to the creditor be sent? (if different)
	<u>Paul Sanford</u> Name
	<u>27 Inverness Center Pkwy</u> Number Street
	<u>Birmingham</u> <u>AL</u> <u>35242</u> City State ZIP Code
	Contact phone <u>(205) 995-9119</u>
	Contact email <u>psanford@barbercompanies.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	
<input checked="" type="checkbox"/> No <input type="checkbox"/> 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?	
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

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? \$ 305,796.53. 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.
Rejection Damages\$502

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. \$ 0.00

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:

☐ 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.

Amount entitled to priority

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

* 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 08/31/2020
MM / DD / YYYY

Steven D. Altmann

Signature

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

Name Steven D. Altmann
First name Middle name Last name

Title Attorney

Company Nomberg Law Firm
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 3940 Montclair Road
Number Street
Birmingham AL 35213
City State ZIP Code

Contact phone (205) 882-5005 Email steve@nomberglaw.com

Attachment 1 - Gold's Alabama LLC (fka BAC Pelham LLC dba Gold's Gym) - Assignment (from BAC Pelham LLC).pdf
Description - Assignment of Lease and Lease

**ASSIGNMENT, ASSUMPTION AND CONSENT
AND ESTOPPEL CERTIFICATE**

THIS AGREEMENT is made and entered into as of the 20th day of December, 2010 between and among **BIRMINGHAM REALTY COMPANY**, an Alabama corporation ("Landlord") having a mailing address of 27 Inverness Center Parkway, Birmingham, Alabama 35242, **BAC Pelham, LLC**, an Alabama limited liability company ("Assignor") having a mailing address of 2244 S. Ashland Road, Lexington, Kentucky 40502, and **Gold's Alabama, LLC**, a Delaware limited liability company ("Assignee") having a mailing address of 125 E. John Carpenter Freeway, Suite 1300, Irving, Texas 75062.

RECITALS:

Assignor entered into that certain Lease Agreement dated the 4th day of January, 2007, as amended by that certain Amendment 1 To Lease dated May 7, 2007, together with Consent To Sublease Letters with Birmingham Realty Company (collectively referred to hereinafter as the "Lease") and attached hereto as Exhibit A, for certain premises within the Oak Mountain Marketplace ("Shopping Center") known as 2244-A Pelham Parkway, Pelham Alabama, ("Premises"). Assignor wishes to assign the Lease to Assignee, and Assignee wishes to assume all of the rights, liabilities, and duties of Assignor as Tenant thereunder on the terms and conditions set forth herein. Landlord is willing to consent to such assignment and assumption on the terms and conditions set forth herein.

WITNESSETH:

NOW THEREFORE, for and in consideration of the foregoing recitals and the covenants, conditions and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of its right, title, and interest in and to the Lease, and Assignee expressly assumes all of the obligations and duties of Assignor as Tenant thereunder.

2. Assumption of Assignee. Assignee hereby agrees to pay the Rent and all other payments required under the Lease when due and to perform all the obligations, terms, and conditions to be performed by Assignor as Tenant thereunder. Assignee hereby expressly assumes all rights, liabilities, and duties of Assignor pursuant to the Lease, including, but not limited to, the right, if any, upon expiration or termination of the Lease, to receipt of the security deposit or any balance thereof paid to Landlord by Assignor.

The undersigned representative of Assignee represents that it has full right and authority to bind Assignee and enter into this Assignment and by doing so does not violate any existing agreement or indenture to which it is a party or by which it is bound or affected, and if Assignee is a corporation, any provisions of its Articles of Incorporation, By-Laws, or other governing or enabling documents or regulations, and that the execution and delivery of this Assignment has been duly authorized by Assignee's Board of Directors; and upon request of Landlord, Assignee will deliver to Landlord a true, correct, and certified copy of the enabling resolutions adopted by Assignee's Board of Directors.

3. No Release of Assignor. Assignor acknowledges and agrees that nothing contained herein shall release Assignor from, and Assignor expressly confirms and ratifies its duty to perform, each and all of its obligations and duties to Landlord pursuant to the Lease, and Assignor expressly acknowledges that it remains fully and primarily liable to Landlord thereunder.

The undersigned representative of Assignor represents that it has full right and authority to bind the Assignor and enter into this Assignment and by doing so does not violate any existing agreement or indenture to which it is a party or by which it is bound or affected, and if Assignor is a corporation, any provisions of its Articles of Incorporation, By-Laws, or other governing or enabling documents or regulations, and that the execution and delivery of this Assignment has been duly authorized by Assignor's Board of Directors; and upon request of Landlord, Assignor will deliver to Landlord a true, correct, and certified copy of the enabling resolutions adopted by Assignor's Board of Directors.

4. Landlord Consent. Landlord hereby consents to the aforesaid

Assignment.

5. The undersigned agree as follows:

Attached hereto as Exhibit A is a true, correct and complete copy of the Lease and Consent To Sublease letters. To Landlord's knowledge, the Lease (i) has not been modified, amended or otherwise altered except as shown in Exhibit A, (ii) is in full force and effect, and (iii) constitutes the entire agreement between Landlord and Tenant. To Landlord's knowledge, there are no easements, restrictions, or other burdens on Tenant's ability to operate the Premises for the permitted use contained in a recorded document or unrecorded agreement between Landlord and any third party.

The term of the Lease commenced on November 1, 2007, and the current term expires on October 31, 2017. Tenant has four options to renew the Lease for successive terms of five years each.

The current monthly payments due under the Lease are:

Monthly Fixed Minimum Rent:	\$17,486
Monthly estimated Common Area Costs ("CAM"):	\$ <u>6,183</u>
Insurance costs:	\$ included in CAM
Real estate taxes:	\$ included in CAM

Tenant's pro rata share for computing the monthly costs are set forth below ("Monthly Costs") is as follows:

CAM:	<u>48.3</u>	%
Insurance costs:	<u>48.3</u>	%
Real estate taxes:	<u>48.3</u>	%

Except for a CAM reconciliation for calendar year 2010 as set out in the Lease, no other payments are currently due from Tenant to Landlord under the Lease.

Fixed Minimum Rent and estimated CAM payments are (i) paid and up to date as of the date of this agreement, including through December 2010, and (ii) have not been paid more than one month in advance, except as follows: N/A

A security deposit in the amount of \$ 0 is presently held by Landlord. There are no other deposits under the Lease.

To the best of Landlord's and Assignor's knowledge, neither Tenant nor Landlord is in default under the Lease, nor has any event occurred which, with the passage of time or the giving of notice or both would become or result in a default under the Lease. Landlord has, and knows of, no current claims or counter claims against Tenant arising under the Lease.

Except as set forth below, to Landlord's and Assignor's knowledge all construction and leasehold improvements to the Premises required under the Lease to be performed by either Landlord or Tenant have been completed

N/A

Notwithstanding Article 5.1 USE OF PREMISES, Landlord shall be allowed to lease space in the Shopping Center to a weight loss clinic which shall initially operate under the name Cindy Dunn Weight Loss Clinic.

6. Notices. Any and all notices, elections, or demands permitted or required to be made under this Agreement or the Lease shall be in writing and shall be sent by an overnight courier service company regularly engaged in the business of nationally delivering business packages (such as Federal Express, UPS, Airborne, or USPS), or by registered or certified mail to the other party at the following address(es), or at such other address as may be specified in writing from time to time by either party to the other; except that Landlord may personally deliver to Assignor and/or Assignee any notice or post a copy of any notice at the Premises. The date of posting, personal delivery, or the date of delivery or refusal if sent by mail or overnight courier (as evidenced by the carrier's or courier's receipt) shall be the effective date of such notice, election, or demand.

To Landlord at: The Barber Companies
 27 Inverness Center Parkway
 Birmingham, AL 35242
 Attention: President

To Assignee at: Gold's Gym
125 E. John Carpenter Freeway, Suite 1300
Irving, TX 75062
Attn: Aaron Watkins

To Assignor at: BAC Pelham
2244 S. Ashland Road
Lexington, KY 40302

In the event Assignee or Assignor fails to disclose a complete notice address in the space provided above, the parties agree that notice to Assignee or Assignor shall be proper at the premises.

7. No Waiver. Assignor and Assignee hereby expressly acknowledge and agree that by consenting to this agreement, Landlord has not heretofore waived, and does not hereby waive, any legal, equitable, or contractual rights, privileges, or remedies which it may have under the Lease, or the right to enforce the terms and conditions thereof.

8. Entire Agreement. This Agreement contains the complete agreement of the parties. Neither party has made any representations or promises, except as contained herein, or in some further writings, signed by the party making such representation or promise.

9. Multiple Counterparts. This Agreement may be executed in multiple copies, any one of which may be considered and used as an original.

10. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Alabama.

11. Ratification of Original Lease. Except as hereinabove amended, Assignor, Assignee, and Landlord hereby fully ratify and affirm the Lease in all respects.

12. Agreement Inures to Benefit of Heirs, etc. Each provision hereof shall

extend to and shall, as the case may require, bind and inure to the benefit of the parties hereto and their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, as of the date hereinabove written.

LANDLORD:

BIRMINGHAM REALTY COMPANY, an Alabama corporation

By: Charles M. Miller Jr.

Printed Name: Charles M. Miller Jr.

its: President

Date: 12/17/10

ASSIGNOR:

BAC Pelham, an Alabama limited liability company

By: Stephen Dawahare

Printed Name: Stephen Dawahare

its: Manager

Date: 12/17/10

ASSIGNEE:

Gold's Alabama, LLC, a Delaware limited liability company

By: Michael G. Smith

Printed Name: Michael G. Smith

its: Vice President

Date: 12/17/10

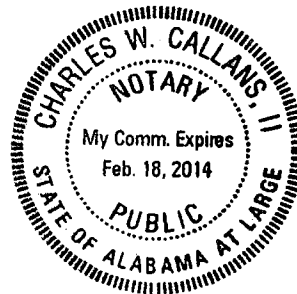
STATE OF ALABAMA)
Shelby COUNTY)

I, Charles W. Callans, II, a Notary Public in and for said County in said State, hereby certify that Charles M. Miller, Jr. whose name as President of BIRMINGHAM REALTY COMPANY, an Alabama corporation, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this 17th day of December, 2010

Charles W. Callans, II

Notary Public

My Commission Expires: 2-18-2014



Kentucky,
STATE OF ALABAMA)
Fayette COUNTY)

I, Donald Newman, a Notary Public in and for said County in said State, hereby certify that Stephen Dawkins whose name as Manager of BAC Pelham, LLC a Alabama corporation, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this 17 day of December, 2010

Donald B. Newman

Notary Public

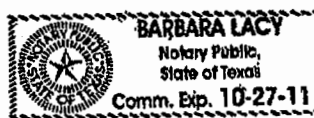
My Commission Expires: January 2, 2011

TEXAS
STATE OF ALABAMA)
DALLAS COUNTY)

I, BARBARA LACY, a Notary Public in and for said County in said State, hereby certify that MICHAEL G. SMITH whose name as V.P. of GOLD'S ALABAMA LLC, a DELAWARE LIMITED LIABILITY COMPANY corporation, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said company corporation as of the day the same bears date. Given under my hand this 17th day of DECEMBER, 2010.

Barbara Lacy
Notary Public

My Commission Expires: 10-27-11



STATE OF ALABAMA)
_____ COUNTY)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____, of _____, a corporation, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this _____ day of _____.

Notary Public

My Commission Expires: _____

EXHIBIT A

CONSISTING OF 69 pages
follows:

Lease

Amendment 1

Sublease Consent letters

AMENDMENT 1 TO LEASE

State of Alabama)
Shelby County)

The undersigned, BIRMINGHAM REALTY COMPANY, an Alabama corporation, as Landlord, and BAC PELHAM, LLC, d/b/a GOLD'S GYM, as Tenant, entered into a lease agreement dated January 4, 2007 (the "Lease"), for Premises shown on Exhibit A and described as:

That certain space located in the
Oak Mountain Marketplace Shopping Center
as shown by cross-hatched lines on Exhibit A,
and further identified as "Gold's Gym"

The parties hereby mutually covenant and agree to amend the Lease as follows:

1. Section 26.12 of the Lease is hereby deleted in its entirety and replaced with the following:

26.12 Temporary Space. From the Possession Date to the date Tenant opens for business, but in no event for more than one-hundred eighty (180) days, Tenant shall be allowed to use the space in the Shopping Center designated as 2232 Pelham Parkway, at no rental cost or Common Area Costs to Tenant (the "Temporary Space"). Tenant will use the Temporary Space to conduct its pre-opening sales and as its construction office and for no other purpose. Tenant agrees to indemnify Landlord for any and all occurrences in or about the Temporary Space. Tenant hereby acknowledges and agrees that all duties and obligations set forth in this Lease shall control and govern Tenant's use and occupancy of the Temporary Space in the same manner and scope as the Premises, including but not limited to maintenance, utilities, repair, insurance, and indemnity and Tenant agrees to be bound by the terms of the Lease during its use or occupancy of the Temporary Space.

2. Tenant hereby exercises its right to extend the expiration of the Permit Period for sixty (60) days (from May 4, 2007, to July 3, 2007) as provided for in Article 7.2.1.
3. The Premises is hereby expanded by four hundred and eight (408) square feet ("Expansion Space"), for a total square footage of 35,380 square feet as shown on the attached Exhibit A.
4. Tenant shall not be obligated to pay Fixed Minimum Rent on the Expansion Space but the Expansion Space shall be included in any calculation for CAM and in Additional Rent and be subject to the other terms and conditions of the Lease.
5. The Plan attached to the Lease as Exhibit A is hereby deleted and replaced with the Plan attached hereto as Exhibit A.

Except as herein set forth, the parties mutually agree that the terms of the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Landlord and Tenant have respectively executed this Amendment to Lease on the 7th day of May, 2007.

LANDLORD:
BIRMINGHAM REALTY COMPANY,
an Alabama corporation

Witness: Janet Peeples

By: Charles M. Miller, Jr.
Printed Name: Charles M. Miller, Jr.
Its: President

TENANT:
BAC PELHAM, LLC, d/b/a GOLD'S GYM

Witness: Stephen Dawahang

By: Stephen Dawahang
Printed Name: Stephen Dawahang
Its: MEMBER

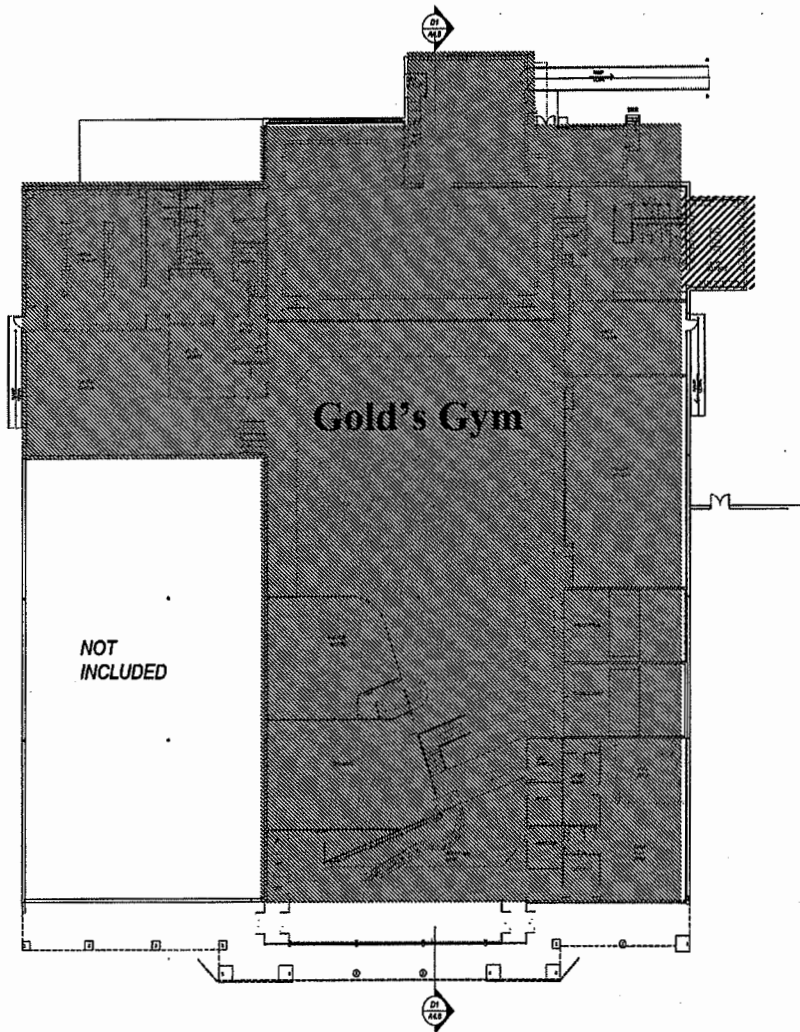
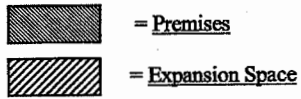
GUARANTOR:
BIRMINGHAM ATHLETIC CLUBS, LLC

Witness: Stephen Dawahang

By: Stephen Dawahang
Printed Name: Stephen Dawahang
Its: MEMBER

EXHIBIT A

Plan



mm

SN

LEASE AGREEMENT

BETWEEN

BIRMINGHAM REALTY COMPANY

as Landlord

AND

BAC PELHAM, LLC

d/b/a

GOLD'S GYM

as Tenant

OAK MOUNTAIN MARKETPLACE SHOPPING CENTER

INDEX

ARTICLE 1	DEFINITIONS
ARTICLE 2	PREMISES
ARTICLE 3	TERM
ARTICLE 4	RENT
ARTICLE 5	USE OF PREMISES
ARTICLE 6	OPERATION OF BUSINESS
ARTICLE 7	CONSTRUCTION OF PREMISES
ARTICLE 8	RELOCATION
ARTICLE 9	REPAIRS AND MAINTENANCE
ARTICLE 10	UTILITIES
ARTICLE 11	DAMAGE TO PREMISES
ARTICLE 12	INSURANCE
ARTICLE 13	INDEMNIFICATION
ARTICLE 14	ASSIGNMENT, SUBLETTING, OWNERSHIP
ARTICLE 15	EVENTS OF DEFAULT/REMEDIES
ARTICLE 16	SUCCESSION TO LANDLORD'S INTEREST
ARTICLE 17	NOTICES
ARTICLE 18	EMINENT DOMAIN
ARTICLE 19	BROKER'S COMMISSION
ARTICLE 20	SURRENDER AND HOLDING OVER
ARTICLE 21	LIABILITY OF LANDLORD
ARTICLE 22	SALE OF PREMISES BY LANDLORD
ARTICLE 23	FORCE MAJEURE
ARTICLE 24	TENANT'S AUTHORITY/GUARANTY
ARTICLE 25	ATTORNEY'S FEES
ARTICLE 26	MISCELLANEOUS
ARTICLE 27	SECURITY DEPOSIT/SECURITY INTEREST IN PERSONAL PROPERTY
ARTICLE 28	WAIVER
ARTICLE 29	REPRESENTATIONS

Exhibit A	Plan
Exhibit B	Site Plan
Exhibit C	Construction of Premises
Exhibit D	Sign Criteria
Exhibit D-1	Tenant's Sign Rendering
Exhibit E	Prohibited Uses
Exhibit F	Guaranty of Lease
Exhibit G	Schedule of Broker's Commissions or Finder's Fees
Exhibit H	Landlord's Lien Subordination and Waiver
Exhibit I	Tenant's Construction Plans & Specifications
Exhibit J	Attornment and Non-Disturbance Agreement

Exhibit K	Title Binder
-----------	--------------

LEASE

OAK MOUNTAIN MARKETPLACE SHOPPING CENTER SHELBY COUNTY, ALABAMA

This Indenture of Lease, made and entered into as of the 4th day of January, 2007, by and between **Birmingham Realty Company, an Alabama corporation ("Landlord")**, having a mailing address of 27 Inverness Center Parkway, Birmingham, Alabama 35242, and **BAC Pelham, LLC, d/b/a Gold's Gym ("Tenant")**, having a mailing address of c/o iVisionary, 239 S. Limestone, Suite 100, Lexington, Kentucky 40508.

WITNESSETH:

ARTICLE 1 DEFINITIONS

1.1 **Landlord and Tenant** agree that the following definitions shall apply to the various provisions of this lease which refer to them.

1.1.1 **"ADA"**: the Americans with Disabilities Act of 1990, as it may be amended from time to time.

1.1.2 **"Additional Rent"**: all sums, other than **Fixed Minimum Rent**, payable by **Tenant** to **Landlord** pursuant to the terms of this lease.

1.1.3 **"Applicable Environmental Law"**: defined in Section 5.7.

1.1.4 **"Building"**: that certain building in which the **Premises** are located.

1.1.5 **"CAM Charge"**: a charge to help offset **Landlord's** expenses incurred in maintaining the **Shopping Center**, which shall be an amount equal to the product of **Tenant's Pro Rata Share** times the **Common Area Costs**. The **CAM Charge** may be an estimate based upon the **Common Area Costs** for the prior **CAM Year** or **Landlord's** reasonable estimate of **Common Area Costs** for the then current **CAM Year**. The **CAM Charge** may be billed, at **Landlord's** election, in monthly, quarterly, semi-annual, or annual installments.

1.1.6 **"CAM Year"**: any fiscal year, calendar year, or other period as reasonably determined by **Landlord**, or, in the event **Landlord** shall change from a fiscal year to a calendar year, or vice versa, or to another period, such shorter period as may be reasonably required by such change.

1.1.7 **"Claims and Costs"**: defined in Section 13.1.

1.1.8 **"Common Areas"**: defined in Section 4.3.2.

1.1.9 **"Common Area Costs"**: defined in Section 4.3.1.

1.1.10 **"Default Rate"**: the lesser of: (i) the maximum interest rate allowed by applicable law; or (ii) ~~twenty percent (20%)~~ twelve percent (12%) per annum.

1.1.11 **"Expiration Date"**: The last day of the one hundred twentieth (120th) full calendar month following the Rental Commencement Date, estimated to be August May 31, 2017 unless extended as provided in this lease; provided, however, that if this lease is canceled or terminated prior to said date, then the Expiration Date shall be the date upon which this lease is so canceled or terminated; provided, further, however, that if this lease is canceled or terminated prior to the originally fixed Expiration Date by reason of Tenant's default under this lease, Tenant's liability under the provisions of this lease shall continue until the date this lease would have expired had the cancellation or termination not occurred, subject to Article 15.

1.1.12 "Fixed Minimum Rent":

<u>DATES</u>	<u>ANNUALLY</u>	<u>MONTHLY</u>
<u>First Lease Year: Rental Commencement</u> <u>Date through May 31, 2008</u>	<u>\$ 52,458.00</u>	<u>\$ 4,371.50</u>
<u>Years 2 - 5: June 1, 2008 - May 31,</u> <u>2012</u>	<u>\$209,832.00</u>	<u>\$ 17,486.00</u>
<u>Years 6 - 10: June 1, 2012 - May 31,</u> <u>2017</u>	<u>\$218,568.00</u>	<u>\$ 18,214.00</u>

Landlord and Tenant agree to execute a letter that establishes the Rental Commencement Date, Possession Date, Expiration Date, and Fixed Minimum Rent schedule upon such time as each may be specifically identified.

Extension Term, if any, as set forth in the Addendum to Lease:

First Option Period: Lease Years 11-15
June 1, 2017 - May 31, 2022 \$227,316.00 \$18,943.00

Second Option Period: Lease Years 16-20
Beginning June 1, 2022 During the Second Option Period, the Fixed Minimum Rent shall increase by the greater of: (a) the percentage increase in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor (1984=100) for all urban consumers from March 2017 to March 2022, for the previous 5 Lease Years or (b) \$19,672.00 ten percent (10%). If the Consumer Price Index is discontinued or replaced, the Landlord shall substitute a comparable index based upon the cost of living or, if no such index shall be available, then a comparable index published by a major bank, financial institution, university, or a recognized financial publication. In no event shall fixed minimum rent increase more than fifteen percent (15%) from the previous five-year period.

Third Option Period: Lease Years 21-25
Beginning June 1, 2027 During the Third Option Period, the Fixed Minimum Rent shall increase by the greater of: (a) the percentage increase in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor (1984=100) for all urban consumers from March 2022 to March 2027, for the previous 5 Lease Years or (b) ten percent (10%). If the Consumer Price Index is discontinued or replaced, the Landlord shall substitute a comparable index based upon the cost of living or, if no such index shall be available, then a comparable index published by a major bank, financial institution, university, or a recognized financial publication. In no event shall fixed minimum rent increase more than fifteen percent (15%) from the previous five-year period.

Fourth Option Period: Lease Years 26-30

Beginning June 1, 2032 During the Fourth Option Period, the Fixed Minimum Rent shall increase by the greater of: (a) the percentage increase in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor (1984=100) for all urban consumers from March 2027 to March 2032, for the previous 5 Lease Years or (b) ten percent (10%). If the Consumer Price Index is discontinued or replaced, the Landlord shall substitute a comparable index based upon the cost of living or, if no such index shall be available, then a comparable index published by a major bank, financial institution, university, or a recognized financial publication. In no event shall fixed minimum rent increase more than fifteen percent (15%) from the previous five-year period.

1.1.13 **"Full Replacement Value"**: the actual replacement cost, not deducting depreciation, excluding foundation and excavation costs and excluding all tenant improvements.

1.1.14 **"Gross Sales"**: defined in Section 4.2.3.

1.1.15 **"Hazardous Substance"**: defined in Section 5.7.

1.1.16 **"Impositions"**: defined in Section 4.3.1(b).

1.1.17 **"Indemnified Parties"**: defined in Section 5.7.5.

1.1.18 **"Landlord"**: defined in the preamble.

1.1.19 **"Lease Year"**: the first Lease Year shall mean a period of twelve (12) consecutive months measured from the first day of the first full calendar month following the **Rental Commencement Date**, plus the partial month, if any, following the **Rental Commencement Date**; each subsequent Lease Year shall begin on the date next following the expiration of the previous Lease Year and shall continue for a period of twelve (12) consecutive months therefrom except the last Lease Year, which shall end on the **Expiration Date**.

1.1.20 **"Operating Hours"**: Not less than Monday through Saturday from 10:00 AM until 6:00 PM, Sunday from 1:00 PM until 6:00 PM, Easter, Thanksgiving, and Christmas days excepted, or as otherwise determined agreed upon by Landlord and Tenant. Tenant shall be allowed to operate twenty-four (24) hours per day, so long as Tenant pays any increase in operating costs associated with staying open for twenty four (24) hours per day including lighting, security and cleaning.

1.1.21 **"Percentage of Gross Sales"**: _____ percent (%) of the total amount of Gross Sales during any measured period.

1.1.22 **"Percentage Rent"**: an amount equal to the extent to which the Percentage of Gross Sales for any measured period exceeds the Fixed Minimum Rent payable with respect to such measured period.

1.1.23 **"Permitted Use"**: Gold's Gym Fitness Center providing athletic training with only two (2) stand-up tanning beds facilities, physical therapy, personal training, health and nutrition aids and supplements, weight loss center, sport specific training, and up to two (2) three (3) stand-up tanning beds.

1.1.24 **"Possession Date"**: The date upon which Landlord delivers possession of the Premises to Tenant with Landlord's Base Work completed in accordance with Article 7, except for punchlist items that can be completed within thirty (30) days of delivery of the Premises to Tenant without adversely affecting Tenant's ability to complete Tenant's Work, which shall be April 30, 2007, unless extended by Landlord pursuant to the next sentence of this paragraph no later than forty-five (45) One Hundred Twenty (120) days from the execution of this lease December 1, 2006 (the "Scheduled Possession Date"). So long as Landlord provides Tenant thirty (30) days prior written notice of its intent to extend the Scheduled Possession Date and an extension payment to Tenant in the amount of Twenty Five Thousand Dollars (\$25,000.00), Landlord may extend the Scheduled Possession Date for one (1) month up to sixty (60) ninety (90) days (such that the Scheduled Possession Date becomes One Hundred Eighty (180) Two Hundred Ten (210) days from the date of execution of this lease). However, in no event shall such extension cause the Scheduled Possession Date to occur after May 31, 2007.

1.1.25 **"Premises"**: that certain space located in the Shopping Center (without basement, balcony, or mezzanine) as shown by cross-hatched lines on Exhibit A, and further identified as Space "Gold's Gym".

1.1.26 **"Pro Rata Share"**: a fraction, the numerator of which shall be the number equal to the **Square Footage of the Premises**, and the denominator of which shall be the gross number of square feet of all leasable space in the **Shopping Center**, including the **Premises**, on average throughout the applicable period.

1.1.27 **"Release"**: defined in Section 5.7.

1.1.28 **"Rent"**: collectively, all sums of whatever nature due under this lease from **Tenant** to **Landlord**.

1.1.29 **"Rental Commencement Date"**: the earlier of: (i) the date **Tenant** opens for business ~~(excluding any pre-sale activities within the Premises)~~; or (ii) the first day of the month next following the date that is one hundred eighty (180) days after Possession Date. However, in no event shall the **Rental Commencement Date** occur prior to ~~Tenant be required to open for business before September 1, 2007~~. **Landlord** and **Tenant** agree to execute a letter that establishes the **Rental Commencement Date**, **Possession Date**, **Expiration Date**, and **Fixed Minimum Rent** schedule upon such time as each may be specifically identified.

1.1.30 **"Shopping Center"**: that certain shopping center site presently known as Oak Mountain Marketplace **Shopping Center** located in the City of Pelham, County of Shelby, State of Alabama, as shown on the site plan attached hereto and made a part hereof and marked Exhibit B.

1.1.31 **"Square Footage of the Premises"**: deemed to be, for all purposes of this lease, 34,972 square feet. ~~Prior to Tenant's opening for business, Landlord and Tenant reserve the right to re-measure the Premises to determine the square footage. In the event the remeasurement discloses that the square footage set forth herein is incorrect, Landlord and Tenant shall execute an amendment to this lease (i) reflecting the actual square footage of the Premises; (ii) adjusting the Fixed Minimum Rent based on the new square footage; (iii) adjusting Tenant's Pro Rata Share as defined in Article 1.1.26, and all other charges accruing under the lease which are based on the square footage of the Premises. In the event of an adjustment, Tenant will pay any excess Fixed Minimum Rent or Additional Rent owed to Landlord within thirty (30) days after receipt of a statement, or Tenant shall take a credit for any overpayment against the next monthly Fixed Minimum Rent and Additional Rent payments.~~

1.1.32 **"Tenant"**: defined in the preamble.

1.1.33 **"Tenant's Work"**: defined in Exhibit C.

1.1.34 **"Trade Name"**: Gold's Gym or such other name as may be adopted by Tenant and approved by Landlord, in writing, in its commercially reasonable discretion.

1.1.35 **"Utility Charge"**: **Landlord's** charge for any utility which **Landlord** may supply to **Tenant**.

ARTICLE 2 **PREMISES**

2.1 For the term, at the **Rent**, and upon the provisions and conditions herein contained, **Landlord** does hereby lease to **Tenant** the **Premises** and **Tenant** rents same.

2.2 **Landlord** covenants that it has full right, power and authority to make this lease and that **Tenant**, upon the payment of the **Rent** and performance of the covenants and obligations upon **Tenant's** part to be performed hereunder, shall and may peaceably and quietly have, hold and enjoy the **Premises** and improvements thereon during the term hereof. Landlord agrees to provide Tenant with a title binder evidencing ownership of and encumbrances (if any) upon the Shopping Center prior to the execution of this lease and to attach said binder as Exhibit K.

2.3 It is expressly agreed that the Premises do not include the land beneath the demised space, except for a swimming pool and its related plumbing and fixtures, nor any space above the roof finished ceiling of such unit; unless Tenant installs a skylight which shall be considered a part of the Premises and Tenant agrees to maintain the skylight, provided that Tenant shall have the non-exclusive right to use a portion of such space above the finished ceiling for the location of Tenant's mechanical equipment and wiring serving the Premises, subject to the approval of Landlord as to the location and installation of such equipment, such right to be in common with Landlord and all others to whom Landlord has granted or may hereafter grant such rights. However, Landlord agrees that Tenant may install a swimming pool within and/or below the Premises subject to the terms and conditions set forth in Exhibit C and in Article 7.3. This lease is subject to utility easements, both recorded and unrecorded, all applicable zoning ordinances, and all other matters set for in Exhibit K, encumbrances of record. At Tenant's request, Landlord will obtain and deliver to Tenant the Non-Disturbance Agreement attached hereto as Exhibit J.

2.4 So long as Tenant is not in default beyond any applicable cure period and Tenant is open and operating pursuant to the terms of this lease, Tenant, in conjunction with the use of the Premises, is hereby granted a non-exclusive license easement to the use of the Common Areas for pedestrian and vehicular access, ingress, egress, and parking of Tenant's retail customers, employees, invitees, and suppliers to the Premises. Said non-exclusive license easement shall not interfere with nor hinder the use of Common Areas by Landlord and/or the other tenants of the Shopping Center. Landlord and Tenant agree that this non-exclusive easement granted to Tenant is an easement in gross, that it will terminate upon the expiration or earlier termination of this lease, and that it may not be assigned by Tenant without Landlord's prior written consent, unless such assignment is made in conjunction with an approved transfer or Permitted Transfer.

ARTICLE 3

TERM

3.1 **Term.** The term of this lease shall commence on the Rental Commencement Date and shall continue through the Expiration Date.

3.1.1 **Right to Terminate:** Provided the Tenant is not in default of this lease beyond any applicable notice and/or cure period, the Tenant shall have a one-time right to terminate the this lease on May 31, 2012 ("Termination Date"), provided the Tenant gives the Landlord written notice on or before September 30, 2011 ("Termination Notice"). In the event Tenant is in default beyond any applicable notice and/or cure period under the this lease on the Termination Date, Tenant's Right to Terminate the this lease will be null and void and the this lease will remain in full force and effect.

3.2 **Possession.** Landlord agrees to give possession of the Premises to Tenant with Landlord's Work complete on or before the Scheduled Possession Date. Subject to Force Majeure as defined below in Article 23, if delivery of possession shall not have occurred on or before the Scheduled Possession Date through no fault of Tenant, then, at Tenant's option, Landlord shall pay Tenant Seventy-Five Thousand Dollars (\$75,000.00), which the parties acknowledge will be substantially less than Tenant's actual damages and shall be Tenant's exclusive remedy and represent Landlord's total liability. Upon such payment, this lease shall be deemed terminated and each party shall be relieved of any further obligations to the other pursuant to this lease.

ARTICLE 4

RENT

4.1 **Fixed Minimum Rent.** Effective upon the Rental Commencement Date, Tenant covenants and agrees to pay Landlord, without demand, the Fixed Minimum Rent in the amounts set forth in Section 1.1.12, and in accordance with the schedule set forth in Section 4.6 hereinbelow.

4.2 **Percentage Rent.** In addition to Fixed Minimum Rent, and as Additional Rent hereunder, Tenant covenants and agrees to pay to Landlord, without demand, for each Lease Year,

~~Percentage Rent in accordance with the schedule set forth hereinbelow.~~

~~4.2.1 Said Percentage Rent shall be payable by Tenant beginning in the month of any Lease Year in which the Percentage of Gross Sales first exceeds the Fixed Minimum Rent due for said Lease Year. Tenant shall then continue to pay said Percentage Rent, on a monthly basis, through the end of the Lease Year. Monthly Percentage Rent payments shall be due for each month, without demand, by the fifteenth (15) day of the following month until the end of the Lease Year.~~

~~4.2.2 Upon receipt of Tenant's annual certified statement of aggregate sales for any Lease Year, Landlord will compare any monthly Percentage Rent payments made by Tenant throughout said period against the Percentage of Gross Sales which would have been due had said period been measured as a whole. Should the aggregate monthly Percentage Rent payments made by Tenant during said period exceed the amount that would have been due based on the full Lease Year's Gross Sales, Landlord shall promptly reimburse Tenant for the amount of such excess. If such monthly payments made by Tenant should be less than the amount that otherwise would have been due based on the full Lease Year's Gross Sales, Tenant covenants and agrees to pay Landlord, as Additional Rent hereunder, within ten (10) days after the date Landlord mails to Tenant statement therefor, such deficiency.~~

4.2.3 Definition of Gross Sales.

~~4.2.3(a) The term "Gross Sales", as used in this lease, shall be defined to be and shall mean the entire amount of the actual sales price of all merchandise or services sold, rented, leased, or licensed in, at or from the Premises or on orders taken or deliveries made or services rendered in, at, or from the Premises by Tenant, its subtenants, licensees, concessionaires, and any other party or parties, whether the orders are filled elsewhere, excluding therefrom the following: (i) Cash or credit refunds to customers on transactions where original sale was included in Gross Sales; (ii) goods transferred to another store or warehouse owned by or affiliated with Tenant and made solely for the convenient operation of Tenant's business and not for the purpose of avoiding the consummation of a sale, on or from the Premises; (iii) sales taxes, so called luxury taxes, consumer's excise taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if charged and collected separately from the selling price of merchandise or services; and (iv) sales of fixtures, equipment or property which are not Tenant's stock in trade;~~

~~4.2.4 Sales Records/Reporting of Sales/Audits. Tenant agrees to keep accurate books of account and to record all sales in accordance with generally accepted accounting principles and to record each individual sales transaction by use of a cash register machine with sales totaling capability. All records together with all federal, state or local sales, use and income tax reports, shall be preserved by Tenant for three (3) years either at the Premises or at the home or regional offices of Tenant and made available to Landlord for inspection and copying at the Premises or such offices upon demand. Tenant agrees to deliver to Landlord a statement of each month's sales on or before the tenth (10th) day of the following month and, by the thirtieth (30th) day following the end of each Lease Year, a statement, certified by a financial officer, owner, or partner of Tenant, of the Gross Sales made during said Lease Year.~~

~~4.2.4(a) In the event Tenant shall be delinquent in furnishing to Landlord any monthly or annual sales statements required hereunder, in order to cover Landlord's additional costs associated with processing such untimely report, Tenant agrees to pay a late reporting charge equal to Thirty Five Dollars (\$35.00). Tenant covenants and agrees to pay Landlord, as Additional Rent hereunder, within ten (10) days after the date Landlord mails to Tenant a statement therefor, such late reporting charge(s).~~

~~4.2.4(b) Landlord shall be entitled at Landlord's expense, to audit Tenant's records of the Gross Sales made during any period either by Landlord or a certified public accountant or other representative designated by Landlord, and to recalculate the rentals payable for such period. If it shall be determined as a result of such audit that there has been a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable with interest thereon at the Default Rate. In addition, if Gross Sales have been understated by~~

more than two percent (2%), or if Tenant shall be delinquent in furnishing any sales statements required hereunder and Landlord shall have chosen to have an audit and account of such annual sales statements, then Tenant shall pay the cost of such audit, and Landlord may, at its option, after thirty (30) days notice to Tenant, terminate this lease.

4.3 Common Area Costs. Effective upon the Rental Commencement Date, and as Additional Rent hereunder, Tenant covenants and agrees to pay Landlord, within ten (10) ~~thirty (30)~~ days after the date Landlord mails to Tenant a statement therefore, the CAM Charge.

4.3.1 As used in this lease, the term "Common Area Costs" means the total costs of all services provided by Landlord for the Shopping Center and all items of expense relating to operating, managing, marketing, supervising, equipping, policing and protecting, lighting, repairing, replacing, and maintaining the appearance, safety and utility of the Common Areas in the same condition as when originally installed.

4.3.1(a) Such costs and expense shall include but expressly are not to be limited to the costs, if any, of the following: pest extermination; removal of trash, snow, ice, sewage, rubbish, trash, garbage, dirt, and debris; planting, replanting and replacing flowers and landscaping and supplies required therefor; maintaining elevators, speed ramps and escalators, lighting facilities and storm drainage systems; replacing and/or repairing miscellaneous items in the Common Areas; all premiums for insurance coverages ~~for the Shopping Center~~ if and as purchased by Landlord, such as, but not necessarily limited to, liability and property damage coverage, sprinkler leakage, fire and extended coverage, including vandalism and malicious mischief, and worker's compensation insurance; any insurance deductible amounts; wages, salaries, ~~seminar, education, and training expenses~~ of all employees who perform work "on site" in relation to the Common Areas and Shopping Center including, but not necessarily limited to unemployment taxes, premiums for life, health, and welfare insurance, pension plan contributions, and social security taxes for those employees; personal property taxes; ADT or other master type supervised security and/or fire alarm; guard services and security; ~~Muzak, marketing and advertising expenses incurred in attracting customers to the Shopping Center; audit~~ ~~accounting~~ expenses relating to Common Area Costs; janitors, landscaping, gardening, decoration, and line painting; maintenance and repair of common utility lines and electrical service lines up to the breaker boxes of each of the tenants in the Shopping Center, water pipes and systems, sanitary and storm control pipes and systems, and sewage treatment facilities; removal of Hazardous Substances normally used in the course of Common Area maintenance (e.g., paint cans); periodic routine asphalt, concrete, roof, and plate glass repairs; fees for required licenses and permits; costs of complying with all laws, ordinances, and orders affecting the use and occupancy of the Common Areas and/or the cleanliness, safety, or operation thereof, including, without limitation, complying with all Applicable Environmental Laws and with the ADA; ~~costs of heating, ventilating, and cooling the Common Areas~~; costs of utilities relating to the Common Areas; depreciation of all capital items which Landlord depreciates as an expense to the Common Area Cost account in accordance with the provisions of the Internal Revenue Code of 1986, as amended, and any such regulations or rules promulgated thereunder (but excluding the initial investment cost of such items); and rental payments for leasing equipment used in the maintenance of the Common Areas; together with administrative costs equal to ~~fifteen percent (15%)~~ ~~ten percent (10%)~~ of the total of all such aforesaid items of expense.

Notwithstanding anything to the contrary contained in this lease, Common Area Costs shall not include: (1) the initial costs of any item properly chargeable to a capital account using generally accepted accounting principles consistently applied or the original costs of constructing the Shopping Center; (2) the cost of any capital addition, capital repair or capital replacement to the Shopping Center or the Property (or reserves therefore); (3) expenses for which the Landlord is or will be reimbursed by another source (excluding Tenant reimbursement for Operating Expenses), including but not limited to repair or replacement of any item covered by warranty; (4) costs incurred to benefit (or as a result of) a specific tenant or items and services selectively supplied to any specific tenant; (5) expenses for the defense of the Landlord's title to the Shopping Center; (6) structural repairs and replacements; (7) depreciation and amortization of the Shopping Center or financing costs, including interest and principal amortization of debts; (8) charitable, lobbying, special interest or political contributions; (9) costs of improving or renovating space for a tenant or space vacated by a

tenant; (10) any amounts expended by Landlord to comply with any Environmental Laws; (11) costs to correct original or latent defects in the design, construction or equipment of the **Shopping Center**; (12) expenses paid directly by any tenant for any reason (such as excessive utility use); (13) any repair, rebuilding or other work necessitated by condemnation, fire, windstorm or other insured casualty or hazard; (14) any expenses incurred (i) to comply with any governmental laws, regulations and rules or any court order, decree or judgment including, without limitation, the Americans with Disabilities Act; or (ii) as a result of Landlord's alleged violation of or failure to comply with any governmental laws, regulations and rules or any court order, decree or judgment; (15) leasing commissions, advertising expenses and other costs incurred in leasing or procuring new tenants; (16) rental on ground leases or other underlying leases; (17) attorneys' fees, accounting fees and expenditures incurred in connection with disputes and claims of other tenants or occupants of the **Shopping Center** or with other third parties except as specifically provided in this lease; (18) cost of the initial stock of tools and equipment for operation, repair and maintenance of the **Shopping Center**; and (19) amounts billed (directly or indirectly) for salaries, overhead and administrative and/or management fees, office expenses, rent and office supplies which (i) in the aggregate, exceed fifteen percent (15%) ten percent (10%) of the total of all **Common Area Costs**, excluding those described in this Article 4.3.1(a), (ii) are duplicative; or (iii) do not represent actual costs incurred for actual services.

4.3.1(b) Such costs and expense shall also include the "**Impositions**." "**Impositions**" shall mean all taxes and assessments on the **Shopping Center** (including, without limitation, all assessments for public improvements, services or benefits, whether or not commenced or completed during the term of this Lease), impact fees (Tenant will have full rights to any credits given for pre-existing fixtures by the applicable governmental entity minus five fixture credits that will be applied to the adjoining space), rates and charges, excises, levies, license fees, inspection fees and other authorization fees, transit development fees, assessments or charges for housing funds, fees for services provided to the **Shopping Center** by any public utility and other governmental charges whether federal, state, regional, county, municipal, or otherwise and whether they be by taxing districts or authorities presently taxing the **Shopping Center** or by others, subsequently created or otherwise, which at any time during or in respect of the term may be levied or assessed against, or be a lien upon, or may be confirmed or imposed on or in respect of: (aa) the **Shopping Center** or any portion thereof or the interest of Landlord or Tenant therein, or any person claiming thereunder, or in respect thereof, or of the use and occupancy thereof or the **Square Footage of the Premises**; (bb) this lease or the interest of Tenant or Landlord hereunder; (cc) the possession, use, occupancy, maintenance or repair of the **Shopping Center** or any portion thereof; (dd) gross receipts from the **Premises** or any portion thereof; (ee) the earnings arising from the possession, use, or occupancy thereof; (ff) the right to do business if Landlord's collection of **Rent** under this lease should be defined as doing business; and (xx) any other tax, fee, or excise, however described, as a direct substitution in whole or in part for, or in addition to, or as the substantial equivalent of, any real estate taxes; (yy) any new tax which is more closely akin to that of an ad valorem or use tax than to an income or franchise tax on Landlord's income; and (zz) the cost of engaging tax consultants who work to keep the **Impositions** at the lowest possible level, but only to the extent that said consultants' fees are less than or equal to the savings resulting from said consultants' work. "**Impositions**" shall not include (i) any succession, transfer, income, estate, gift, franchise, capital stock, or excess profit tax of Landlord determined on the basis of Landlord's general income or revenues; (ii) any other tax determined on the basis of Landlord's general income or revenues, or (iii) any assessments liened against the **Shopping Center** prior to the **Commencement Date**, (iv) any impact or similar fees levied against the **Shopping Center** after the date of this lease by reason of any new tenant or any future development of the **Shopping Center** by Landlord. Landlord represents that **Impositions** for Tax Year 2006 consist of the following: Forty-six Thousand Four Hundred Dollars (\$46,400.00).

4.3.1(c) Within six (6) months after the end of each CAM Year, Landlord shall furnish to Tenant a statement showing the total **Common Area Costs** for the CAM Year just expired, with: (i) costs calculated in accordance with generally accepted accounting principles; (ii) the amount of Tenant's **Pro Rata Share** of such **Common Area Costs**; and (iii) payments made by Tenant with respect to such CAM Year. If the total amount paid by Tenant with respect to such CAM Year shall be less than the actual amount due from Tenant for such period, as shown

on such statement, Tenant covenants and agrees to pay Landlord, as Additional Rent hereunder, within ~~ten (10)~~ forty-five (45) days after the date Landlord mails to Tenant a statement therefor, such deficiency. If the total amount paid by Tenant hereunder with respect to any such CAM Year shall exceed such amount due from Tenant for such CAM Year, Landlord shall promptly reimburse Tenant for the amount of such excess at the time of delivering the annual statement.

4.3.1(d) Landlord shall keep records showing all expenditures incurred as Common Area Costs, insurance and Impositions for each calendar year for a period of two (2) years following each year, and such records shall be made available for inspection and photocopying by Tenant and/or its accountants, upon ten (10) days written notice to Landlord, during ordinary business hours in the city in which the Premises are located.

4.3.1(e) So long as Tenant is not delinquent in the payment of any Rent, including any Rent disputed by Tenant, any dispute with respect to Landlord's calculations of Tenant's Additional Rent shall be resolved by the parties through consultation in good faith within sixty (60) days after notice by Tenant to Landlord. However, if the dispute cannot be resolved within such period, the parties shall request an audit of the disputed matter from an independent, certified public accountant selected by both Landlord and Tenant, whose decision shall be based on generally accepted accounting principles and shall be final and binding on the parties. If there is a variance of three percent (3%) or more between said decision and the Landlord's determination of the Additional Rent disputed by Tenant, Landlord shall pay the costs of said audit and shall credit any overpayment toward the next Fixed Minimum Rent and/or Additional Rent payment falling due or pay such overpayment to Tenant within thirty (30) days. If the variance is less than three percent (3%), Tenant shall pay the cost of said audit. In the event the audit reveals that Tenant owes any Rent, Tenant shall pay such amount to Landlord within thirty (30) days.

4.3.2 The "Common Areas", as herein referred to, but subject to Landlord's right to reconfigure same and construct additional improvements ~~as set forth in~~ to the extent not contrary to the terms of this lease, shall consist of any and all ~~interior or exterior~~ areas of the Shopping Center property not specifically demised and leased as tenant space. Common Areas may include, but are not necessarily limited to, walkways; sidewalks; access roads; parking lots; public rest rooms; loading platforms; driveways; roof areas; ~~lounges and shelters; storage and office areas used by Landlord to operate, maintain, and manage the Shopping Center;~~ trash removal facilities; delivery and service corridors; ~~elevators and escalators;~~ and any and all other areas of the Shopping Center which are not leased to individual tenants of the Shopping Center.

4.3.2(a) All Common Areas shall at all times be subject to the exclusive control and management of Landlord. Landlord will operate and maintain the Common Areas in such manner as ~~Landlord, in its sole discretion, shall determine from time to time~~ to keep same in good repair in keeping with similar first class centers in the Pelham, Alabama area. ~~Anything in this lease to the contrary notwithstanding~~ Subject to the provisions set forth below, with respect to the Common Areas, Landlord shall have the right, at any time and from time to time, and without notice to or consent from Tenant, and without in any manner diminishing Tenant's obligations under this lease, to: (i) reconfigure the Common Areas; (ii) periodically close off all or a portion of the Common Areas for repairs, maintenance, or construction work; (iii) construct, maintain and operate lighting and other facilities in and on all Common Areas; (iv) police the Common Areas; (v) from time to time, close or otherwise change the area, level, location, use and arrangement of parking areas, however, Landlord shall not reduce the number of parking spaces at the Shopping Center by more than ten (10) spaces, and other facilities located in the Common Areas; (vi) restrict parking by Tenant, its officers, agents, and employees from customer only parking areas; ~~(vii) enforce parking charges (by operation of meters or otherwise);~~ (viii) close all or any portion of the Common Areas to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; (ix) close temporarily all or any portion of the parking areas or parking facilities to discourage non-customer parking; (x) add onto or otherwise alter, and build additional stories onto, any existing buildings, or erect additional buildings or improvements, including elevated or multiple-deck parking, or change the locations of buildings or other structures anywhere in the Shopping Center; (xi) approve the use of the Common Areas for promotional, retail, or other

activities; (xii) erect permanent or temporary kiosks, stands, or similar structures anywhere in the Shopping Center; (xiii) reduce or enlarge the Shopping Center; (xiv) sell any portion of the Shopping Center or the Common Areas; and (xv) otherwise do and perform such other acts in and to the Common Areas as, in the use of reasonable business judgment, Landlord shall determine to be advisable. Landlord agrees to use commercially reasonable efforts to avoid interfering with the conduct of Tenant's business during any periods of construction or otherwise in connection with any of the activities contemplated by this Article 4.3.2.

Notwithstanding anything to the contrary in this lease, in no event shall Tenant's location within the Shopping Center, or its location in relation to the major tenants or entrances, be subject to change without the prior written approval of Tenant. In no event shall any kiosks, planters, or other obstructions be located in front of Tenant's store or in any position which substantially materially obstructs the visibility of Tenant's store or storefront sign. Notwithstanding anything to the contrary herein, Landlord agrees in the exercise of its rights under this Lease that Landlord will not materially unreasonably restrict or impair access, visibility, or and parking for Tenant's business in the Premises.

Landlord shall pursue all work it is obligated to perform with reasonable continuity, diligence and dispatch and in such a manner as to cause a minimum of interference with Tenant's use of the Premises.

If, because of Landlord's actions, there is created a substantial and material interference with Tenant's ability to conduct its business, Landlord shall remedy such interference within twelve (12) hours of its receipt of written notice from Tenant outlining the interference with specificity. At the expiration of such twelve (12) hour period, ~~in the Premises and as a result Tenant closes for more than two (2) days~~, Tenant shall be entitled to an abatement of Fixed Minimum Rent for each day during which the interference condition continues.

4.4 Sales or Use Tax on Rent. Tenant covenants and agrees to pay Landlord, as Additional Rent hereunder, any sales or use tax imposed on Rent. Such tax shall be payable to Landlord at the same time as any such component of Rent shall be due under this lease.

4.5 Interest. Tenant covenants and agrees to pay, as Additional Rent hereunder, interest on all delinquent Rent, at a rate equal to the Default Rate. Such interest shall accrue from the original due date of such Rent (subject to applicable grace periods) to the date of actual receipt by Landlord. Tenant covenants and agrees to pay Landlord, as Additional Rent hereunder, within ~~ten (10)~~ thirty (30) days after the date Landlord mails to Tenant a statement therefor, such interest.

4.6 Due Dates for Payments. Rent of every kind herein set forth shall begin to accrue on the Rental Commencement Date and continue through the Expiration Date. With regard to payments of Fixed Minimum Rent, the first installment shall be due, in advance, on the Rental Commencement Date. Each subsequent installment shall be due, in advance, on the first day of each month next ensuing after the Rental Commencement Date. For any partial month, Tenant shall pay a per diem amount equal to one thirtieth (1/30th) of the monthly amount for each day of such partial month.

4.7 Place of Payment. All Rent payable by Tenant hereunder to Landlord shall be paid, in lawful money of the United States of America, to Landlord at the notice address or to such other payee or address as Landlord may designate in writing to Tenant.

ARTICLE 5

USE OF PREMISES

5.1 Use. In order to comply with certain restrictions affecting the Shopping Center, anything in this Lease to the contrary notwithstanding, Tenant covenants and agrees that Tenant is expressly prohibited from engaging in any activity described on Exhibit E attached hereto and incorporated herein by reference. In addition, Tenant covenants and agrees that Tenant shall operate its business in the Premises during the term of this lease under the Trade Name, and shall use the Premises only for the Permitted Use; Tenant covenants and agrees that it will not use, or permit or suffer the

use of the Premises or any part thereof, for any other business or purpose ~~without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and will be subject to the Prohibited Uses set forth in Exhibit E. Subject to rights of tenants of the Shopping Center under leases in existence as of the date of this lease and to any renewals or extensions thereof, for so long as Tenant is not in default beyond any applicable notice and/or cure period and is open and operating pursuant to the terms of this lease, for so long as this lease continues in effect Landlord agrees that Landlord shall not use or allow any other person or entity other than Tenant (except Tenant, any existing tenants, and the Dollar Tree expected to occupy the adjoining space) to use any portion of the Shopping Center for a work out/fitness facility, physical therapy, personal training, weight loss center, or sport specific training and that Landlord shall not use or allow any other person or entity other than Tenant whose primary use is the sale of health or nutritional aids (except Tenant, any existing tenants, and the Dollar Tree expected to occupy the adjoining space) to use any portion of the Shopping Center. The foregoing restriction on Tenant's use of the Premises notwithstanding, in no event shall there be found any implied covenant of exclusive use in favor of Tenant.~~

5.2 Nature of Use. Tenant shall use and occupy the Premises in a careful, safe and proper manner and shall keep the Premises in a clean and safe condition in accordance with this lease and local ordinances and the lawful directions of proper public officers. Tenant shall not use, or permit the Premises to be used, for any purpose other than as specified herein and shall not use or permit the Premises to be used for any unlawful, disreputable or immoral purpose or in any way that will injure the reputation of the Shopping Center, nor permit the Premises to be occupied in whole or in part by any other person, except as otherwise provided herein.

5.3 Extra Hazardous Activity. Tenant agrees that it will not do or keep anything in or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. If any act or omission by Tenant shall cause the rate of fire or other insurance on any portion of the Shopping Center to be increased beyond the minimum rate which would be applicable to the Premises for the use or purposes herein described, Tenant will pay the amount of such increase, as Additional Rent, within thirty (30) days after demand therefor by Landlord.

5.4 Alterations. ~~Following completion of the construction of the Premises, Tenant will not alter the Premises, without first obtaining Landlord's written approval therefore. After initial construction of Tenant's Work the Building, except for interior alterations which do not cost in excess of fifty thousand dollars (\$50,000.00) in any Lease Year and do not involve structural changes or diminution in value of the Building or affect the plumbing, electrical, or HVAC, Tenant shall have no right to make changes or alterations to the Premises without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, and shall be deemed given if Landlord fails to respond within fourteen (14) days of its receipt of Tenant's written request. Landlord shall state with specificity any grounds for disapproval.~~

5.5 Rubbish and Trash. Tenant shall not permit the accumulation of rubbish, trash, garbage or other refuse in and around the Premises. Tenant agrees to keep all refuse in proper containers and out of public sight on the interior of the Premises. In the event Tenant fails to remove any accumulation of rubbish, trash, garbage or other refuse from the Common Areas immediately after Landlord informs Tenant or Tenant's manager that such rubbish, trash, garbage or other refuse should be removed, Landlord shall have the right, but not the obligation, to remove the same, in which event Tenant agrees to pay to Landlord, as Additional Rent hereunder, within ~~ten (10)~~ thirty (30) days after the date Landlord mails to Tenant a statement therefor, the cost Landlord incurs in removing such rubbish, trash, garbage or other refuse.

5.6 Signs. Prior to opening the Premises for business, Tenant shall furnish and install a storefront and pylon signs as approved by Landlord in accordance with Landlord's sign criteria attached hereto as Exhibit D and in substantially the same form as the rendering submitted by Tenant and approved by Landlord, attached hereto as Exhibit D-1. Tenant shall not place, erect nor maintain on the doors, or on any exterior surface of the Premises, or in any vestibule, or anywhere outside of the Premises, any sign, lettering, decoration, or advertising, except such sign(s) as may be

permitted or required by **Landlord**, **Tenant** shall, at its expense, maintain such permitted or required sign(s) in good state of repair and, upon vacating the **Premises**, **Tenant** agrees to remove all signs and to repair all damage caused by such removal. Beginning with the Possession Date and continuing for up to thirty (30) days following **Tenant's** opening for business, **Tenant** shall further be permitted to use such professionally prepared temporary signage within the Shopping Center for pre-opening promotions as may be permitted by applicable law and so long as said signage does not impair the visibility of any tenant in the Shopping Center or damage the Common Areas.

5.7 Environmental Covenant. As used herein the term "**Applicable Environmental Law**" shall be defined as any statutory law, regulation, or case law pertaining to health or the environment, or oil, or petroleum products, or "**Hazardous Substances**" (as herein defined), including, without limitation: (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. §§ 9601 et seq., as amended; (ii) the Alabama Underground Storage Tank and Wellhead Protection Act of 1988, as codified at Ala. Code §§ 22-36-1 et seq., as amended; and (iii) the Alabama Hazardous Substance Cleanup Fund Act, as codified at Ala. Code §§ 22-30A-1 et seq., as amended. As used herein the terms "**Hazardous Substance**" and "**Release**" shall have the meanings specified for said terms in CERCLA; provided however, that in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broadened meaning shall apply subsequent to the effective date of such amendment; and provided further, that to the extent that the laws of the State of Alabama establish a meaning for "**Hazardous Substance**" or "**Release**" which is broader than that specified in CERCLA, such broader meaning shall apply; and provided further, that **Hazardous Substance** shall also be defined to include oil, petroleum products, extremely flammable substances, explosives, and radioactive materials, and **Release** shall also be defined to include any disturbance or **Release** of asbestos which would call for abatement or removal procedures under any **Applicable Environmental Law**.

5.7.1 **Tenant** shall not suffer, allow, permit, or cause:

5.7.1(a) the accumulation of tires, spent batteries, debris, or other solid waste either on the **Premises** or any other part of the **Shopping Center** property except rubbish placed in designated containers scheduled for normal, scheduled disposal in compliance with all applicable laws;

5.7.1(b) the generation, accumulation, storage, possession, **Release**, or threat of **Release of Hazardous Substances**; provided, however, the foregoing prohibition shall not be applicable to: (i) **Hazardous Substances** which are present on the **Premises** prior to the date **Tenant** first took possession of the **Premises**; (ii) normal and reasonable amounts of cleaning and pest control supplies necessary for normal maintenance of the **Premises** as a retail store so long as such materials are properly, safely, and lawfully stored and used by **Tenant** and the quantity of same does not exceed a "reportable quantity" as defined under 40 C.F.R 302, as amended; or (iii) de minimis amounts of leaked or spilled petroleum products from the normal operation of motor vehicles.

5.7.2 **Tenant** acknowledges that the use, maintenance or storage of chlorofluorocarbons (including but not limited to Freon and other so-called CFCs) may hereafter be prohibited or limited by law. In the event use, maintenance or storage of chlorofluorocarbons is hereafter prohibited or limited:

5.7.2(a) After the use or maintenance of chlorofluorocarbons is prohibited or limited, **Tenant** shall not thereafter allow, cause, suffer or permit any chlorofluorocarbons to be either placed, stored, maintained, used or kept within the **Premises** or at any other part of the **Shopping Center** which is within or subject to **Tenant's** right to control or use, except or in compliance with all **Applicable Environmental Laws**;

5.7.2(b) **Tenant** shall forthwith contain or otherwise abate (as required by **Applicable Environmental Law**) all chlorofluorocarbons placed in the **Premises** after the date on which **Tenant** first took possession of the **Premises** provided same were not placed in the **Premises** by **Landlord**;

5.7.2(c) Landlord shall have the right ~~obligation~~ to ~~remove and to~~ abate any chlorofluorocarbons ~~asbestos~~ placed in the Premises prior to the Possession Date on which Tenant first took possession of the Premises, together with any other Hazardous Substance that may be required to be removed by any Applicable Environmental Law. ~~Landlord shall have no obligation to so abate unless required by Applicable Environmental Law.~~ Landlord shall deliver the Premises to Tenant free of any grease traps or refrigeration equipment above the finished floor. ~~Except for chlorofluorocarbons contained in the existing HVAC units, Landlord shall further have the right and obligation to abate any chlorofluorocarbons placed in the Premises prior to Possession Date.~~ In conjunction therewith, ~~Landlord shall be entitled to access to the Premises for the purposes of performing any necessary containment or abatement of such chlorofluorocarbons in accordance with Applicable Environmental Law.~~ Furthermore, Tenant shall not be entitled to terminate this lease or to receive any abatement of Rent or to hold Landlord liable for any incidental or consequential damages (such as, but not limited to, damages for business interruption) arising by reason of the fact that any chlorofluorocarbons are present in the Premises at the date of this lease so long as Landlord performs its obligations under this subsection of this lease within a reasonable time after the effective date of any Applicable Environmental Law which prohibits further use, storage, or maintenance of chlorofluorocarbons within the Premises;

5.7.2(d) In addition to the foregoing, Tenant agrees that Tenant shall, on or before the Expiration Date, remove all chlorofluorocarbons which were not placed in the Premises by Landlord and which were placed in the Premises after the date Tenant first took possession of the Premises (regardless of whether the use, storage or maintenance of chlorofluorocarbons is prohibited within the Premises at the Expiration Date) unless required not to do so by Landlord.

5.7.3 Tenant shall notify Landlord immediately upon learning: (i) that any duty described in this Section 5.7 of this lease has been violated; (ii) that there has been a Release, discharge, or disposal of any Hazardous Substance on a part of the Premises or the Shopping Center; (iii) that radon gas or urea formaldehyde has been detected on or in the Premises; or (iv) that the Premises or improvements thereto are subject to any third-party claim or action, or threat thereof, because of any environmental condition at the Shopping Center or in or originating from the Premises or arising in connection with the operation of the Premises. Tenant shall promptly provide Landlord with copies of all correspondence to or from third parties regarding such claims or actions or regarding environmental conditions in or originating from the Premises.

5.7.4 In the event of a Release of any Hazardous Substance on, in or from the Premises which was not caused by Landlord ~~Tenant, its agents, employees, contractors, invitees, or vendors~~, Tenant shall immediately cause complete remediation of such Release and restore the Premises to the condition that existed prior to the date Tenant first took possession of the Premises. Landlord shall have the right, but not the obligation, to enter the Premises and remediate any environmental condition on the Premises to comply with all Applicable Environmental Laws during which time Tenant shall not be entitled to any abatement of Rent.

5.7.5 Tenant hereby agrees to pay any judgments, fines, charges, fees, damages, losses, penalties, demands, actions, costs and expenses (including without limitation legal fees and expenses), remedial and response costs, remediation plan preparation costs, and any continuing monitoring or closure costs arising from or pertaining to the application of any Applicable Environmental Law to the Premises due to a breach of Tenant's obligations pursuant to this Section 5.7. Further, Tenant hereby covenants and agrees to indemnify and forever hold harmless Landlord, together with its officers, directors, stockholders, employees, servants, and agents (collectively, the "Indemnified Parties") of and from any and all liabilities (including strict liability), judgments, fines, charges, fees, damages, losses, penalties, demands, actions, costs and expenses (including without limitation legal fees and expenses), remedial and response costs, remediation plan preparation costs, and any continuing monitoring or closure costs incurred or suffered by the Indemnified Parties, or asserted by any third party against the Indemnified Parties, due to the breach of Tenant's obligations set forth in this Section 5.7. This indemnification shall survive the expiration or earlier termination of this lease.

5.7.6 At the Expiration Date, Tenant shall return the Premises to Landlord free of any Hazardous Substances in, on, or from the Premises which were not placed on the Premises by Landlord ~~Tenant, its agents, employees, contractors, invitees, or vendors~~ or ~~not~~ present in the

Premises prior to the date Tenant first took possession of the Premises.

5.7.7 Landlord hereby agrees to pay any judgments, fines, charges, fees, damages, losses, penalties, demands, actions, costs, and expenses (including, without limitation, legal fees and expenses), remedial and response costs, remediation plan preparation costs, and any continuing monitoring or closure costs arising from or pertaining to the application of any Applicable Environmental Law to the Premises due to a breach of Landlord's obligations pursuant to this Article 5.7 and from any failure of Landlord to comply with its obligations under 5.7.2(c) above. Further, Landlord hereby covenants and agrees to indemnify and forever hold harmless Tenant, together with its officers, directors, stockholders, employees, servants, and agents (collectively, the "Tenant Indemnified Parties") of and from any and all liabilities (including strict liability), judgments, fines, charges, fees, damages, losses, penalties, demands, actions, costs, and expenses (including without limitation legal fees and expenses), remedial and response costs, remediation plan preparation costs, and any continuing monitoring or closure costs incurred or suffered by the Tenant Indemnified Parties, or asserted by any third party against the Tenant Indemnified Parties, due to the breach of Landlord's obligations set forth in this Article 5.7. This indemnification shall survive the expiration or earlier termination of this lease. Further, to the extent Tenant's use or occupancy of the Premises is substantially impaired due to a breach of Landlord's obligations pursuant to this Article 5.7, Fixed Minimum Rent shall abate in proportion to the impairment of Tenant's use and if such impairment continues for a period of more than ninety (90) days, Tenant may terminate this lease upon ten (10) days' written notice to Landlord.

ARTICLE 6

OPERATION OF BUSINESS

6.1 Open for Business. Upon the **Rental Commencement Date**, Tenant agrees to occupy the Premises and open its store for business fully fixtured, stocked, and staffed, and thereafter to continuously operate its business for the **Permitted Use** during the **Operating Hours**, under the **Trade Name**. Tenant recognizes that the covenants of Tenant contained in this paragraph are a material consideration to Landlord hereunder in order that Tenant might produce the maximum profitable **Gross Sales** possible from the Premises during the lease term and the continued operation of the **Shopping Center** be assured.

6.2 General Covenants of Tenant

6.2.1 Tenant will at its sole cost: (i) keep the inside and outside of all glass in the doors and windows of the Premises clean; and (ii) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, cats, vermin and other pests.

6.2.2 Tenant agrees to comply with all laws, ordinances, orders, regulations and requirements of all county, municipal, state, federal and other governmental authorities affecting the construction, use and occupancy of the Premises and the cleanliness, safety, or operation thereof. Tenant agrees to be the responsible entity for instituting a plan of compliance to ensure that the Premises are in compliance with the ADA and Tenant shall make, at its sole cost, any and all alterations which may be required to bring the Premises into compliance with the ADA. Tenant agrees, at its sole expense, to comply with all recommendations, regulations, and requirements of any public or private agency having authority over insurance rates with respect to the construction, use, or occupancy of the Premises by Tenant, including, without limitation, installation and maintenance of any fire extinguishing apparatus required by local regulations or the requirements of insurance underwriters.

6.2.3 Tenant agrees to comply with all reasonable rules and regulations that are not in conflict with the terms of this lease, which Landlord may from time to time establish for the use and care of the Premises, Common Areas, and other facilities and building areas, to pay any reasonable fines that are uniformly imposed by Landlord upon similarly situated tenants for failure to comply with such rules and regulations, and to use reasonable efforts to cause its concessionaires and suppliers, officers, agents, employees and independent contractors to so

comply, and to use its best reasonable efforts to cause its customers, invitees and licensees to so comply, provided such rules and regulations apply to all similarly sized and situated tenants of the Shopping Center.

6.2.4 Tenant agrees that Landlord, its agents, employees or servants, or any person authorized by Landlord, may upon twenty-four (24) hours verbal notice to Tenant, except in an emergency when no notice shall be required, enter the Premises for the purpose of inspecting the condition of same; making such repairs, additions or improvements thereto, or to the Building, as Landlord may elect or be required to make; and for exhibiting the same to prospective purchasers or mortgagees of the Shopping Center, and during the last six three (3) months of the term of this lease, exhibiting the same to prospective tenants and placing a sign in the window of the Premises advertising the Premises for lease, so long as any sign shall not be larger than 4' x 4'.

6.3 Liens. Tenant will not permit to be created nor to remain undischarged any lien, encumbrance or charge which might be or become a lien or encumbrance or charge upon the Premises or any part thereof or the income therefrom, and Tenant will not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Premises shall be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Tenant agrees to pay to Landlord, as Additional Rent hereunder, within ~~ten (10)~~ thirty (30) days after the date Landlord mails to Tenant a statement therefor, any amount so paid by Landlord together with all costs and expenses, including attorney fees, incurred by Landlord in connection therewith, together with interest thereon at the Default Rate from the respective dates of Landlord's making of the payment or incurring of the cost and expense. Landlord agrees, at Tenant's request, to execute the lien waiver attached hereto as Exhibit H.

6.4 Tenant's Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation in the Premises as well as upon its trade fixtures, leasehold improvements, merchandise, and other personal property in or upon the Premises.

ARTICLE 7 CONSTRUCTION OF PREMISES

7.1 Landlord's Base Work. Landlord's construction responsibility shall be limited to those items described in Exhibit C as Landlord's Base Work, which Landlord shall complete at its sole cost and expense and in a good and workmanlike manner before delivering the Premises to Tenant, except for punchlist items that can be completed within thirty (30) days of delivery without adversely affecting Tenant's ability to perform Tenant's Work.

7.1.1 To the best of Landlord's knowledge, as of the Possession Date, the Common Areas of the Shopping Center, including, without limitation, sidewalks, parking areas, driveways, all structural elements, the foundation, roof, roof membrane and roof system, and exterior walls are substantially complete and are in compliance with all applicable building codes. Landlord shall correct any latent defects promptly after Tenant notifies Landlord in writing of any such defect. Landlord represents and warrants that it has disclosed to Tenant any conditions or restrictions, including, without limitation, environmental contamination, restrictions on utilities, or exclusive use restrictions within Landlord's knowledge that would adversely affect Tenant's store design, permitting, construction, or use as contemplated by this lease.

7.1.2 Landlord will perform and complete Landlord's Work in accordance with Exhibit C, which work shall comply with all applicable building codes, excluding code issues, such as ADA compliance, that are specific to Tenant's retail use. Tenant shall deliver to Landlord a written punchlist of all incomplete or faulty items of construction and any finish work needed to bring the Premises into the condition described in Exhibit C. Landlord shall substantially repair all punchlist items that apply to Landlord's Work as set forth in Exhibit C and Landlord shall complete or repair all such items within thirty (30) days of the date Possession Date in a manner that will not interfere with Tenant's ability to complete Tenant's Work.

7.2 Tenant's Construction. Tenant shall be entitled to possession of the Premises on the Possession Date and shall, at its own cost and expense, perform all work and complete all installations described as Tenant's Work and fully equip the Premises with all trade fixtures, lighting fixtures, furniture, furnishings, floor coverings, storefront signs, any special equipment and other items of construction and personal property necessary for the completion of the Premises and the proper operation of Tenant's business. All such items installed by Tenant shall be new or in "like new" condition. Tenant shall not do any construction work or make any alterations, nor shall Tenant install any equipment without first obtaining Landlord's written approval of the plans and specifications therefore. Tenant agrees to provide Landlord with its Construction Plans & Specifications, which shall, subject to modifications desired by Tenant, be based on the preliminary design format shown on Exhibit I, within thirty (30) ~~sixty (60)~~ ninety (90) days from the date Landlord delivers to Tenant the plans described in Exhibit C-1 hereof, to be approved by Landlord, in its reasonable discretion. The approval by Landlord of such plans and specifications **Tenant's Construction Plans & Specifications** shall not constitute the assumption of any liability on the part of Landlord for its accuracy or its conformity with any building code or other governmental requirements, and Tenant shall be solely responsible for such plans and obtaining all permits and approvals from local governmental bodies. ~~In the event Tenant shall fail to complete any portion of its construction of the Premises or the installation of any equipment or other items to be installed therein as required by this lease within the time periods set forth, Landlord may, in addition to any other rights and remedies it may then have, complete such construction or make such installations on behalf of and for the account of Tenant, after ten (10) days notice to Tenant of its intention to do so and Tenant's failure to cure, and Tenant covenants and agrees to pay Landlord, as Additional Rent hereunder, within ten (10) ~~thirty (30)~~ days after the date Landlord mails to Tenant a statement therefor, the cost incurred by Landlord in completing such construction or making such installations.~~

7.2.1 Permit Contingency. Subject to the terms set forth herein and subject to Tenant's submission to Landlord of its Construction Plans & Specifications in the format required by the applicable governmental authority and conforming with all applicable codes and regulations, Tenant's obligations under this lease are conditioned on Tenant's obtaining any permits and/or licenses (including but not limited to conditional use permits, building permits, variances and other governmental approvals) (collectively, "Government Approvals"), by the later of the Possession Date or one hundred twenty (120) days of the execution of this lease (the "Permit Period"), that are required by applicable laws to enable Tenant legally (a) to construct Tenant's Work to the Premises in accordance with Tenant's Construction Plans and Specification; and (b) to install Tenant's signage on the Premises; and (c) to conduct its business from the Premises; provided, however, that so long as Tenant has diligently pursued obtaining all Government Approvals, then Tenant may extend the Permit Period until the responsible authority has made a final decision and all appeals of the decision are exhausted, but in no event shall Tenant be allowed to extend the Permit Period by more than sixty (60) days unless approved by Landlord in writing. Tenant shall, at Tenant's expense, initiate and diligently pursue each Government Approval and Landlord shall execute any applications and shall provide Tenant with such further assistance and cooperation as Tenant may require in connection with applications for such Government Approvals.

Tenant hereby agrees that Landlord may also extend the Permit Period for sixty (60) days during which time Landlord may attempt to obtain the Government Approvals on Tenant's behalf and, if Landlord is able to obtain all necessary Government Approvals, Tenant agrees to reimburse Landlord for its expenses associated with obtaining the

Government Approvals within ten (10) days of the date **Landlord** mails **Tenant** a statement therefore. If **Tenant** cannot, after diligent efforts, obtain such **Government Approvals** within the **Permit Period** and, if **Landlord** elected to extend the **Permit Period** and was not able to obtain the **Governmental Approvals**, either party shall have the right to terminate this lease upon ten (10) days written notice to the other. After a termination hereunder, neither party shall have any further rights or liabilities under this lease.

7.3 All alterations, additions, improvements, and **Tenant's Work** provided for herein, shall become, upon the **Expiration Date**, at the option of **Landlord**, the property of **Landlord**, subject to the terms of this lease. Any trade fixtures, signs and other personal property of **Tenant** not permanently affixed to the **Premises** shall remain the property of **Tenant**. **Tenant** agrees that if **Tenant** elects to install a swimming pool in the **Premises**, under the conditions set forth in Article 2.3, such swimming pool will be filled following the **Expiration Date** removed, upon **Landlord's** written request. Provided, however, if the **Expiration Date** does not occur until after the First Option Period, **Tenant** shall not have any obligation to fill the swimming pool. and the **Premises** returned to the condition in which it existed at the completion of **Tenant's Work**.

ARTICLE 8 **RELOCATION**

8.1 ~~**Landlord** may, at its discretion, relocate **Tenant** to another similar space in the **Shopping Center** if **Landlord** deems such relocation is for the benefit of the **Shopping Center** as a whole. In return for relocating, **Landlord** will pay the cost of **Tenant's** moving expenses and give **Tenant** one month's free rent at the new location. **Landlord** shall move **Tenant** in a manner that will minimally affect **Tenant's** ability to provide continuous service to its customers. Should **Tenant** elect not to relocate, **Tenant** shall notify **Landlord**, in which event **Tenant** may terminate this lease in lieu of relocating by providing **Landlord** with written notification of **Tenant's** intention to terminate within thirty (30) days after the date of **Landlord's** notice.~~

ARTICLE 9 **REPAIRS AND MAINTENANCE**

9.1 ~~**Landlord** agrees, at its expense, to use commercially reasonable efforts to keep the footings, foundation, load bearing walls, roof-deck, floor slabs, and columns and beams which support the roof, of the **Building** in structurally sound condition and repair. Such repairs, replacements, and maintenance shall include, without limitation, the upkeep of the roof, roof membrane, and roof system (gutters, downspouts, and the like), foundation, exterior walls, and all structural components of the **Premises** other than those modified by **Tenant** and the **Shopping Center**. **Landlord** agrees to replace the roof, at its expense, when **Landlord** deems such replacement necessary. Notwithstanding the foregoing, to the extent **Tenant's Work** requires work to the roof of the **Premises**, **Tenant** shall co-ordinate same with **Landlord** and shall use **Landlord's** roofing contractor if required by **Landlord**. Following the completion of such work, **Landlord** shall be fully responsible for the roof of the premises as provided for in this Lease.~~

9.2 **Tenant** agrees at **Tenant's** expense, to keep all other parts of the **Premises** in good order and repair, and in a clean, sanitary and safe condition, and shall permit no waste, damage or injury to the **Premises** or the **Shopping Center**. **Tenant's** repair responsibility shall include all necessary replacements and capital expenditures, irrespective of the condition of the **Premises** at time of the commencement of this lease and **Tenant** shall be responsible for maintaining the **Premises**. **Tenant** agrees to initiate and carry out a program of regular maintenance and repair of the **Premises**, so as to impede, to the greatest extent possible, deterioration by ordinary wear and tear and to keep the same in a first class condition, including without limitation, the immediate repair of any exterior door or glass damage; the immediate repair of any damage to the **Premises** caused by the removal or replacement of any trade fixtures, signs, or other leasehold improvements or personal property; the replacement of equipment and fixtures; painting or replacement of materials on the interior when necessary in order to maintain at all times a clean and attractive appearance; exterior and interior portion of all doors; door checks; windows; plate glass; storefront; all plumbing and sewage facilities within the **Premises** and free flow up to first common sewer line; fixtures; heating, ventilating, and air conditioning systems and electrical systems from the point such systems begin to exclusively serve the **Premises** up to and including the **Premises**; sprinklers;

walls, floors and ceilings; and any other portions of the Premises which are not a part of Landlord's repair responsibilities. Tenant agrees to enter into and maintain in effect a maintenance contract satisfactory to Landlord for the heating, ventilating, and air conditioning systems serving the Premises. Tenant shall not make any repairs outside its Premises without first obtaining Landlord's written approval of the plans and specifications therefor and coordinating timing of same with Landlord. If Tenant refuses or neglects to make repairs and/or maintain the Premises or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right, but not the obligation, upon giving Tenant notice (and the opportunity to cure in accordance with Section 15.1.7) of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event, Tenant agrees to pay to Landlord, as Additional Rent hereunder, within ~~ten (10)~~ thirty (30) days after the date Landlord mails to Tenant a statement therefor, the costs incurred by Landlord in performing such work. At the Expiration Date, or earlier termination, Tenant shall be responsible for returning all plumbing, electrical, lighting and HVAC to Landlord in good working order.

ARTICLE 10 **UTILITIES**

10.1 Tenant shall pay from the date the Premises are delivered to Tenant, the cost of sewer and/or water hook up or tie-in, demand, or reservation fees of any kind, including, without limitation, any impact fees, subject to the credits provided for in Article 4.3.1(b), or development fees assessed in connection with the Premises, the cost of gas, electricity, fuel, light, heat, power, telephone, cable, trash and garbage removal, and all other utilities furnished to the Premises or used by Tenant in connection therewith, whether such utility costs are determined by separate billing from third parties or are billed by Landlord to Tenant as Additional Rent or as part of the CAM Charge. Tenant shall not install any equipment nor shall Tenant use the Premises in a manner that will exceed or overload the capacity of any utility facilities. If Tenant's use of the Premises shall require additional utility facilities, the same shall be installed only after obtaining Landlord's written approval (which approval shall not be unreasonably withheld) may be withheld in Landlord's sole and unfettered discretion and shall be installed at Tenant's expense in accordance with plans and specifications approved in writing by Landlord. If Tenant's use or occupancy of the Premises results in an increase to Landlord of any utilities expense or connection or user fees or charges for increased usage or capacity or assessments of any kind whatsoever, Tenant shall pay the entire amount thereof within ~~ten (10)~~ thirty (30) days of Landlord's written demand. In no event shall Landlord be liable for any interruption or failure in the supply of utilities to the Premises, except to the extent caused by Landlord's gross negligence or willful misconduct and which Landlord failed to cure within forty-eight hours of Landlord's receipt of written notice of the interruption or failure.

10.2 Landlord shall have the option to supply, either itself, by an agent employed by Landlord, or by an independent contractor, one or more utilities to the Premises. For any utility which Landlord may supply to Tenant, Tenant will purchase its requirements for such service(s) tendered by Landlord, and Tenant covenants and agrees to pay Landlord, as Additional Rent hereunder, within ~~ten (10)~~ thirty (30) days after the date Landlord mails to Tenant a statement therefor, the Utility Charge. The Utility Charge shall be at the applicable rates determined by Landlord from time to time not to exceed other rates available to the Tenant by another utility provider.

ARTICLE 11 **DAMAGE TO PREMISES**

11.1 Except as stated in Section 11.1.3, in the event the Premises are damaged or rendered partially untenantable by fire, explosion, or any other casualty ("Casualty"), Landlord shall promptly repair or rebuild the Premises (other than Tenant's work). Provided, however, if there is a Casualty that substantially destroys the Building (more than 75% of the value thereof), Landlord may elect either to: (i) repair or rebuild the Building (other than Tenant's Work) or (ii) terminate this lease. Landlord shall notify Tenant of its election within ninety (90) days after any such Casualty.

11.1.1 If the Casualty, repairing or rebuilding shall render the Premises untenantable, in

whole or in part, then a proportionate abatement of ~~Rent, less an amount equal to Tenant's Pro Rata Share times the Impositions on a per diem basis;~~ shall be allowed from the date of the Casualty until the earlier of the date Tenant reopens for business or the date ~~sixty (60)~~ ninety (90) days after the date Landlord shall have completed its work, said proportion to be computed on the basis of the relation which the gross square footage of the space rendered untenable bears to the Square Footage of the Premises, provided that the tenantable space constitutes useable space that is satisfactory for the continued operation of Tenant's business.

11.1.2 The provisions of this Article with respect to repair by Landlord shall be limited to such repair as is necessary to reconstruct the Building exclusive of Tenant's Work, and when placed in such condition the Premises shall be deemed restored and rendered tenantable, promptly following which time Tenant, at Tenant's expense, shall perform the work required to place the Premises in the condition in which Tenant first opened for business and Tenant shall also repair or replace its stock in trade, fixtures, furnishings, carpeting, draperies, floor coverings and equipment, and if Tenant has closed, Tenant shall, on or before the date which is sixty (60) days after the date Landlord shall have completed its work, promptly reopen for business.

11.1.3 In the event the Premises are damaged more than twenty-five percent (25%) of the cost of replacement of the Premises in the last eighteen (18) months of any lease term, including any renewal term(s), Landlord or Tenant shall have the right to terminate the lease. However, if Landlord can repair the damage and return the Premises to Tenant (other than Tenant's Work) so that there is a minimum of thirteen and one-half (13½) months remaining on the then current lease term, then Tenant shall not have the right to terminate the lease. If the Landlord elects to terminate the lease as provided above, then Tenant can negate Landlord's election to terminate the lease by exercising early its upcoming renewal term, provided there is at least one additional renewal term remaining under the lease.

ARTICLE 12 **INSURANCE**

12.1 Tenant's Insurance Obligations. Tenant shall at all times during the Lease Term maintain in full force and effect the following insurance in standard form generally in use in the state in which the Shopping Center is located, with insurance companies authorized to do business in said State, rated no less than A, VIII in the current edition of Best's Rating Guide:

12.1.1 Commercial general liability insurance written on an "occurrence" basis (as opposed to "claims made") at least equivalent to the most current standard Insurance Service Offices standard CGL form with a per accident limit of at least One Million Dollars (\$1,000,000) and a general aggregate limit of at least Two Million Dollars (\$2,000,000), protecting Tenant and Landlord (as an additional insured) against claims based upon, involving, or arising out of the ownership, use, occupancy, or maintenance of the Premises. Such coverage shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. In the event the business being conducted from the Premises includes the sale or other disposition of alcoholic beverages for on or off premise consumption, Tenant shall, in addition to the commercial general liability insurance, obtain liquor liability insurance in the amounts equal to that required above for the commercial general liability insurance.

12.1.2 Property insurance covering all of Tenant's Work and the merchandise, trade fixtures, furnishings, wall covering, carpeting, drapes, equipment and all other items of personal property of Tenant located on or within the Premises to the extent of ~~(100%)~~ Eighty Percent (80%) of the Full Replacement Value of the same against Fire and Other Perils commonly included in "Special Form Coverage". Each such policy shall name Landlord and Tenant as joint payees and the proceeds from any such policy shall first be used for the replacement or restoration of Tenant's Work, and secondly be used for the replacement or restoration of the merchandise, trade fixtures, furnishings, wall covering, carpeting, drapes, equipment and other items of personal property of Tenant.

12.1.3 If Tenant owns, uses, operates or controls any vessel or piping under pressure, including but not limited to boilers, heating or air conditioning apparatus and steam machinery,

equipment or pressure vessels of any kind then **Tenant** shall also procure and maintain in full force and effect standard boiler and machinery insurance on all such boilers, heating and air conditioning equipment and other pressure vessels and systems, whether fired or unfired, located in the **Premises**; and if the said objects and the damage that may be caused by them or result from them are not covered by extended coverage insurance, then such boiler insurance shall be in an amount not less than Five Hundred Thousand Dollars (\$500,000). Such policy shall insure damage to property of both **Landlord** and **Tenant** on a replacement cost basis arising out of the ownership, use, operation or control of any such above-described pressure objects.

12.1.4 Workmen's Compensation Insurance and employees insurance as required by law.

~~Except with the respect to the insurance in Section 12.1.4 above, all such~~ **All liability** insurance policies ~~(other than that required by Section 12.1.4 above)~~ shall be endorsed to add **Landlord** as an additional insured for the full amount of the insurance herein required. ~~and Except with the respect to the insurance in Section 12.1.4 above, all such insurance policies shall be endorsed~~ to provide that such insurance shall be primary, and that any insurance maintained by **Landlord** shall be excess only and not contributory. **Tenant** shall furnish to **Landlord**, on or before the date **Tenant** first enters the **Premises** for any reason, and at least thirty (30) days before expiration or termination or reduction of coverage of any such policy, copies of policies or certificates of insurance evidencing coverages required by this Lease. All policies required hereunder shall contain an endorsement providing that the insurer will not cancel, fail to renew, or amend the policy or policies without first giving thirty (30) days' prior written notice thereof to the **Landlord**. If **Tenant** fails to furnish **Landlord** with such certificates of insurance as above required, **Landlord** may (but shall not be obligated to), after fifteen (15) days written notice to **Tenant** and **Tenant's** failure to furnish such certificates, obtain such insurance coverages and **Tenant** agrees to pay to **Landlord**, as **Additional Rent** hereunder, within ~~ten (10)~~ **thirty (30)** days after the date **Landlord** mails to **Tenant** a statement therefor, the costs of obtaining such coverages. This remedy is in addition to any other remedy **Landlord** may have under this lease.

12.2 Landlord's Obligations. **Landlord** shall keep the **Shopping Center** insured throughout the term of this lease against the loss or damage by fire and extended coverage, including vandalism and malicious mischief in an amount not less than eighty percent (80%) of the then **Full Replacement Value**; and against such other hazards and in such amounts as the holders of any mortgage or deed of trust to which this lease is subordinated may reasonably require from time to time. It is understood that **Landlord's** insurance obligation hereunder does not extend to **Tenant's Work**.

12.2.1 Any insurance policy may be subordinated as the interest of such holders may appear, pursuant to a standard clause for holders of mortgages or deeds of trust providing that any such mortgage or deed of trust shall contain provisions wherein proceeds of loss by reason of casualty shall be made available to **Landlord** for the purpose of fulfilling its obligations under any provision of this lease.

12.3 Master Policy. The insurance required by this Article may be included in policies of "blanket insurance", provided that, in all other respects, each such policy shall comply with the requirements of this Article and provided that no other loss which may or may not be also insured thereby, shall in any way affect or limit the coverages and amount of insurance required hereby.

12.4 Waiver of Subrogation. **Landlord** and **Tenant** hereby release the other from any and all liability to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. **Landlord** and **Tenant** each agree that it will cause its insurance carriers to include in its policies such a clause or endorsement.

ARTICLE 13
INDEMNIFICATION

13.1 Effective upon the date Tenant first takes possession of the Premises, and continuing through the Expiration Date, Tenant hereby covenants and agrees to indemnify the Indemnified Parties and defend and save them harmless from and against any and all costs, claims, actions, demands, damages, liabilities, losses, judgments, and expenses (including, without limitation, reasonable attorneys fees and expenses, investigative and discovery costs, and court costs), and any repair, restoration, and compliance costs, and any and all other sums which the Indemnified Parties may pay or become obligated to pay (collectively "Claims and Costs") arising from or in connection with loss of life, bodily injury, death, and property damage liability, personal and advertising injury liability, and medical payments arising from or out of any occurrence in, upon, or at the Premises, or the occupancy or use by Tenant of the Premises, ~~the Common Areas or any part thereof~~, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, lessees, or concessionaires. ~~Further, Tenant hereby covenants and agrees to indemnify the Indemnified Parties and defend and save it and them harmless from and against any and all Claims and Costs arising out of or in connection with the compliance with laws, ordinances, etc., provisions of Section 6.2.2 of this lease, including, without limitation, all compliance requirements set forth in the ADA including, without limitation, those relating to the use, renovation, and/or alteration of the Premises, including, without limitation, any changes necessary because of the specific needs of Tenant's employees.~~ This indemnity of the Indemnified Parties is required in addition to the insurance required under this lease. If any action or proceeding is brought against the Indemnified Parties by reason of any such Claims and Costs, Landlord may choose the attorney(s) and direct the litigation, and Tenant agrees to pay all costs and expenses of the defense. The provisions contained in this paragraph shall survive the expiration or earlier termination of this lease.

13.2 Likewise, Landlord hereby covenants and agrees to indemnify Tenant Indemnified Parties (such reference to include its officers, agents and employees) and defend and save it and them harmless from and against any and all costs, claims, actions, demands, damages, liabilities, losses, judgments, and expenses (including, without limitation, reasonable attorneys fees and expenses, investigative and discovery costs, and court costs), and any repair, restoration, and compliance costs, and any and all other sums which Tenant Indemnified Parties may pay or become obligated to pay arising from or in connection with loss of life, bodily injury, death, and property damage liability, personal and advertising injury liability, and medical payments arising from or out of any occurrence in, upon or at the Common Areas, when such costs and claims are not a result of any act or omission of Tenant, its agents, contractors, employees, servants, invitees, lessees, or concessionaires. The provisions contained in this paragraph shall survive the expiration or earlier termination of this lease. Landlord shall indemnify and hold harmless Tenant against and from any and all claims arising from Landlord's use of the Premises Common Areas or the conduct of its business or from any activity, work, or thing done by the Landlord in or about the Premises Common Areas; and shall further indemnify and hold harmless Tenant against and from any and all claims arising from any act, fault, or omission of Landlord, or of its agents, contractors or employees after notice has been given to Landlord by Tenant and from and against all costs, attorneys fees, expenses, and liabilities incurred in or about such claim or any action of proceeding brought thereof and in case any action or proceeding be brought against Tenant by reason of any such claim. Landlord, upon notice from Tenant, shall defend the same at Landlord's expense.

ARTICLE 14
ASSIGNMENT, SUBLETTING, OWNERSHIP

Tenant shall not assign this lease or any interest herein or sublet the Premises or any portion thereof without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. ~~may be withheld in Landlord's sole and unfettered discretion.~~ Failure to first obtain in writing Landlord's consent or failure to comply with the provision of this Article shall operate to prevent any such transfer, assignment, subletting, license, concession agreement or hypothecation from becoming effective. If Tenant is a corporation, trust, partnership or other such organization and if the control thereof changes at any time during the term hereof, Tenant shall promptly notify Landlord of such change. Landlord, at its option, may, by giving thirty (30) days

prior written notice to **Tenant**, declare such a change any transfer other than a Permitted Transfer to be a breach of this lease, subject to the remedies provided for breach in Article 15 hereof. Notwithstanding the foregoing, **Tenant** may, with written notice to **Landlord**, sublet all or any portion of the **Premises** or assign this lease to the following (each a "Permitted Transfer") only if the Permitted Transferee expressly agrees in writing to bound by each and every duty and obligation set forth in this lease: (a) a parent, subsidiary, affiliate, division, or other entity controlling, controlled by, or under common control with **Tenant**; or (b) a successor entity related to **Tenant** by merger, consolidation, reorganization, or government action, or (c) Gold's Gym or other franchisor of the business conducted by **Tenant** in the **Premises** ("**Tenant's Franchisor**"); or (d) another franchisee of **Tenant's Franchisor**, or (e) the purchaser of all or substantially all of the assets of **Tenant's** parent company, presently Birmingham Athletic Clubs, LLC. Further, **Landlord** hereby agrees and consents that, so long as **Tenant** is not in default beyond any applicable cure period, **Tenant** may sub-lease a maximum of ten thousand (10,000) square feet of the **Premises** to Brookwood Medical Center and may choose to share its pylon signage and/or storefront signage with Brookwood Medical Center, subject to compliance with the terms and conditions of this lease, including the sign criteria attached as Exhibit D. If **Landlord's** consent is required for an assignment or sublease, **Landlord** shall respond to **Tenant** in writing including the reasons for any disapproval within fourteen (14) days of **Landlord's** receipt of the written request from **Tenant**, which shall be accompanied by financial statements and the proposed use of the proposed assignee or subtenant. If **Landlord** fails to respond within such fourteen (14) day period and such failure continues for ten (10) days after a follow-up written notification from **Tenant**, then **Landlord's** consent shall be deemed to have been given. Unless released in writing, **Tenant** shall remain primarily liable for all covenants under this lease; provided, however, that **Tenant's** obligations may not be enlarged or extended by any act or agreement of any assignee or subtenant, except as provided for herein.

ARTICLE 15 **EVENTS OF DEFAULT/REMEDIES**

15.1 **Events of Default by Tenant.** This Lease is made upon the condition that **Tenant** shall punctually and faithfully perform all covenants and agreements as herein set forth. The happening of any one or more of the following listed events of default shall constitute a breach of this lease by **Tenant**:

15.1.1 The failure of **Tenant** to pay any part, portion, or component of any **Rent** payable by **Tenant** within ten (10) days of written notice to **Tenant** that the date the same is past shall become due; provided that **Landlord** shall not be obligated to give **Tenant** notice of late payments more than twice in any twelve (12) month period, and on the third time a payment is ten (10) days late it shall be an immediate event of default without notice or grace period;

15.1.2 The taking of the leasehold on execution or other process of law in any action against **Tenant**;

15.1.3 The failure of **Tenant** to take possession of, construct and thereafter open the **Premises** for business, fully fixtured, stocked and staffed on the **Rental Commencement Date**, or the abandonment of the **Premises**, or cessation of **Tenant's** business within the **Premises** as required by Article 6 and in full compliance with the business hours requirements of Article 6 hereof;

15.1.4 The filing by **Tenant** of any petition or answer seeking any reorganization, liquidation, arrangement, readjustment or similar relief for itself under any present or future federal, state or other statute and the failure of **Tenant** to secure a dismissal thereof within ninety (90) days; provided, however, that in the event **Landlord** shall not be permitted to terminate this lease because of the provisions of Title 11 of the United States Code (the "Bankruptcy Code"), then **Tenant** as debtor-in-possession, or any trustee, receiver, or liquidator appointed for **Tenant's** benefit, must provide adequate assurance of performance of the terms this lease, which shall include, without limitation, adequate assurance: (i) of the source of **Rent** reserved hereunder; (ii)

that any **Percentage Rent** due hereunder will not decline from the levels established previously; (iii) that the assumption of this lease will not breach any provision hereunder; (iv) that any assumption or assignment of this lease will not breach any provision such as the radius, location, use or exclusivity provisions in this or any other lease, finance agreement, or master agreement relating to the **Shopping Center** under any circumstances, as the use provision of Section 5.1 is the equivalent of a covenant running with the land and as such, may not be changed by the state of bankruptcy of **Tenant**; and (v) that the assumption or assignment of this lease will not unreasonably disrupt any tenant mix or balance in the **Shopping Center**, and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this lease shall be deemed rejected and **Landlord** shall have the right to immediate possession of the **Premises** and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach and/or termination of this lease;

15.1.5 The commission of waste by **Tenant** with respect to the **Premises** or the removal by **Tenant** of any ~~of **Tenant's Work**~~ leasehold improvements therefrom without **Landlord's** approval ~~replacement thereof~~ unless promptly replaced by **Tenant** upon written notice from **Landlord**;

15.1.6 The failure of **Tenant** to secure the insurance coverages and provide evidence thereof to **Landlord** as required by Article 12 in accordance with the time periods set forth therein;

15.1.7 The failure of **Tenant**, within ~~ten (10)~~ thirty (30) days after receipt of written notice from **Landlord**, to comply with any of the other provisions of this lease (that is, other than those discussed in Sections 15.1.1 through 15.1.6 hereinabove) or any other written agreement between **Landlord** and **Tenant**, including all Exhibits attached hereto and incorporated herein by reference, all of which terms, provisions, and covenants shall be deemed material; provided, however, that if any such default shall be a default that cannot be cured by the payment of money and cannot with diligence be cured within such ~~ten (10)~~ thirty (30) day period, and if the cure of such default shall be promptly commenced and prosecuted with diligence, the period within which such default may be cured shall be extended for an additional period of time, not to exceed an additional thirty (30) days, as may be reasonably necessary to cure such default as long as **Tenant** prosecutes such cure with diligence and continuity and provided **Landlord** receives periodic reports with respect thereto;

15.2 **Landlord's Remedies for Tenant Default.**

15.2.1 Upon the occurrence of any event or events of default by **Tenant**, whether enumerated in this Article or not, **Landlord** shall have the option, at **Landlord's** election, to pursue any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted **Landlord** by law or by this lease:

15.2.1(a) **Landlord** may cancel and terminate this lease and dispossess **Tenant**;

15.2.1(b) **Landlord** may without terminating this lease declare all **Rent** due under this lease for the remainder of the existing term (or any applicable extension or renewal thereof) to be immediately due and payable; and thereupon all **Rent** and other charges due hereunder to the end of the initial term or any renewal term, if applicable, shall be accelerated; In the event of **Tenant's** default and failure to cure the same under the time periods provided herein, **Landlord** is entitled to receive as damages the amount of **Fixed Minimum Rent** and **Additional Rent** which would have been payable by **Tenant** under the lease, discounted to present value at a discount rate of ten percent (10%) ~~eight percent (8%)~~;

15.2.1(c) **Landlord** may elect to enter and repossess the **Premises** and relet the **Premises** for **Tenant's** account, holding **Tenant** liable for any damages for all reasonable expenses incurred in any such reletting and for any difference between the amount of **Rent** received from such reletting and the amount due and payable under the terms of this lease;

15.2.1(d) **Landlord** may enter upon the **Premises** and do whatever **Tenant** is obligated to do under the terms of this lease (and **Tenant** shall reimburse **Landlord** on demand for any reasonable expenses which **Landlord** may incur in effecting compliance with **Tenant's** obligations under this lease); provided, however, **Landlord** shall not operate **Tenant's** business.

15.2.2 Should **Landlord**, as a result of any **Tenant** default, elect to terminate this lease, **Landlord** shall be entitled to collect from **Tenant** as damages: (i) the worth at the time of award of the unpaid **Rent** which may be due and unpaid by **Tenant** at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid **Rent** and other charges which would have come due after termination until the time of award exceeds the amount of rental loss that **Tenant** proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid **Rent** and other charges for the balance of the term after the time of award exceeds the amount of rental loss which **Tenant** proves could have been reasonably avoided; (iv) all other reasonable amounts necessary to compensate **Landlord** for all actual damages ~~detriment~~ proximately caused by **Tenant's** failure to perform or which are likely to result therefrom including, but not limited to attorneys' fees, costs of repossession, costs of removing persons or property from the **Premises**, costs of repairs to the **Premises**, cost of reasonable alterations to the **Premises** to make the space tenable to prospective replacement tenants, costs of re-leasing the space, brokerage fees, etc. All computations of the worth at the time of award of amounts recoverable by **Landlord** as stipulated herein shall be computed by allowing interest at the **Default Rate**. The worth at the time of award shall be computed by discounting the amount otherwise recoverable by **Landlord** at the discount rate of the Federal Reserve Bank of Atlanta at the time of the award.

15.2.3 If **Landlord** shall elect, as previously provided, to reenter the **Premises**, it is agreed that **Landlord** shall conduct itself in a reasonable manner and **Landlord** shall not be liable for damages by reason of such entry.

15.2.4 **Tenant** acknowledges that late payment by **Tenant** to **Landlord** of any part, portion or component of any rental payment or any other charge due to **Landlord** hereunder will cause **Landlord** to incur costs not contemplated by this lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on **Landlord** by the terms of any encumbrance and note secured by any encumbrance covering the **Premises**. Therefore, if any rental payment or any other charge due to **Landlord** hereunder shall not be received by **Landlord** within ten (10) days of the date when due, **Tenant** covenants and agrees to pay **Landlord**, as **Additional Rent** hereunder, within ten (10) days after the date **Landlord** mails **Tenant** a statement therefor, an additional sum equal to seven percent (7%) ~~ten percent (10%)~~ of the amount of any such part, portion, or component of any such overdue rental payment or any such overdue charge as a late charge, and such charge is in addition to payment of interest at the **Default Rate**. The parties agree that this late charge represents a fair and reasonable estimate of the costs that **Landlord** will incur by reason of late payment by **Tenant**. Acceptance of any late charge shall not constitute waiver of **Tenant's** default with respect to the overdue amount, or prevent **Landlord** from exercising any of the other rights and remedies available to **Landlord**.

15.3 All rights, options, and remedies of **Landlord** contained in this lease shall be construed and held to be cumulative and the exercise of one or more rights, remedies, or options shall not be taken to exclude or waive the right to the exercise of any other. All such rights, remedies, and options may be exercised and enforced concurrently and whenever and as often as deemed desirable. **Landlord** shall have the right to pursue any one or all of such remedies which may be provided herein or by law or in equity. For the purpose of any suit by **Landlord** brought or based on this lease, this lease shall be construed to be a divisible contract, to the end that successive actions may be maintained as successive periodic sums shall mature under this lease. It is further agreed that failure to include in any suit or action any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums so omitted.

15.4 Events of Default by Landlord. This lease is made upon the condition that **Landlord** shall punctually and faithfully perform all covenants and agreements as herein set forth. Failure of **Landlord** to perform any obligation specified in this lease, following written notice from **Tenant**, shall constitute a default of this lease by **Landlord**. A default hereunder shall be deemed cured if **Landlord** in good faith commences performance requisite to cure same within thirty (30) days after receipt of notice and thereafter continuously and diligently proceeds to complete the performance required to cure such default. In no event, however, shall **Tenant** be required to forbear from exercising its remedies for a period in excess of ninety (90) days.

15.5 Tenant's Remedies for Landlord's Default. In the event **Landlord** shall fail to perform any obligation specified in this lease within thirty (30) days of receipt of written notice from **Tenant**, and if the cure of such default can not with diligence be cured within such thirty (30) day period, the

period within which such default may be cured shall be extended for an additional period of time as may be reasonably necessary to cure such default. If the cure is not promptly commenced and prosecuted with diligence and within the above time periods, the Tenant may cure such default on behalf of Landlord, and bill Landlord for such work.

ARTICLE 16

SUCCESSION TO LANDLORD'S INTEREST

16.1 Attornment. Tenant shall attorn and be bound to any of Landlord's successors under all of the terms, covenants and conditions of this lease, provided such successors recognize Tenant's rights under this lease.

16.2 Subordination. ~~At Tenant's request, Landlord agrees to cause its mortgagee, if any, to execute and deliver an the Attornment and Non-Disturbance Agreement in a form acceptable to the lender. attached hereto as Exhibit J.~~ Landlord and Tenant agree that this Lease is and shall be subject and subordinate at all times to all ground leases, all mortgages, which may now or hereafter affect or relate to the real property of which the Premises form the part; and all renewals, modifications, consolidations, participations, replacements, and extensions thereof. Additionally, upon written request of Landlord, or any mortgagee or beneficiary of Landlord, Tenant will execute a written agreement to evidence the subordination of its rights hereunder to the interest of any ground lessor of the Shopping Center and to the lien of any mortgage, now or hereafter in force against the Shopping Center and to all advances made or hereafter to be made upon the security thereof; providing, however, that the ground lessor, or the mortgagee or trustee named in said mortgage shall agree that so long as Tenant is not in default hereunder, beyond any applicable notice and/or cure period, Tenant's peaceable possession of the Premises will not be disturbed on account thereof.

16.3 Estoppel Certificate. At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord, or to the holder of any mortgage which is a lien on the Shopping Center, or to any prospective mortgagee or purchaser of the Shopping Center, a statement in writing, certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which any Rent has been paid in advance, if applicable, and stating whether or not Landlord is in default in performance of any covenant, agreement or condition contained in this lease, and if so, specifying each such default, or such other information as such mortgagee, prospective mortgagee, or prospective purchaser may reasonably request, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any party to whom such certificate may be delivered by Landlord, including, but not limited to, Landlord's mortgagees and any prospective mortgagee or purchaser of the Shopping Center. In the event Tenant fails to provide such letter as above-described within ten (10) days after Landlord's written request therefor, Landlord may make a second request which specifies that Landlord will be appointed Tenant's attorney-in-fact pursuant to this paragraph if Tenant does not provide such letter, and in the event Tenant fails to provide the above described letter within ten (10) days after Landlord's second request, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact, solely for the purposes of executing said letter.

ARTICLE 17

NOTICES

Any and all notices, elections, or demands permitted or required to be made under this Lease shall be in writing and shall be sent by an overnight courier service company regularly engaged in the business of nationally delivering business packages (such as Federal Express, UPS, Airborne, or USPS), or by registered or certified mail to the other party at the following address(es), or at such other address as may be specified in writing from time to time by either party to the other; ~~except that Landlord may also personally deliver to Tenant a copy of any notice or post a copy of any notice at the Premises.~~ The date of posting, personal delivery, or the date of delivery or refusal if sent by mail or overnight courier (as evidenced by the carrier's or courier's receipt) shall be the effective date of such notice, election, or demand.

To Landlord at: The Barber Companies
27 Inverness Center Parkway
Birmingham, AL 35242

To Tenant at: BAC Pelham, LLC d/b/a Gold's Gym
iVisionary
239 S. Limestone, Suite 100
Lexington, KY 40508

With a copy to:	Mr. Dan Rose Stoll Keenon Ogden PLLC
	300 West Vine Street, Suite 2100 Lexington, KY 40507-1801

ARTICLE 18 **EMINENT DOMAIN**

The parties hereto agree that if the whole **Premises**, or any lesser portion thereof, shall be permanently taken by any public authority, or quasi-public authority, under the power of eminent domain, or like power, or condemned by competent authority for public or quasi-public use, as will make the **Premises** unusable for the purposes herein leased, including the loss of adequate parking as provided for in this lease, then this lease shall terminate from the date when possession of the part so taken shall be required for the use and purpose for which it had been taken. If the lease continues after a partial taking, **Fixed Minimum Rent** shall abate proportionately as to the part of the **Premises** taken and Landlord shall restore the balance of the Premises (other than Tenant's work) to a useable condition as near as practicable to that which existed prior to such taking. All compensation awarded for such taking of the **Building**, the fee and the leasehold shall belong to and be the property of **Landlord**; provided, however, that **Landlord** shall not be entitled to any portion of the award made to **Tenant** for the value of **Tenant's** trade fixtures. **Tenant** shall not be entitled to any damages for the unexpired portion of the term of this lease, or injury to its leasehold interest. except that the Tenant may claim and recover from the condemning authority a separate award for the Tenant's moving expenses, business dislocation damages, the Tenant's personal property and fixtures, the unamortized costs of leasehold improvements paid for by the Tenant, and any other award that would not substantially reduce the award payable to the Landlord. Each party shall seek its own award, at its own expense, and neither shall have any right to the award made to the other.

ARTICLE 19 **BROKER'S COMMISSION**

Tenant and **Landlord** each represent that except as set forth on Exhibit G attached hereto and incorporated herein by reference, there are no broker's commissions or finder's fees due any party in connection with their respective execution of this lease, and except as to the broker(s) identified in Exhibit G, if any, who shall be paid a commission by Landlord, each agrees to assume full responsibility for, any broker's commissions or finder's fees due any party in connection with their respective execution of this lease and each agrees to indemnify the other and save the other harmless from any and all liability that may arise from such claim, including reasonable attorney's fees.

ARTICLE 20 **SURRENDER AND HOLDING OVER**

In the event: (i) **Landlord** does not send **Tenant** a notice to vacate at least thirty (30) days prior to the **Expiration Date**; and (ii) **Tenant** remains in possession of the **Premises** after the **Expiration Date**, then, in such event, the term of this Lease shall be amended to provide that **Tenant** shall hold the **Premises** for one month after the **Expiration Date**, and so on from month to month until one of the parties shall give to the other notice in writing of its intention to terminate this Lease effective at midnight on the last day of the following month; provided that no such extension shall continue for more than one (1) year following the **Expiration Date**. **Tenant** shall deliver and surrender to

Landlord possession of the Premises upon the Expiration Date, in as good condition and repair as the same shall be at the Rental Commencement Date (ordinary wear and tear and damage by fire and other perils covered by standard fire and extended coverage insurance only excepted) free of debris and litter and in suitable condition to be effectively shown by Landlord to prospective replacement Tenants, and shall deliver the keys to the Shopping Center manager or other representative designated by Landlord. Should Tenant or any party claiming under Tenant remain in possession of the Premises, or any part thereof, after any termination of this Lease, no tenancy or interest in the Premises shall result therefrom but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Tenant covenants and agrees to pay Landlord, without demand, a sum equal to double ~~One Hundred Fifty Percent (150%)~~ One Hundred Twenty-Five percent (125%) of the Rent as specified herein, for any period during which Tenant shall hold the Premises after such termination.

ARTICLE 21

LIABILITY OF LANDLORD

If Landlord shall fail to perform any covenant, term or condition of this lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Landlord in the Shopping Center as the same may then be encumbered and neither Landlord, its Trustees, nor, if Landlord be a partnership, any of the partners comprising Landlord shall be liable for any deficiency. It is understood that in no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the Shopping Center parcel as hereinbefore expressly provided. In the event of the sale or other transfer of Landlord's right, title and interest in the Premises or the portion of the Shopping Center parcel which includes the Premises, Landlord shall be released from all subsequent liability and obligations hereunder provided that the transferee of such interest shall have assumed all obligations of Landlord arising under this lease subsequent to such transfer.

ARTICLE 22

SALE OF PREMISES BY LANDLORD

In the event of any sale or exchange of the Premises by Landlord and/or assignment of this lease, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this lease arising out of any act, occurrence, or omission relating to the Premises or this lease occurring after the consummation of such sale, exchange, or assignment provided that the transferee or assignee of such interest shall have assumed all obligations of Landlord arising under this lease subsequent to such transfer.

ARTICLE 23

FORCE MAJEURE

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this lease, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that the party prevented from performance delivers written notice to the other party of such Force Majeure within five (5) business days of its knowledge thereof. The provisions of this Article shall not operate to excuse Tenant from the prompt payment of Rent.

ARTICLE 24

TENANT'S AUTHORITY/GUARANTY

Tenant represents that it has full right and authority to enter into this Lease and by doing so does not violate any existing agreement or indenture to which it is a party or by which it is bound or affected, and if Tenant is a corporation, any provisions of its Articles of Incorporation, By-Laws or

other governing or enabling documents or regulations, and that the execution and delivery of this Lease has been duly authorized by Tenant's Board of Directors; and upon request of Landlord, Tenant will deliver to Landlord a true, correct and certified copy of the enabling resolutions adopted by Tenant's Board of Directors. As a material inducement to Landlord, without which Landlord would not enter into this Lease, Tenant agrees to deliver to Landlord, together with Tenant's delivery of this lease to Landlord, a fully executed Guaranty of Lease in the form of Exhibit F attached hereto and incorporated herein by reference.

ARTICLE 25 **ATTORNEYS' FEES**

Tenant agrees to pay Landlord, or to pay on Landlord's behalf, as Additional Rent, within ~~ten (10)~~ thirty (30) days after the date Landlord mails to Tenant a statement therefor, a reasonable attorney or other professional fee and all reasonable expenses related thereto in the event Landlord employs an attorney or other professional for any of the following purposes: (i) to collect any Rent due hereunder by Tenant; or (ii) to protect the interest of Landlord in the event that Tenant is adjudicated or adjudged bankrupt; or (iii) to protect Landlord's rights in the event legal process is levied upon the goods, furniture, effects or personal property of Tenant upon the Premises or upon the interest of Tenant in this lease or in the Premises; or (iv) to prevent Tenant from violating, or to rectify the violation of, any of the terms, conditions, or covenants on the part of Tenant herein contained. Tenant further agrees to pay all other reasonable costs incurred by Landlord in securing the performance by Tenant of all said terms, conditions, or covenants of this lease. Said reasonable fees and other costs shall be at not less than actual cost to Landlord for said services. Reasonable fees shall be deemed to be not less than the normal hourly rate or rates charged by Landlord's said professionals for other or similar work done by said professionals. The billing and collection of said professional fees and other costs shall not require Landlord filing suit against Tenant for the performance of the terms, conditions, and obligations of this lease, nor shall Landlord have to notify Tenant of default or move to terminate this lease before Landlord is entitled to be reimbursed or have Tenant pay directly such reasonable professional fees and other costs. In the event of litigation, the losing party shall pay to the prevailing party the prevailing party's reasonable attorney's fees and costs of suit, and all reasonable expenses related thereto, including fees, costs, and expenses of any appeal(s). Should either party hereto institute any action or proceeding in court to enforce any provisions hereof or for damages by reason of any alleged breach or default of any provision of this lease or for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorney's fees for the services rendered to the party finally prevailing in such action or proceeding, including appeals therefrom.

ARTICLE 26 **MISCELLANEOUS**

26.1 Exhibits. All Exhibits attached hereto are deemed incorporated herein by reference as though made an integral part hereof.

26.2 Interpretation. Whenever either the word "Landlord" or "Tenant" is used in this lease, it shall be considered as meaning "Landlords" or "Tenants" respectively, wherever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons and corporations designated respectively as Landlord or Tenant in the heading of this instrument wherever the context requires.

26.3 Severability. If any covenant, agreement or condition of this lease or the application thereof to any person, firm or corporation or to any circumstances, shall to any extent be invalid or unenforceable, the remainder of this lease, or the application of such covenant, agreement or condition to persons, firms or corporation or to circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each covenant, agreement or condition of this lease shall be valid and enforceable to the fullest extent permitted by law.

26.4 Headings. The article, section, and other headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect this lease.

26.5 Counterparts. This lease has been executed in several counterparts, but the counterparts shall constitute but one and the same document.

26.6 No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant as a result of execution of this lease.

26.7 Construction of Terms.

26.7.1 None of the covenants, terms or conditions of this lease to be kept and performed by either party shall in any manner be altered, waived, modified, changed or abandoned, except by a written instrument, duly signed, acknowledged and delivered by the other party.

26.7.2 Printed parts of this lease shall be as binding upon the parties hereto as other parts hereof. Parts of this lease which are written or typewritten shall have no greater force or effect than, and shall not control, parts which are printed, but all parts shall be given equal effect. Tenant declares that Tenant has read and understands all parts of this lease, including all printed parts thereof.

26.7.3 Landlord and Tenant agree that in construing this lease all provisions shall be construed to give them effect. Landlord and Tenant agree that the rule construing language most strongly against the party who prepared the language shall not be enforced as to this lease and both the parties hereby expressly waive the right to claim the application and result of the above rule.

26.8 No Recording. Tenant shall not record this lease without the prior written consent of Landlord, which may be withheld at Landlord's sole, absolute, and unfettered discretion, and any such recording without Landlord's consent shall constitute an event of default hereunder. However, upon Tenant's request and at Tenant's sole expense, a "Memorandum of Lease," suitable for recording in the office of the county recorder of Shelby Jefferson County, Alabama, and satisfactory in form to both Landlord and Tenant, shall be executed and recorded by Tenant. Said document shall be entitled "Memorandum of Lease," and shall incorporate the legal description of the Premises described in Exhibit A.

26.9 Governing Law. This lease shall be construed and enforced in accordance with the laws of the State of Alabama.

26.10 Lease Inures to Benefit of Assignees. This lease and all the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns, respectively, of the parties hereto, provided, however, that no assignments by, from, through or under Tenant not in strict compliance with the provisions hereof shall vest in the assignee any right, title or interest whatever in this lease or in the Premises.

26.11 No Option. The submission of this lease for examination does not constitute a reservation of or option for the Premises or any other space within the Shopping Center and shall vest no right in either party. This lease becomes effective as a lease only upon execution and delivery thereof by both of the parties hereto.

26.12 Temporary Trailer. From the Possession Date to the date Tenant opens for business, but in no event for more than one-hundred twenty (120) days, Tenant shall be allowed to use up to six thousand (6,000) square feet in the Shopping Center, the location of which to be chosen by Landlord, at no rental cost to Tenant, if available. If no space is available within the Shopping Center or at Landlord's option, Tenant may place a temporary trailer, no larger than 8' x 40' and subject to all local codes and ordinances from which space or trailer Tenant will conduct its pre-opening sales and its construction office. Tenant agrees to indemnify Landlord for any and all occurrences in or about such space or trailer.

ARTICLE 27
SECURITY DEPOSIT/SECURITY INTEREST IN PERSONAL PROPERTY

27.1 Security Deposit. Upon execution of this lease, Tenant shall deposit with Landlord the sum of Eight Thousand Seven Hundred Forty-three Dollars (\$8,743.00). ~~Said sum shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this lease, including, but not limited to, the provisions relating to the payment of Rent, Landlord may (but shall not be required to) use, apply or retain all or any part of the security deposit to the payment of any Rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a default under this lease. Landlord shall not be required to keep this security deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this lease to be performed by it, the security deposit or any balance thereof shall be~~ applied to the first two (2) installments of Fixed Minimum Rent returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days following the Expiration Date. In the event of termination of Landlord's interest in this lease, Landlord shall transfer said deposit to Landlord's successor-in-interest.

27.2 Security Interest In Personalty Of Tenant. ~~In addition to the Landlord's~~ hereby waives any liens provided by the law of the State of Alabama ~~or otherwise on~~, Tenant grants Landlord a security interest in, and lien upon, the security deposit held by Landlord pursuant to Section 27.1 and Tenant's interest in the Premises and in the furniture, inventory, trade fixtures, and equipment on or about the Premises ("Tenant's Property"). ~~Tenant grants Landlord a security interest in, and lien upon, the security deposit held by Landlord pursuant to Section 27.1 and on Tenant's interest in the leasehold improvements in the Premises therein as security for the payment of Rent and performance of other obligations undertaken by Tenant in this lease. Such lien shall be prior and superior to any and all other liens thereupon whatsoever. Tenant agrees to execute any and all documents necessary for perfecting such security interest. Landlord will sign a Lien Waiver with respect to Tenant's Property in favor of any lender to Tenant, in a form reasonably acceptable to Landlord and such lender. Notwithstanding the foregoing, In addition to the waiver of any lien on Tenant's Property as set forth in the first sentence of this paragraph, Landlord agrees, at Tenant's written request, to execute the Lien Waiver attached hereto as Exhibit H in favor of any lender to Tenant that takes or intends to take a security interest in Tenant's Property.~~

ARTICLE 28
WAIVER

28.1 No Waiver. No waiver of any covenant, condition, or legal right or remedy shall be implied by the failure of Landlord to declare a default, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by Landlord. No waiver by Landlord in respect to one or more tenants or occupants of the Shopping Center in which the Premises are located shall constitute a waiver in favor of any other tenant, nor shall the waiver of a breach of any condition or covenant be claimed or pleaded to excuse a future breach of the same condition or covenant. No waiver of any default by Tenant shall be implied from any acceptance by Landlord of any Rent or other payments due or by any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in said waiver.

28.2 No Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided for in this lease or available at law or in equity.

28.3 **Rent Demand.** No demand of **Rent** shall constitute a waiver of any of **Landlord's** rights. Every demand for **Rent** due wherever and whenever made shall have the same effect as if made at the time it falls due and at the place of payment. After the service of any notice or commencement of any suit, or final judgment therein, **Landlord** may receive and collect any **Rent** due, and such collection shall not operate as a waiver nor affect such notice, suit or judgment. Other provisions of this lease notwithstanding, all **Rents** of all types shall be payable by **Tenant** without demand from **Landlord**, and upon the dates specified in this lease.

28.4 **Tenant's Waiver for Loss or Damage to Property and as to Security.** Except if caused by the gross negligence or willful misconduct of Landlord, **Tenant** waives all claims against **Landlord**, its partners, officers, agents, and employees for any **Claims and Costs** which **Tenant** may pay or become obligated to pay with respect to: (i) any damage to merchandise, trade fixtures or personal property of **Tenant** in the **Premises** caused by water leakage from water lines, sprinkler or heating or air conditioning equipment, or roof membrane; (ii) any loss of profits or other consequential or speculative damages because of any disrepair or failure to repair any of the items which are primarily the responsibility of **Landlord**; (iii) any damage to persons or property located on the **Premises** sustained by **Tenant** or any person claiming through **Tenant**; (iv) the loss of or damage to any property of **Tenant** or of others by theft or otherwise; and (v) any security service provided by **Landlord** or **Landlord's** agents. This waiver shall be effective whether such damage or loss is caused by other tenants or persons in the **Shopping Center** or in the **Premises**, or occupants of adjacent property, or the public, or operations in construction of any private, public or quasi-public work, or the storage or of failure to store **Tenant's** properties after **Tenant's** default hereunder. All property of **Tenant** kept or stored on the **Premises** shall be so kept or stored at the risk of **Tenant** only. Any personal property left in the **Premises** by **Tenant** after the **Expiration Date**, shall, at **Landlord's** sole option and without notice to **Tenant**, become the property of **Landlord**. If, in order to protect persons or property, it is necessary for Tenant to make emergency repairs which are the responsibility of the Landlord, Tenant shall have the right to make such repairs if Tenant first notifies Landlord of the need to make any such emergency repairs and Landlord fails to respond in a reasonable manner. Landlord agrees to reimburse Tenant for the reasonable and actual expense incurred by it in making any such emergency repair within thirty (30) days after Landlord's receipt of a breakdown of the costs incurred by Tenant for said repairs.

28.5 **Tenant's Waiver of Redemption.** **Tenant** hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of **Tenant** being evicted or dispossessed for any cause, or in the event of **Landlord** obtaining possession of the **Premises** by reason of the violation by **Tenant** of any of the covenants and conditions of this lease or otherwise. The rights given to **Landlord** herein are in addition to any rights that may be given to **Landlord** by any statute or otherwise.

28.6 **Tenant's Waiver Regarding Billings.** **Tenant's** failure to object to any statement, invoice or billing rendered by **Landlord** within a period of ~~thirty (30)~~ ~~sixty (60)~~ one (1) year days after receipt thereof shall constitute **Tenant's** acquiescence with respect thereto and shall render such statement, invoice or billing an account stated between **Landlord** and **Tenant**.

28.7 **Waiver of Jury Trial by Both Parties.** **Tenant** and **Landlord** hereby waive any right to a trial by jury on any claim, counterclaim, setoff, demand, action or cause of action brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way pertaining or relating to: (i) this lease; (ii) the relationship of **Landlord** and **Tenant**; (iii) the use and occupancy of the **Premises**; or (iv) in any way connected with or pertaining or relating to or incidental to any dealings of the parties hereto with respect to this lease, or any other matter or controversy whatsoever between the parties; in all of the foregoing cases whether now existing or hereafter arising. **Tenant** and **Landlord** agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive trial by jury, and that any dispute or controversy whatsoever between them shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury. **Tenant** hereby certifies that no representative or agent of **Landlord**, including **Landlord's** counsel, has represented, expressly or otherwise, that **Landlord** would not, in the event of such dispute or controversy, seek to enforce the provisions of this paragraph, and **Tenant** acknowledges that **Landlord** has, in part, been induced to enter into this lease and let the **Premises** to **Tenant** in reliance on the provisions of this paragraph.

ARTICLE 29
REPRESENTATIONS

Tenant hereby represents to **Landlord** and **Landlord** hereby represents to **Tenant** that this lease, with its exhibits, sets forth the entire agreement between the parties. Each party further represents to the other that it has not been induced, persuaded, or motivated by any promise or representation that is not contained in this lease. Any prior conversations, understandings, oral agreements not herein reduced to writing, prior writings or any other item not contained herein are hereby merged herein and extinguished. **Tenant** represents to **Landlord** that it is entering into this lease based solely on the writing contained herein and that **Tenant** has not relied and is not relying on any representation, whether written or oral, not contained in writing in this lease. **Tenant** acknowledges that **Landlord** and its agents have made no representations or promises with respect to the **Premises** or the **Shopping Center** except as herein expressly set forth. **Tenant** further represents that **Tenant** will not assert in any way any claim that **Landlord**, its agents or employees, in any way represented, misrepresented, promised, agreed, or had any understanding regarding the lease of the **Premises** not contained herein. **Tenant** represents that it has completely read and fully understands all the provisions of this lease or that **Tenant** was represented by competent counsel who read and/or explained all provisions to **Tenant**.

IN WITNESS WHEREOF, the parties hereto have caused this lease agreement to be executed, under seal, as of the day and year first above mentioned.

LANDLORD:
BIRMINGHAM REALTY COMPANY, an Alabama corporation

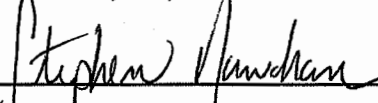
By: 

Printed Name: Charles M. Miller, Jr.

Its: President

Date: 1/4/07

TENANT:
BAC PELHAM, LLC, d/b/a GOLD'S GYM

By: 

Printed Name: Stephen D. Dawahare

Its: Manager

Date: January 2, 2007

STATE OF ALABAMA)
Shelby COUNTY)

I, Jan I. Peoples, a Notary Public in and for said County in said State, hereby certify that **Charles M. Miller, Jr.**, whose name as **President**, of **BIRMINGHAM REALTY COMPANY**, an Alabama corporation, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this 4th day of January, 2007.

Jan I. Peoples

Notary Public

My Commission Expires: 1-18-2008

^{Kentucky}
STATE OF ALABAMA)
Fayette COUNTY)

I, Sarah C. Hawkins, a Notary Public in and for said County in said State, hereby certify that **Stephen D. Dawahare**, whose name as **Manager**, of **BAC PELHAM, LLC**, d/b/a **GOLD'S GYM**, a limited liability company, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this 2nd day of January, 2007.

Sarah C. Hawkins

Notary Public

My Commission Expires: June 30, 2010

EXHIBIT A
PLAN

"Premises": that certain space located in the Shopping Center (without basement, balcony, or mezzanine) as shown by cross-hatched lines on Exhibit A.

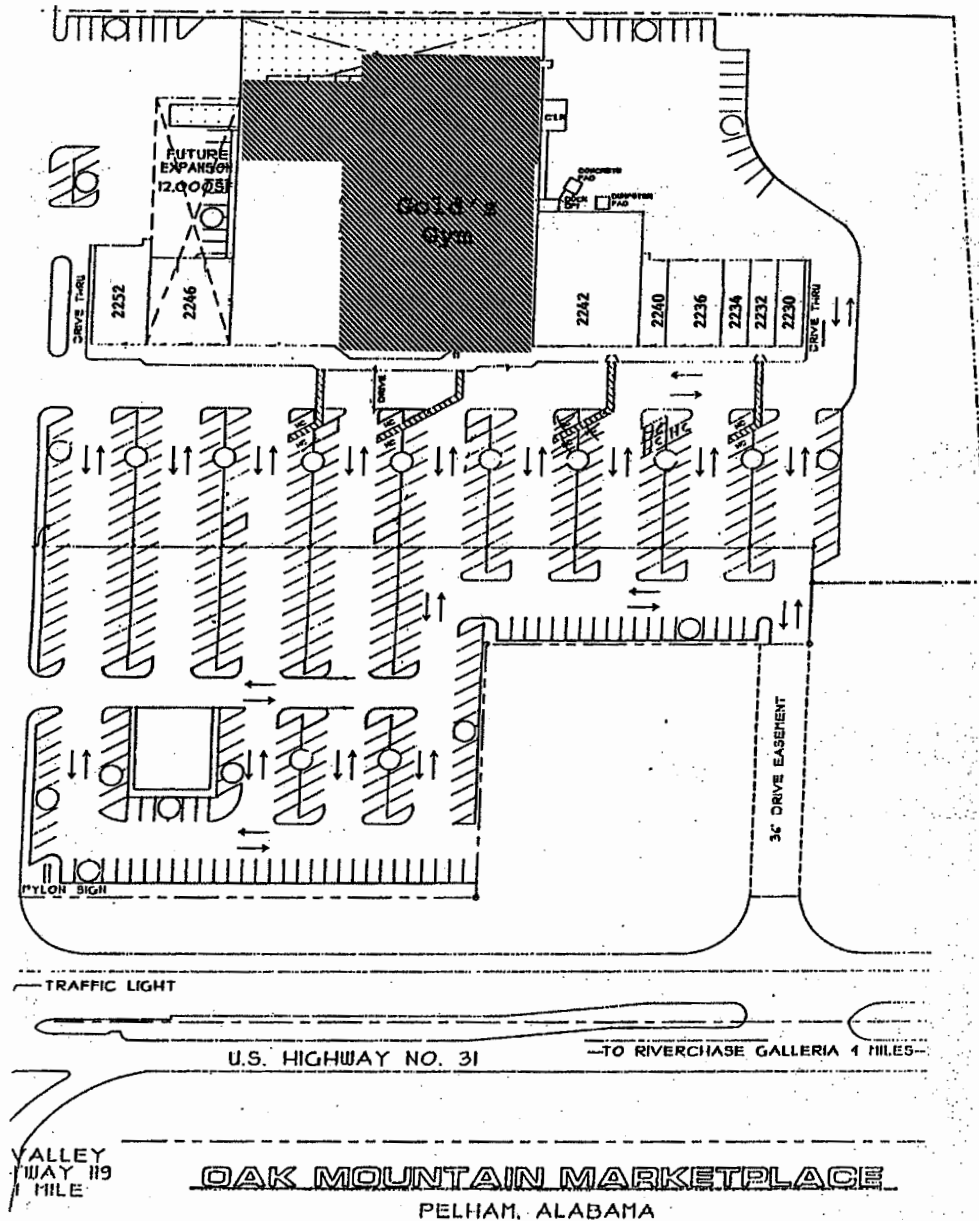


EXHIBIT B
SITE PLAN

That certain shopping center site presently known as **Oak Mountain Marketplace** located in the City of Pelham, County of Shelby, State of Alabama, as shown on the site plan.

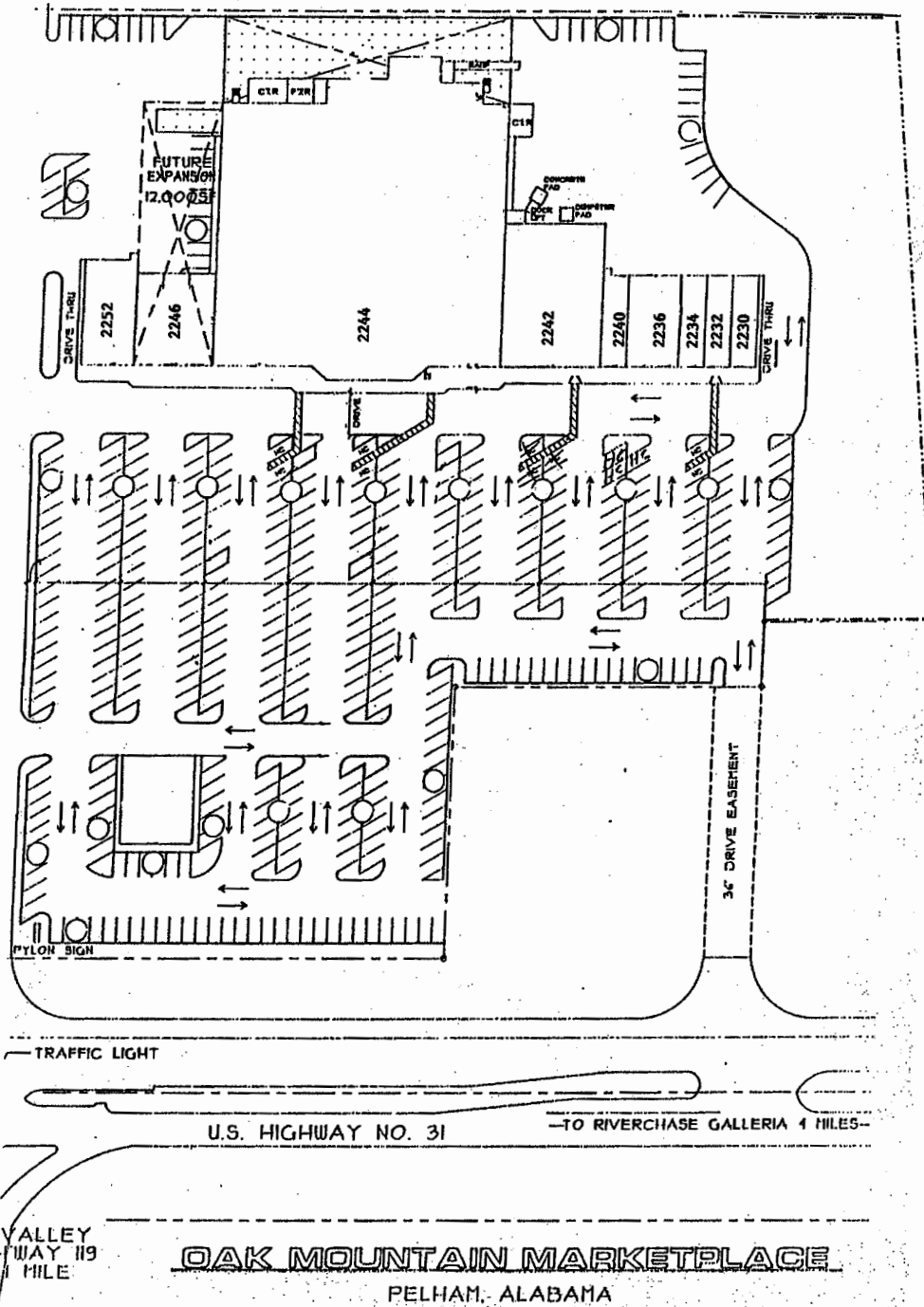


EXHIBIT C
CONSTRUCTION OF PREMISES
OAK MOUNTAIN MARKEPLACE

I. LANDLORD'S BASE WORK: As of the Possession Date, Landlord shall deliver the space "as-is" except Landlord will perform the improvements as shown in Exhibit C-1 attached hereto.

II. TENANT'S WORK IN PREMISES: "Tenant's Work" shall be defined to include all work required to make the Premises suitable for retail occupancy, in accordance with plans and specifications prepared at Tenant's sole expense by a duly licensed architect or engineer, or otherwise as approved by Landlord, in such detail as Landlord may reasonably require, including all work described hereinbelow:

1. SIGNAGE

Tenant's sign shall be in accordance with Exhibit "D" of this Lease and be paid for at Tenant's sole cost and expense.

2. PLANS AND SPECIFICATIONS

Tenant agrees that no work is to commence on any of Tenant's Work until Landlord has approved such plans and specifications in writing, which plans and specifications when so approved shall be designated as an addition to this Exhibit "C" and attached hereto and made a part hereof by this reference. Landlord agrees to act with reasonable promptness with respect to approval of such plans and specifications. Any changes to Tenant's plans and specifications made after submission and approval of said plans and specifications by Landlord shall be subject to Landlord's approval again and furthermore Tenant agrees to pay any extra cost that may be incurred by Landlord which is caused by the changes so requested by Tenant. If Tenant fails to submit its plans and specifications to Landlord within the time required and stipulated in this paragraph such failure shall be deemed to be a material default under this Lease and Landlord may, at its option, and in addition to all other remedies available to it, have the sole right to cancel this Lease.

3. TENANT'S CONSTRUCTION

Unless otherwise provided for by separate addendum attached to this Lease, all work in addition to the items specifically enumerated in said plans and specifications is to be constructed by Tenant's personnel or agents at Tenant's cost and expense in accordance with the plans and specifications approved by Landlord. Tenant agrees that it will file for and obtain all necessary permits and Certificates of Occupancy for the work performed by Tenant. Tenant shall perform all its work so as to comply with all governing statutes, ordinances, regulations, building codes, and insurance rating boards. Tenant agrees that it shall complete such work within one hundred eighty (180) thirty (30) days following the date of construction permit issuance. Any materials, equipment, fixtures or machinery which Tenant is to install or construct in the Premises shall be paid for by Tenant. Payment by Tenant of such costs shall not operate, expressly or implicitly, to create in Tenant any interest in the Premises beyond the leasehold interest granted hereby.

4. COMMENCEMENT/COMPLETION OF CONSTRUCTION/LIEN WAIVERS/DEPOSIT

Prior to commencement of Tenant's Work, Tenant shall cause its General Contractor to furnish to Landlord: (i) a Commercial General Liability Insurance policy, naming Landlord as an additional insured, with single limit coverage for bodily injury, death, and property damage at a minimum of Two Million Dollars (\$2,000,000) and a Worker's Compensation Insurance Policy. Upon completion of Tenant's Work, Tenant shall provide to Landlord: (ii) a Performance, Labor, and Material Payment Bond in an amount equal to the total cost of Tenant's Work, which bond shall name Landlord as an additional beneficiary; and (iii) a refundable deposit in the amount of Two Thousand Five Hundred Dollars (\$2,500), which deposit shall be held by Landlord until the last to occur of the following: (a) Tenant's affidavit that Tenant's Work has been fully completed in accordance with said approved plans and specifications, which affidavit may be relied upon by Landlord; (b) the affidavit of the general contractor performing Tenant's Work stating that Tenant's Work has been fully completed in accordance with said plans and specifications, that all signs are completed and in compliance with Exhibit "D", and that all subcontractors, laborers, and material suppliers supplying labor or material for Tenant's Work have been paid in full; (c) a waiver of lien with respect to the Leased Premises executed by said contractor and; if requested by Landlord, waivers of lien executed by every subcontractor supplying labor or materials for Tenant's Work; (d) written certification by an architect approved by Landlord that Tenant has completed all of Tenant's Work, in accordance with the requirements and the provisions of this Lease and Exhibits attached hereto; (e) a complete set of "as built" plans and specifications; and (f) a certificate of occupancy or its equivalent shall have been issued by the appropriate governmental authority permitting use of the Premises.

EXHIBIT C - 1
LANDLORD'S IMPROVEMENTS
OAK MOUNTAIN MARKEPLACE
(PAGE 1 OF 2)

1. Build a demising wall according to code that separates the Premises from a 10,000 square foot space, which is approximately 80 feet wide by 125 feet deep.
2. Remove existing ceiling tiles, light fixtures and ceiling grid. Electrical connections will be terminated at the nearest junction boxes. Existing sprinkler heads to remain.
3. Demolish existing VCT tile flooring. Demolish ceramic tile flooring and replace with mud bed. ~~except where it is level with adjoining slab. Demolish electrical stub-ins in floor and patch concrete. Leave existing ceramic tile where it was installed in a recessed area.~~
4. Remove equipment in mezzanine except for existing HVAC.
5. Fill with gravel and pour a concrete slab over the existing 3' x 30' service pit, formerly servicing refrigeration equipment.
6. ~~Temporarily secure existing HVAC ductwork to structural system.~~
7. ~~Leave existing bathrooms and all improvements in bathrooms.~~
8. Demolish partition walls.
9. Remove sheetrock from block walls.
10. Demolish existing bar/counter/bakery awning and wall signage.
11. Remove all plumbing fixtures ~~except in bathrooms~~ and cap existing plumbing even with floor slab.
12. Remove existing exhaust hood and cover opening.
13. Remove any Hazardous Substances and other matters as provided for in Section 5.7.2(c) of the lease.
14. Cap sewer leading to Grease Trap.
15. Within forty-five (45) days of execution, Landlord will provide Tenant with an electronic drawing showing the following as the same will be delivered to Tenant on the Possession Date:
 - a. walls, type, height., thickness interior and exterior.
 - b. flooring, type, parameters,
 - c. doors, size, type, locations.
 - d. Ceilings, type, parameter, ceiling height.
 - e. Lighting, type, locations,
 - f. Electrical panels, locations, specifications.
 - g. Mechanical units, type and location
 - h. Plumbing fixtures, type, location
 - i. Heights of exterior walls,
 - j. Height of interior joists and spacing.

EXHIBIT C - 1 (Continued)
LANDLORD'S IMPROVEMENTS
OAK MOUNTAIN MARKEPLACE
(PAGE 2 OF 2)

Within forty-five (45) days of execution, Landlord shall provide to Tenant hard copy marked up plans of the following:

1. Location of grease traps and any other below slab plumbing
2. Existing grades around the perimeter of the building.
(Existing Topo. of the site)
3. Location of sprinkler lines and heads
4. Existing landscaping areas, dumpster locations, site lighting locations.
5. Existing roof plan showing all roof penetrations, mechanical units.

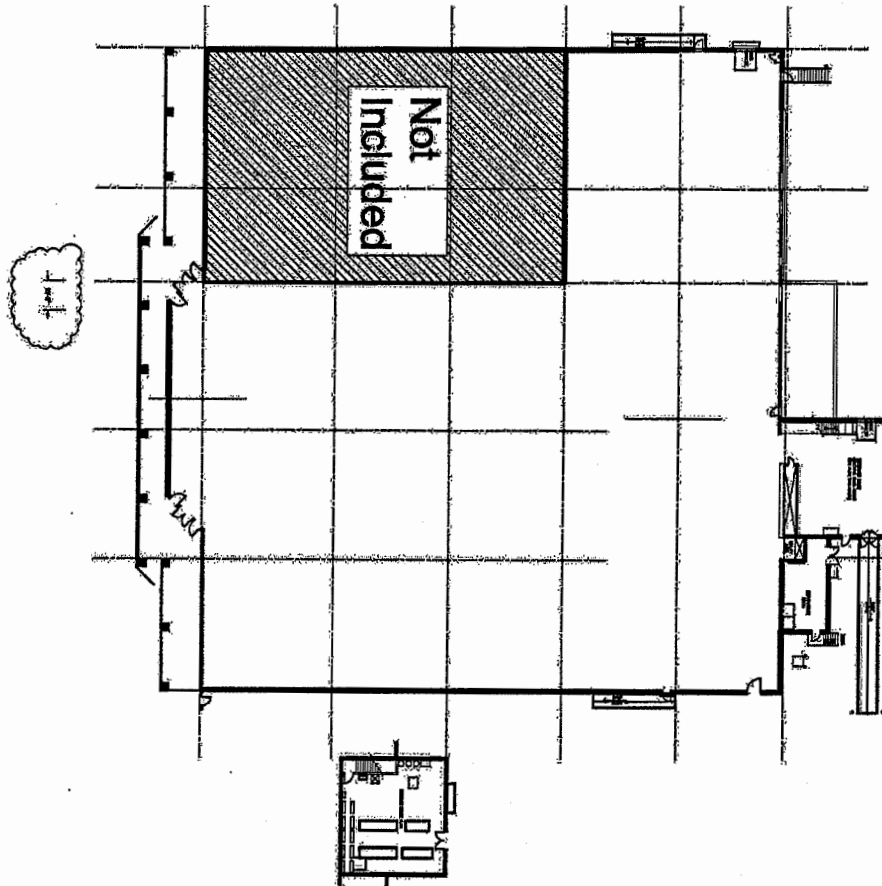


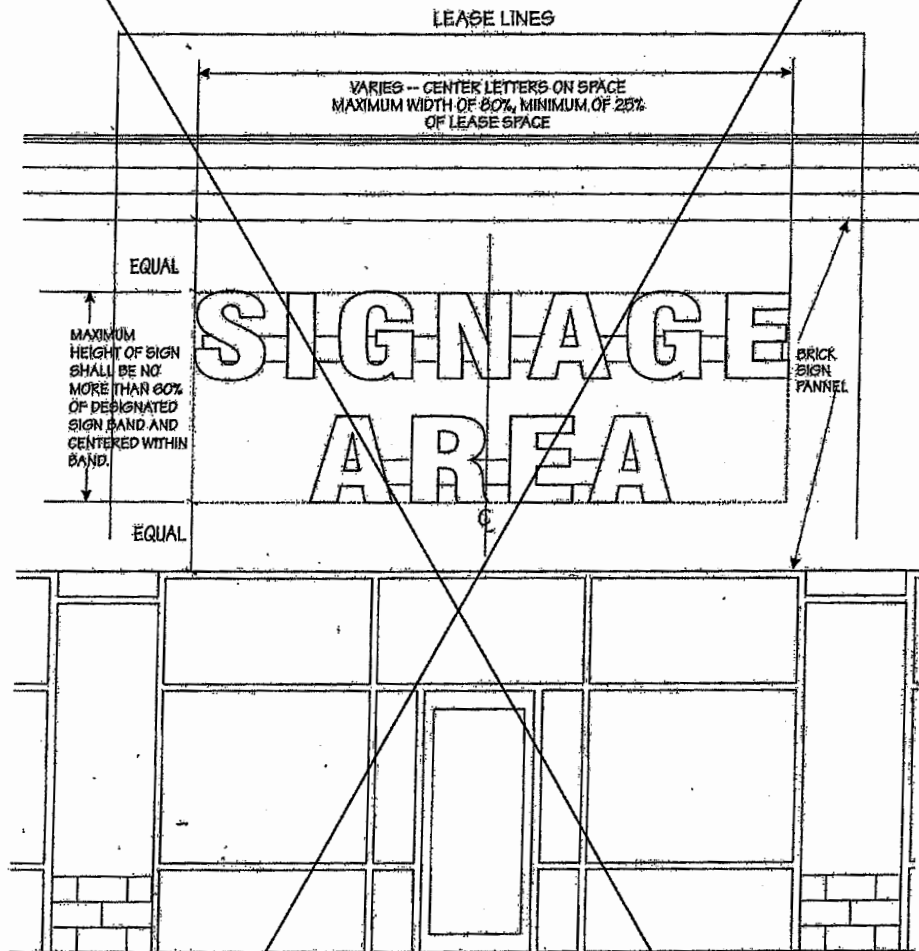
EXHIBIT D
SIGN CRITERIA
OAK MOUNTAIN MARKETPLACE
(consisting of 3 pages)

This sign criteria is intended to encourage and develop creative and diversified signing for the stores, providing not only effective store identification, but also good design practice. Any deviations in this criteria must be approved in writing by Landlord.

- ~~1. Only signs that have individual interior lighted letters will be permitted. Signs with exposed neon tubing or exposed lamps, any exposed sign illumination or illuminated sign cabinets, modules or "box" signs, signs of the flashing, rotating, moving, blinking or animated type are not permitted.~~
2. The design and location of all signs must be approved in writing by Landlord and shall be subject to Landlord's sole discretion as to design, size, and location, signs shall be limited to a maximum of eighty (80%) percent of space designated as "sign band" at demised premises. Tenant shall submit sign working drawings to Landlord and no sign shall be installed until Landlord's written approval has been obtained by Tenant. The working drawings must indicate the following:
 - A) The size of all lettering
 - B) The location of the sign in relation to the store façade
 - C) Section through the sign to show its construction
 - D) Method of installation
- ~~3. Wording of large scale signs shall be limited to Tenant's store or trade name only.~~
- ~~4. Tenant's sign shall be located within the limits of Tenant's storefront. Height letters shall be maximum of eighty (80%) percent and a minimum of twenty five (25%) percent of the space designated by Landlord as the sign band.~~
- ~~5. Printed signs on storefront or show windows are prohibited.~~
6. Painted signs on the exterior surface of any wall of the demised premises are prohibited.
7. Except for pre-opening, temporary signage, paper, cloth or cardboard signs, stickers, banners, or flags are prohibited.
8. No exposed ballast boxes or electrical transformers will be permitted except as required by code.
9. Sign company names or stamps will be concealed if permitted by code.
10. Only one (1) sign for each tenant will be permitted unless otherwise approved by Landlord in writing.
11. Electrical connection for signs will be the responsibility of the Tenant.
12. No roof mounted signs will be permitted.
- ~~13. All signs shall be installed on raceways painted the color of the fascia (to be selected by architect).~~

EXHIBIT D - CONTINUED
SIGN CRITERIA

BIRMINGHAM REALTY COMPANY



TYPICAL ELEVATION

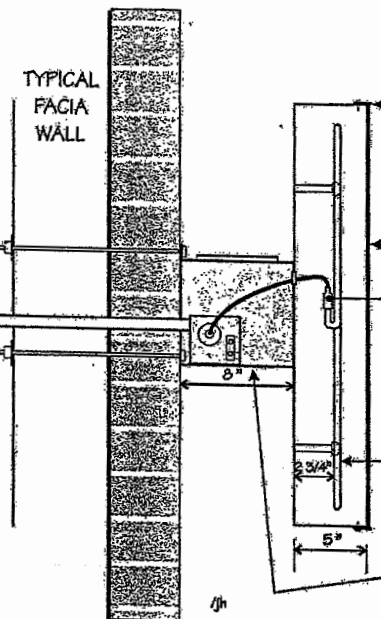
BIRMINGHAM REALTY COMPANY

NOTE:
UL LABELS ARE REQUIRED
ON ALL SIGNAGE

ALL EXTERIOR SIGN BOLTS
AND/OR FASTENERS
SHALL BE NON-CORROSIVE

ONLY FASTENERS AND
PRIMARY ELECTRICAL CIRCUIT
IN "SEAL TITE" PENETRATE
FACIA. CIRCUIT CONNECTS TO
TENANT'S PANEL. CODE
COMPLIANT. LETTERS EXPOSED
TO WEATHER SHALL BE
MOUNTED SO AS TO PERMIT
PROPER DIRT AND
WATER DRAINAGE.

NOTE: SIGN INSTALLER SHALL
REPAIR ANY DAMAGE DONE
TO ANY WORK CAUSED BY
INSTALLING TENANT'S SIGN.



SECTION AT SIGN PANEL 1 1/2" = 1'

INDIVIDUAL INTERNALLY
ILLUMINATED CHANNEL LETTERS.
ALL LETTERS TO HAVE 5" DEEP .040
ALUMINUM RETURNS, PREFINISHED
#313 DEEP BRONZE
W/ 1" BRONZE JEWELITE TRIM.
ALL LETTERS TO HAVE
.050 ALUMINUM BACKS

PLEXIGLAS FACES SHALL BE 1/8"
ROHM & HASS WHITE #7328
OR EQUIVALENT.

UL LISTED WITH ELECTRO BITS
NEON TO BE 15mm EGL WHITE
#6500 ON 2 3/4" TUBE SUPPORTS.
SEE ELEVATION DRAWING FOR
MAXIMUM LETTER HEIGHT AND
LOCATION ON BRICK FACIA.

8"X 8" EXTRUDED ALUMINUM
RACEWAY SHALL HOUSE
TRANSFORMERS AND ALL
SECONDARY WIRING. RACEWAY
TO BE PAINTED COLOR TO MATCH
FACIA, DESCRIBED IN THE
EXHIBIT "D" SIGN CRITERIA.

EXHIBIT D-1
TENANTS SIGN RENDERING

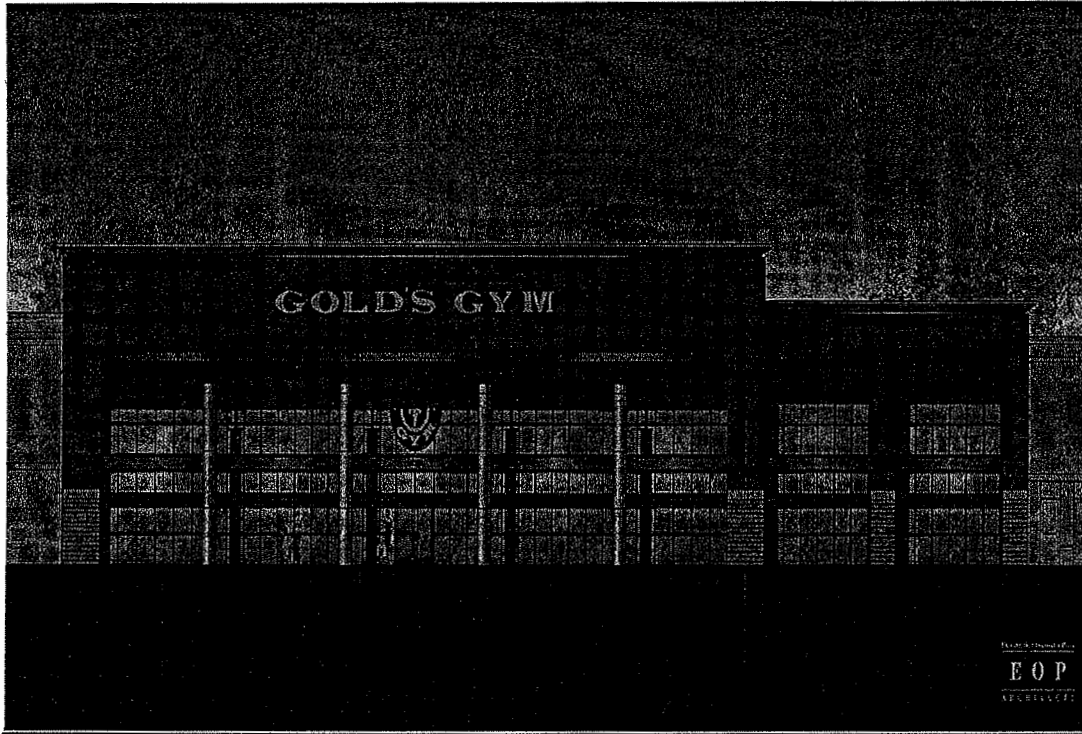


EXHIBIT E
PROHIBITED USES

Tenant covenants and agrees that it shall not sell meat, seafood, vegetables/fruits/produce, dairy products, frozen foods, beer, or wine, or engage in any of the following activities:

- (1) supermarket, grocery, bakery, and delicatessen;
- (2) photo lab or film development business;
- (3) ~~spa, health, sports, or exercise club;~~
- (4) lounge, bar, "teen lounge" or social encounter club;
- (5) bowling alley;
- (6) pawn shop;
- (7) skating rink;
- (8) bingo or electronic or other game parlor;
- (9) theater (either motion or legitimate);
- (10) area or space for the sale or display of pornographic or "adult" material;
- (11) business or professional office;
- (12) medical offices or abortion or HIV clinic;
- (13) automobile dealership;
- (14) church;
- (15) manufacturing or storage business;
- (16) public auditorium or other public entertainment facility;
- (17) tag office or other government service office;
- (18) exterior "pay" telephone;
- (19) restaurant;
- (20) dry cleaning operation other than one which does not process dry cleaning or utilize dry cleaning chemicals on-site;
- (21) operation of a hair care salon or tanning salon, except Tenant may operate three (3) ~~two (2)~~ stand-up tanning beds within the Premises;
- (22) business whose primary use is the sale of cellular phones and other personal communications devices;
- (23) a single price point variety retail store;
- (24) a close-out store;
- (25) variety retail operations with the word "Dollar" in their trade name;
- (26) a retail super drug store.

EXHIBIT F
CORPORATE GUARANTY OF LEASE

THIS GUARANTY OF LEASE (this "Guaranty") made as of the 4th day of January, 2007, by **BIRMINGHAM ATHLETIC CLUBS, LLC ("Guarantor")**, having a mailing address of 224 South Ashland Ave., Lexington, Kentucky 40502, in favor of **BIRMINGHAM REALTY COMPANY**, an Alabama corporation ("**Landlord**"), having a mailing address of 27 Inverness Center Parkway, Birmingham, Alabama 35242.

RECITALS:

Landlord has entered into that certain Lease (the "Lease") of even date herewith with **BAC Pelham, LLC, d/b/a Gold's Gym ("Tenant")**, covering the Premises described therein a ~~Tenant~~ unit located at ~~(to be determined prior to execution) Pelham Parkway, Oak Mountain Marketplace, in the County of Shelby, State of Alabama, and more particularly described in the Lease.~~ **Tenant** is a wholly owned subsidiary of **Guarantor**, and as a condition to its execution of the lease, and as a material inducement to **Landlord**, without which **Landlord** would not have agreed to enter into the lease, **Landlord** required ~~requires~~ that **Guarantor** guarantee the full performance of the obligations of **Tenant** under the lease up to and until the date **Tenant** opens for business fully staffed, stocked, and fixtured in an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00). **Guarantor** is desirous that **Landlord** enter into the Lease with **Tenant**.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and in consideration of the execution of the lease by **Landlord**, **Guarantor** hereby unconditionally guarantees the full performance of each and all the terms, covenants, and conditions of the lease to be kept and performed by **Tenant**, including the payment of all rentals and other charges to accrue thereunder up to and until the date **Tenant** opens for business in an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00). **Guarantor** further agrees as follows:

1. This covenant and agreement on **Guarantor's** part shall continue in favor of **Landlord** notwithstanding any extension, modification, or alteration of the lease entered into by and between the parties thereto, or their successors or assigns, or notwithstanding any assignment of the Lease, with or without the consent of **Landlord**, and no extension, modification, alteration or assignment of the Lease shall in any manner release or discharge **Guarantor** and **Guarantor** does hereby consent thereto until the date **Tenant** opens for business fully staffed, stocked, and fixtured. At such time as **Tenant** opens for business so staffed, stocked and fixtured, this **Guaranty** shall be null and void and of no force and effect, provided **Tenant** is not in default.

2. This **Guaranty** will continue unchanged by any bankruptcy, reorganization or insolvency of **Tenant** or any successor assignee thereof or by any disaffirmance or abandonment by a trustee of **Tenant**.

3. **Landlord** may, without notice, assign this **Guaranty of Lease** in whole or in part and no assignment or transfer of the Lease shall operate to extinguish or diminish the liability of **Guarantor** hereunder.

4. The liability of **Guarantor** under this **Guaranty of Lease** shall be primary and in any right of action which shall accrue to **Landlord** under the Lease, **Landlord** may, at its option, proceed against **Guarantor** without having commenced any action, or having obtained any judgment against **Tenant**.

5. **Guarantor** shall pay **Landlord's** reasonable attorney's fees and all costs and other expenses incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed or enforcing this **Guaranty of Lease** against **Guarantor**.

6. **Guarantor** does hereby waive notice of any demand by **Landlord**, as well as any notice of default in the payment of rent or any other amounts contained or reserved in the lease.

7. The use of the singular herein shall include the plural. Use of masculine, feminine or neuter

genders shall include each. The obligation of two or more parties shall be joint and several. The terms and provisions of this Guaranty of Lease shall be binding upon and inure to the benefit of the respective successors and assigns of the parties herein named.

8. Any and all notices, elections, or demands permitted or required to be made under this Guaranty shall be in writing, and shall be ~~delivered personally, or~~ sent by overnight courier service by a company regularly engaged in the business of delivering business packages (such as Federal Express or Airborne), or sent by registered or certified mail to the other party at the address set forth hereinabove, or at such other address as may be specified in writing from time to time by either party to the other. ~~The date of personal delivery or, if sent by mail or overnight courier, then the date of delivery or refusal thereof as evidenced by the carrier's or courier's receipt, shall be the effective date of such notice, election, or demand.~~

Guarantor represents and warrants to Landlord that Guarantor has the full power and unrestricted right to enter into this Guaranty, to incur the obligations set forth herein, and to execute and deliver this Guaranty to Landlord, and that this Guaranty constitutes a valid and legally binding obligation of Guarantor, enforceable in accordance with its terms. Guarantor represents and warrants to Landlord that it owns all of the stock of Tenant.

It is agreed that the provisions, covenants and conditions of this agreement shall bind and inure to the benefit of the Landlord, its successors and assigns, (absolute or as security for a loan) and shall be binding upon the undersigned Guarantor, its legal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, the undersigned Guarantor has caused this Guaranty of Lease to be executed as of the date set forth in the lease.

GUARANTOR:
BIRMINGHAM ATHLETIC CLUBS, LLC

ATTEST:

By: [Signature]
its: Witness

By: [Signature]
Printed Name: Stephen D. Dawahare
its: Manager

STATE OF Kentucky
COUNTY OF Fayette

I, Sarah C. Hawkins a Notary Public in and for said County in said State, hereby certify that Stephen D. Dawahare, whose name as Manager of BIRMINGHAM ATHLETIC CLUBS, LLC, a limited liability company, is signed to the foregoing guaranty and who is known to me, acknowledged before me on this day that, being informed of the contents of the guaranty, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this 2nd day of January, 2007.

Sarah C. Hawkins
Notary Public
My Commission Expires: June 30, 2010

EXHIBIT G
SCHEDULE OF BROKER'S COMMISSIONS OR FINDER'S FEES

List of all broker's commissions or finder's fees due any party in connection with their respective execution of this lease:

[None]

EXHIBIT H
LANDLORD'S LIEN SUBORDINATION AND WAIVER

STATE OF _____ }
COUNTY } _____

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned ~~Birmingham Realty Company~~ (whether one or more, hereinafter referred to as the "Landlord") is the owner of certain real property located in the State of Alabama, Jefferson County, and more particularly described or identified as follows:

The Landlord has leased said property (hereinafter referred to as the "Real Property") to _____, a _____ (Hereinafter referred to as the "Tenant"). It is contemplated that the Tenant and _____ (hereinafter referred to as the "Bank") may enter into one or more financing transactions, pursuant to which the Tenant may grant to Bank a security interest in certain personal property of Tenant, including, Tenant's goods, furniture, equipment, machinery, ~~trade fixtures~~, inventory and/or other personal property, in each case including such items as they may now or hereafter be owned and/or located on the Real Property. As a condition precedent to the Bank's agreement to enter into any one or more of such financing transactions with the Tenant, the bank has required the Tenant to seek and obtain Landlord's agreement to this Lien and Subordination Waiver.

In consideration of the foregoing, and of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Landlord, the Landlord does hereby agree with the Bank as follows:

1. The Landlord hereby agrees with the Bank that any and all goods, furniture, equipment, machinery, ~~trade fixtures~~, inventory and/or other personal property of the Tenant now or hereafter owned and/or located on the Real Property and listed on the attached Exhibit A (all of such property of the Tenant is hereinafter referred to as the "Tenant's Property") shall be and remain personal property, and shall not constitute "fixtures" or become a part of the Real Property, unless such property is affixed to the building in such a manner that it becomes an integral part thereof, to be determined by Landlord in its sole and unfettered discretion.

2. The Landlord hereby agrees that prior to the termination of the lease, the Bank, through its employees, agents or other representatives, shall have the right to enter upon and inspect the Real Property and to remove the Tenant's Property therefrom upon at least two (2) days written notice to Landlord ~~subject only to Bank's agreement with Tenant~~. Any damage to the Real Property caused by the removal of Tenant's Property shall be repaired at the expense of the Bank.

3. If the Lease is terminated or Tenant abandons the Premises prior to the scheduled expiration of the term of the Lease, and so long as Bank assumes all obligations of Tenant, ~~except for future rental obligations~~, Bank shall have the right and license to enter into and to occupy the Premises, for the purposes of removing Tenant's Property, for an actual occupancy period of up to thirty (30) days (at Bank's discretion), following the later of (a) Landlord placing Bank in possession of the Premises; and (b) ~~the~~ abandonment or surrender of the Premises by Tenant or termination of Tenant's rights of possession, whether voluntary or involuntary ~~for the sole and exclusive purpose of removing Tenant's property~~. In consideration of the foregoing, Bank agrees (to the extent not paid by the Tenant) to pay to Landlord, periodically for the use and occupancy of the Premises by Bank as provided above, a per diem occupancy fee (based upon base rent and the Tenant's pro rata share of operating costs, utilities, insurance (including the providing of any insurance required of Tenant under the Lease) and taxes payable by the Tenant under the Lease for each day Bank actually uses or occupies the Premises as provided above, based upon a thirty (30) day month for actual days of occupancy by Bank. All physical damage to the Premises caused by the removal of the Tenant's Property shall be reimbursed or repaired by Bank at its expense, and any other damage to the Premises during Bank's occupancy shall be reimbursed or repaired by Bank at its expense.

4. The Landlord hereby agrees that any right, title, lien or other claim which the Landlord might have, whether by statute, agreement or otherwise, to any of the Tenant's Property shall be wholly subordinate to any interest therein of the Bank, and any such right of the Landlord is hereby waived in favor of the Bank (but not in favor of any other person or entity) except as otherwise provided in the Lease.

5. The Landlord hereby agrees that the Landlord will not, without the prior written consent of the Bank, claim or assert any right of distraint, levy, lien or other interest in any of the Tenant's Property.

6. The Landlord hereby agrees that this agreement will be binding upon the executors, administrators, successors, assigns and transferees of the Landlord, and shall inure to the benefit of any successors or assigns of the Bank.

7. This Lien Subordination and Waiver may be executed in counterparts, and shall be governed and controlled by, and interpreted under, the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned Landlord as executed this lien subordination and waiver under seal this _____ day of _____, 20____.

LANDLORD:
Birmingham Realty Company

By: _____
Printed Name: _____
Its: _____

STATE OF _____}

_____COUNTY }

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____ whose name as _____ of _____, a corporation, is signed to the foregoing Lien Subordination and Waiver, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Lien Subordination and Waiver, (s)he as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this _____ day of _____, A. D. 2006.

Notary Public
[NOTARIAL SEAL]
My commission expires: _____

Exhibit A
to
LANDLORD'S LIEN SUBORDINATION AND WAIVER
(Attach List of Tenant's Personal Property)

[illegible]

EXHIBIT J
ATTORNMEN AND NON DISTURBANCE AGREEMENT

THIS AGREEMENT dated the ____ day of ____, 2006, is made between
____, ("Mortgagee") and ____ ("Tenant").

WITNESSETH:

WHEREAS, Tenant has entered into a certain lease (the "Lease") dated ____,
amended by First Amendment to Lease dated ____, and amended by Second
Amendment to Lease, dated ____ with ____, an Alabama Corporation, as
lessor ("Landlord"), covering premises as referenced in the Lease known as ____
located in ____ and described more in fully on Exhibit A
hereto (the "Premises"); and

WHEREAS, Mortgagee has agreed to make a mortgage loan (the "Mortgage") to the
Landlord, secured in part by the Premises, and the parties desire to set forth their agreement as
hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar
(\$1.00) by each party in hand paid to the other, the receipt of which is hereby acknowledged, the
parties hereby agree as follows:

1. Subordination of Lease. Said Lease is and shall be subject and subordinate to the
Mortgage insofar as it affects the real property of which the demised Premises form a part, and to
all renewals, modifications, consolidations, replacement and extensions thereof, to the full extent
of amounts secured thereby and interest thereon.

2. Attornment. Notwithstanding the subordination described in paragraph 1,
Mortgagee and Tenant hereby agree that the Lease shall not terminate in the event of a
foreclosure of the Mortgage, and Tenant further agrees that it will attorn to and recognize any
purchaser at a foreclosure sale under the Mortgage, any transferee who acquires the demised
Premises by deed in lieu of foreclosure, and the successor and assigns of such purchasers, as its
landlord for the unexpired balance (and any extensions, if exercised) of the term of said Lease
upon the same terms and conditions set forth in said Lease.

3. Non Disturbance. If it becomes necessary to foreclose the Mortgage, Mortgagee
will not terminate said Lease nor join Tenant in summary or foreclosure proceedings so long as
Tenant is not in default under any of the terms, covenants, or conditions of said Lease.

4. Mortgagee Responsibilities. If Mortgagee succeeds to the interest of Landlord
under the Lease, Mortgagee shall not be:

- (a) liable for any act or omission of any prior landlord (including
Landlord); or
- (b) liable for the return of any security deposit; or
- (c) subject to any offsets or defenses which Tenant might have against
any prior landlord (including Landlord); or
- (d) bound by any rent or additional rent which Tenant might have paid
for more than the current month to any prior landlord (including
Landlord); or
- (e) bound by any amendment or modification of the Lease made without its
consent.

5. Tenant's Certification. Tenant hereby certifies that:

(a) ~~The Lease has not been modified, changed, altered, assigned, supplemented, or amended in any respect. The Lease is not in default and is valid and in full force and effect on the date hereof. The Lease is the only Lease or agreement between the Tenant and the Landlord affecting or relating to the Premises. The Lease represents the entire agreement between the Landlord and the Tenant with respect to the Premises. The Premises consists of an area of approximately _____ square feet.~~

(b) ~~The Tenant is not entitled to, and has made no agreement(s) with the Landlord or its agents or employees concerning free rent, partial rent, rebate of rent payments, credit or offset or deduction in rent [except as set forth in Item _____ of Amendment _____ to Lease], or any other type of rental concession, including without limitation, lease support payments, or lease buy-outs, or any provisions for lease termination.~~

(c) ~~The Tenant has accepted and now occupies the Premises, and is and has been open for business since _____. The Lease term began _____. The termination date of the present term of the Lease, excluding unexercised renewals, is _____.~~

(d) ~~The Tenant has paid rent for the Premises for the period up to and including _____. The fixed minimum rent and any additional rent (including the Tenant's share of tax increases and cost of living increases) payable by the Tenant presently is \$ _____ per month. No such rent has been paid more than one (1) month in advance of its due date. The Tenant's security deposit is \$ _____.~~

(e) ~~All conditions under this Lease to be performed by the Landlord have been satisfied except the work to be performed by Landlord set out in Item _____ of Amendment _____ to Lease and in Exhibit _____ to Amendment _____ (see attached Amendment _____). All required contributions by the Landlord to the Tenant on account of the Tenant's tenant improvements have been received by the Tenant.~~

(f) ~~The Lease contains, and the Tenant has, no outstanding options or rights of first refusal to purchase the Premises or any part thereof or all or any part of the real property of which the Premises are a part. _____~~

(g) ~~No actions, whether voluntary or otherwise, are pending against the Tenant or any general partner of the Tenant under the bankruptcy laws of the United States or any state thereof.~~

(h) ~~The Tenant has not sublet the Premises to any sublessee and has not assigned any of its rights under the Lease.~~

6. ~~Tenant acknowledges that all the interest of the Landlord in and to the Lease is being duly assigned to Mortgagee, and that pursuant to the terms hereof, all rent payments under the Lease shall continue to be paid to the Landlord in accordance with the terms of the Lease unless and until the Tenant is notified otherwise in writing by Mortgagee or its successors or assigns.~~

~~It is particularly noted that:~~

(a) ~~Under the provisions of the assignment, the Lease cannot be terminated (either directly or by the exercise of any option which could lead to termination) or modified in any of its terms, or consent be given to the release of any party having liability thereon, without the prior written consent of Mortgagee or its successors or assigns, and without such consent, no rent may be collected~~

or accepted more than one (1) month in advance.

(b) ~~The interest of the Landlord in the Lease has been assigned to Mortgagee for the purposes specified in the assignment. Mortgagee, or its successor or assigns, assumes no duty, liability or obligation whatever under the Lease or any extension or renewal thereof.~~

7. ~~Binding Effect.~~ This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

8. ~~Notice of Default.~~ Tenant agrees to give Mortgagee, by certified mail, a copy of any notice of default served upon the Landlord. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Mortgagee shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default, (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure) in which event the Lease shall not be terminated while such remedies are being so diligently pursued. Any notices sent to Mortgagee should be sent by certified mail and addressed to _____, _____, Alabama _____, Attention: _____.

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

_____, Mortgagee

By: _____

Printed Name: _____

Its: _____

_____, Tenant

By: _____

Printed Name: _____

Its: _____

[Add acknowledgements]

EXHIBIT K
Title Binder

Revolving Fax: 189 30 2006 213891 Fax Station: HARDER CO. LEASING P. 2

11/30/05 16:55

NO. 053 P002/005

ALTA Commitment (1992)

INFORMATIONAL COMMITMENT
Issued By

First American Title Insurance Company

Agent's File No.: 155950

SCHEDULE A

1. Effective Date: November 6, 2005, at 8:00 am
2. Policy or Policies to be issued:
 - (a) Owner's Policy: 1992 ALTA Owner's Policy Policy Amount: \$0.00
Proposed Insured:
None
 - (b) Loan Policy: 1992 ALTA Loan Policy Policy Amount: \$0.00
Proposed Insured:
None
3. Title to the fee simple estate or interest in said land is at the effective date hereby vested in:
Birmingham Realty Company
4. The land referred to in this Commitment is described as follows:
SEE ATTACHED CONTINUATION OF SCHEDULE A FOR LEGAL DESCRIPTION

Issue
Date: November 30, 2005

CAHABA TITLE, INC.

1800 Indian Lake Drive
Birmingham, AL

35244

(Insert above line name of Agency)

By: Deanna Agosto
Authorized Signatory

11/30/06 16:56

NO.053 P003/005

ALTA Commitment (1082)

First American Title Insurance Company

Agent's File No.: 155950

SCHEDULE B - PART 1

The following requirements must be met:

1. Payment to, or for the account of the grantors and/or mortgagors of full consideration for the estate or interest to be insured.
2. Payment of all taxes, assessments, levied and assessed against property, which are due and payable.
3. Payment of premiums, fees and charges for the policy.
4. Proper documents creating the estate or interest to be insured must be executed and duly filed for record, to wit:
 - (a) (i) Subject to validly executed Lease from Birmingham Realty Company to Lessee to be determined;
 - (ii) If a Memorandum of Lease is recorded rather than the Lease, we recommend:
 - (a) That the Memorandum be in accordance with the Code of Alabama Sec. 35-4-51.1; and
 - (b) That a copy of the Lease be provided for our file.
5. The 2006 Ad Valorem Taxes, became due and payable October 1, 2006, in the amount of \$74,433.70.
6. Subject to a statement from the City Clerk of Pelham stating that there are no unpaid municipal improvement and sewer assessments against subject property.

NOTE: The Ad Valorem tax ID #(s) for 2006 is/are:
10-8-31-3-001-014,001

NOTE: The above tax information is provided for informational purposes only. Tax information has been based on the present assessment rolls, but is subject to any changes or future adjustments that may be made by the Tax Assessor or by the County's Board of Equalization. No liability is assumed for the accuracy of the amount of taxes paid or for any changes imposed by said county authority.

NOTE: THIS COMMITMENT IS ISSUED FOR INFORMATIONAL USE ONLY AND NOTWITHSTANDING ANY OTHER PROVISION(S) HEREIN, THE COMPANY DOES NOT HEREBY INSURE, OR COMMIT TO INSURE, NOR TO ISSUE ANY POLICY OF INSURANCE. THERE SHALL BE NO COVERAGE OF ANY KIND EXTENDED TO ANY PERSON OR ENTITY BY THIS INFORMATIONAL COMMITMENT.

11/30/05 16:56

NO.053 P004/005

ALTA Commitment (1682)

First American Title Insurance Company

Agent's File No.: 155950

SCHEDULE B - PART II

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any created, first by appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage covered by this Commitment.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.
4. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.
5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Any adverse claim to any portion of said land which has been created by artificial means or has accreted to any such portion so created and riparian rights, if any.
7. Taxes or special assessments which are not shown as existing by the public records.
8. Any prior reservation or conveyance, together with release of damages of minerals of every kind and character, including, but not limited to gas, oil, sand, and gravel in, on and under subject property.
9. General and special taxes or assessments for the year 2007 and subsequent years not yet due and payable.
10. Building setback line of as shown by plat, Map Book 18 Page 58.
11. Easements as shown by recorded plat, Map Book 18 Page 58.
12. Restrictions, covenants and conditions as set out in instrument(s) recorded in Inst. No. 1994-14606, Inst. No. 1994-14812, Inst. No. 1994-16775, Inst. No. 1994-18542 and Inst. No. 1994-21077 in the Probate Office.
13. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed Book 194 page 63, Deed Book 194 page 83 and Deed Book 181 page 228 in the Probate Office.
14. Right(s) of Way(s) granted to State of Alabama by instrument(s) recorded in Deed Book 111 page 397 in the Probate Office.
15. Easement(s) to Alabama Power Company as shown by instrument recorded in Inst. No. 1994-34818 and Inst. No. 1994-3243 in the Probate Office.
16. Rights acquired by Alabama Power Company through case set out in Lis Pen & page 279 in the Probate Office.
17. Declaration of Easements as recorded in Inst. No. 1994-14811 in the Probate Office.
18. Terms and provisions of the unrecorded Lease to be recorded and any Memorandum of Lease Commemorating same filed for record.
19. Rights of owners of property adjoining property in and to the joint or common rights in building situated on said lots, such rights include but are not limited to roof, foundation, party walls, walkways and entrance.

11/30/05 16:57

NO. 053 P005/005

ALTA Commitment (1992)

First American Title Insurance Company

SCHEDULE A - LEGAL DESCRIPTION

Agent's File No.: 155950

That certain store building approximately 220 feet in width by 200 feet in depth, together with vestibule at the front measuring approximately 77 feet in width by 12 feet in depth with rear additions, concrete pads for coolers and freezers and compactor or baler at the rear, and the land on which the same shall stand (hereinafter collectively called "demised premises"), which store building and related improvements are to be constructed by Landlord according to plans and specifications to be approved by the parties hereto and shall be in the location and of the dimensions as outlined in red on the Plot Plan prepared by Charles A. Cline, Architect, entitled "Oak Mountain Marketplace, Pelham, Alabama," drawn on March 4, 1993, last revised August 28, 1993, and being more particularly described in the Short Form Lease recorded as Inst. No. 1993-29143 and affidavit recorded as Inst. No. 1994-14814 and corrected in Inst. No. 1994-15067 in the Probate Office of Shelby County, Alabama.

The demised premises are located in a shopping center development (hereinafter called "shopping center"), located at the Northwest corner of the intersection of U.S. Highway #31 and Highway #119 in the City of Pelham, Shelby County, Alabama, which is now situated, on a portion of Lot 1, Oak Mountain Commerce Place, as recorded in Map Book 16 Page 58 in the Probate Office of Shelby County, Alabama.

ADDENDUM TO LEASE

This ADDENDUM TO LEASE is incorporated into the lease agreement of even date herewith between by and between **BIRMINGHAM REALTY COMPANY**, an Alabama corporation ("**Landlord**"), and **BAC PELHAM, LLC, d/b/a GOLD'S GYM** ("**Tenant**"). It is hereby mutually agreed that the Lease shall include the following provisions:

28.8 Extensions. So long as **Tenant** shall not be in default under this lease, **Tenant** shall have the option to extend the initial term of this lease for four (4) period(s) of five (5) year(s) (each), and otherwise on the same terms and conditions of this lease subject to the following:

(a) **Tenant** shall provide written notice to **Landlord** of **Tenant's** intent to renew this lease not less than one hundred eighty (180) days prior to the then current **Expiration Date**.

(b) **Tenant** shall not have been late on more than three (3) occasions within any 12 month period during the term of this lease in the required payment of any **Rent** due under this lease. For the purposes of this provision only, **Rent** shall be considered "late" if it is received by **Landlord** more than six days after the date due.

(c) ~~**Tenant** is not late in the remittance of monthly, quarterly, semi-annual, or annual statements of Gross Sales, as the case may require.~~

(d) ~~**Tenant** is in full compliance pertaining to the maintaining of full, complete and accurate permanent records and accounts in accordance with general accounting practices acceptable to **Landlord**.~~

(e) ~~**Tenant** has remained in full compliance with **Landlord's** guidelines and regulations on printed displays or show window lettering established for the **Premises**, and **Tenant** has not failed to remove any printed display or show window lettering not approved by **Landlord** within twenty-four (24) hours following **Landlord's** notice to correct.~~

It is specifically understood and agreed that each of the aforementioned conditions are conditions precedent to **Tenant's** exercise of any such option to extend the term of this lease, and in the event **Tenant** remains in possession of the **Premises** after the **Expiration Date**, even though each and every one of the aforementioned conditions have not been met, the term of the lease shall not be extended, and the provisions of Article 20 shall apply.

In the event the provisions of this Addendum conflict with or are inconsistent with the other provisions of the Lease, the provisions of this Addendum shall govern and control.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Addendum to Lease as of the day and year first above written.

LANDLORD:

BIRMINGHAM REALTY COMPANY, an Alabama corporation

By: 

Printed Name: Charles M. Miller Jr.

Its: President

Date: 1/9/07

TENANT:

BAC PELHAM, LLC, d/b/a GOLD'S GYM

By: 

Printed Name: Stephen D. Dawahare

Its: Manager

Date: January 2, 2007

LEASE ADDENDUM

A. Landlord hereby consents to Tenant's displaying Gold's Gym building signage as attached as Exhibit A to Lease Addendum. Tenant will be allowed to display Gold's Gym signage with future modifications by Gold's Gym Franchising, LLC ("GGF") with Landlord's reasonable approval, the "Gold's Gym®" Marks and signs at the Facility according to the system standards of Gold's Gym Franchising LLC ("GGF") set forth in the Franchise Agreement between Tenant and GGF (the "Franchise Agreement"), as GGF periodically modifies them.

B. Landlord shall send to GGF copies of all default notices, and all notices of Landlord's intent to terminate the Lease (or any rights of Tenant thereunder) or evict Tenant from the leased ~~p~~ Premises, simultaneously with sending such notices to Tenant. Such copies shall be sent to:

Gold's Gym Franchising LLC
125 E. John Carpenter Freeway
Suite 1300
Irving, TX 75062
Attn: Legal Department - Franchise

C. Landlord shall provide GGF twelve (12) ~~ten (10)~~ at least thirty (30) days prior written notice of any monetary default by Tenant together with the amount in default, before Landlord terminates the Lease (or any rights of Tenant thereunder) or evicts Tenant from the leased ~~p~~ Premises, which represents the ten (10) day notice period provided to Tenant plus two (2) additional days within GGF shall have the right, but not the obligation, to cure any monetary defaults of Tenant under the Lease. GGF shall have thirty-two (32) days to cure a default that cannot be cured by the payment of money (that is, other than those discussed in Sections 15.1.1 through 15.1.6 of the Lease), which represents the thirty (30) day notice period provided to Tenant plus two (2) additional days within which GGF shall have the right but not the obligation to cure any such non-monetary default. If GGF cures such defaults, then such notice from Landlord shall be void and of no force or effect.

D. Upon the occurrence of any of the following:

- (1) a default by Tenant under the Lease, the Franchise Agreement, or any document or instrument securing or relating to the Franchise Agreement, or
- (2) the termination of the Franchise Agreement before its term expires by GGF or Tenant for any reason other than a default by GGF,

GGF shall have the right (but no obligation), exercisable upon curing any default of Tenant under the Lease and delivery of written notice to Tenant and Landlord, to compel an assignment of the Lease, provided the assignee expressly agrees in writing to be bound by each and every duty and obligation set forth in the Lease, and all of Tenant's rights thereunder, to GGF or to an assignee of GGF's choice, at GGF's option. If GGF (or its assignee) exercises the rights under this paragraph (D), Tenant shall have no further right, title or interest under the Lease or to the leased ~~p~~ Premises, but shall remain solely liable to Landlord for all rents, charges and other obligations under the Lease prior to the date upon which GGF (or its assignee) assumes possession of the leased premises.

E. Landlord shall allow ~~cooperate with~~ GGF or any designee thereof and/or Tenant in the removal from the leased ~~p~~ Premises of any trademarks, service marks, and proprietary systems and information related to the "Gold's Gym®" brand upon the termination or expiration of the Franchise Agreement, provided GGF or Tenant repairs any damage to the Premises caused by its removal.

F. ~~Landlord shall give GGF access to Landlord's information of Tenant's records relating to Tenant's performance of its obligations under the Lease, including but not limited to Tenant's Lease payment records.~~

G. ~~GGF is an intended third party beneficiary under the provisions set forth above with independent rights to enforce them.~~

Landlord: Birmingham Realty Company, an
Alabama corporation

By: Charles M. Miller Jr.

Printed Name: Charles M. Miller Jr.

Title: President

Date: 1/9/07

Tenant: BAC Pelham, LLC, d/b/a Gold's Gym

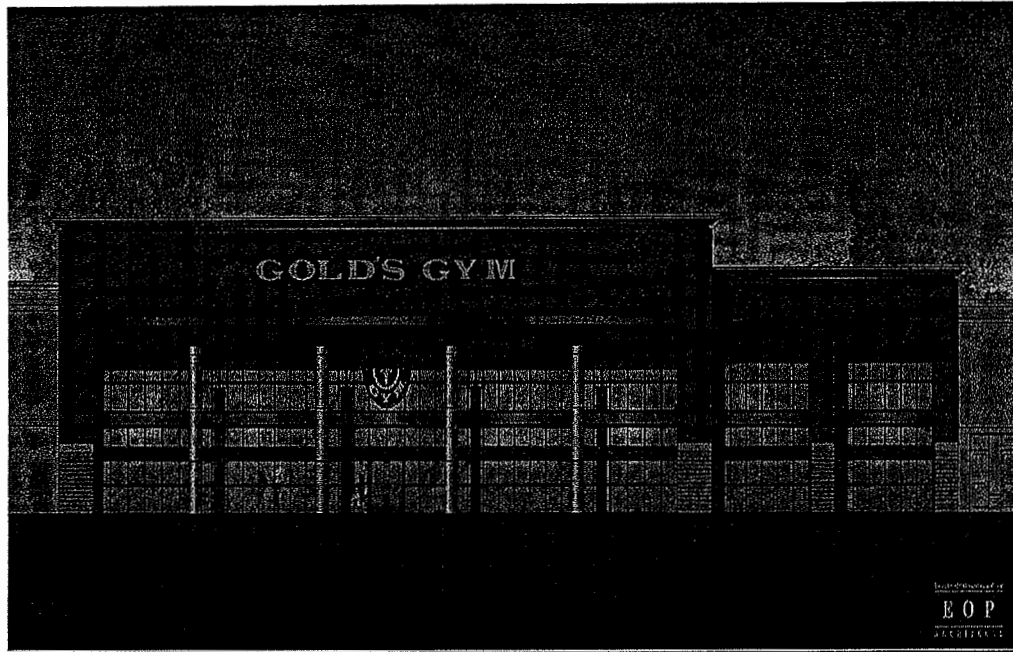
By: Stephen D. Dawahare

Printed Name: Stephen D. Dawahare

Its: Manager

Date: January 2, 2007

EXHIBIT A
TO
LEASE ADDENDUM



Barber Companies

June 15, 2007

Mr. Stephen D. Dawahare
iVisionary
239 S. Limestone
Suite 100
Lexington, KY 40508

Re: The Lease (the "Lease") for 35,380 square feet of space at Oak Mountain Marketplace, Pelham, Alabama ("Premises"), by and between Birmingham Realty Company ("Landlord") and BAC Pelham, LLC, d/b/a Gold's Gym ("Tenant")

Dear Mr. Dawahare:

Birmingham Realty Company consents to allow BAC Pelham, LLC d/b/a Gold's Gym to sublease approximately 1,012 square feet located inside the space known as Gold's Gym located at Oak Mountain Marketplace, Pelham, Alabama, as shown on Exhibit A, to Rehab Associates L.L.C. ("Sublease Tenant"), for the use of providing physical therapy services and for no other use or purpose, effective October 1, 2007.

This consent does not release BAC Pelham, LLC, d/b/a Gold's Gym from its duties to perform each and all of its obligations and duties to the Landlord pursuant to the Lease.

All communication to the Landlord regarding property management and accounting items should come through BAC Pelham, LLC d/b/a Gold's Gym.

Also, all rental payments should continue to be made by BAC Pelham, LLC d/b/a Gold's Gym.

Please let us know if we can be of further assistance.

Sincerely,

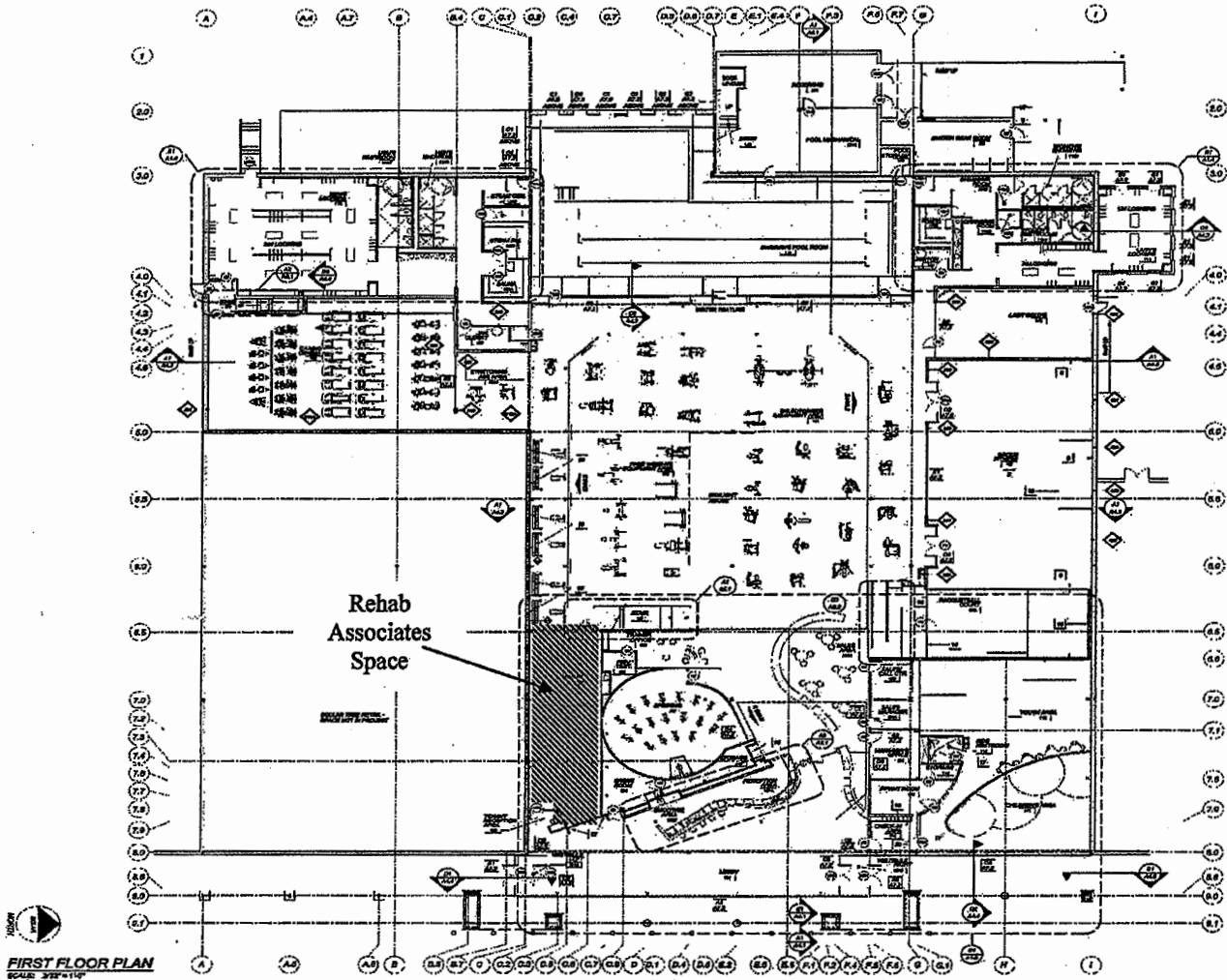


Charles M. Miller, Jr.
President

Exhibit A



= Space subleased to Rehab Associates, L.L.C.



Barber Companies

October 27, 2010

Mr. Stephen D. Dawahare
iVisionary
239 S. Limestone
Suite 100
Lexington, KY 40508

Re: *The Lease (the "Lease") for 35,380 square feet of space at Oak Mountain Marketplace, Pelham, Alabama ("Premises"), by and between Birmingham Realty Company ("Landlord") and BAC Pelham, LLC, d/b/a Gold's Gym ("Tenant")*

Dear Mr. Dawahare:

Birmingham Realty Company consents to allow BAC Pelham, LLC d/b/a Gold's Gym to sublease approximately 1,012 square feet located inside the space known as Gold's Gym located at Oak Mountain Marketplace, Pelham, Alabama, as shown on Exhibit A, to Rehab Associates LLC ("Sublease Tenant"), for the use of providing physical therapy services and for no other use or purpose, effective October 1, 2010.

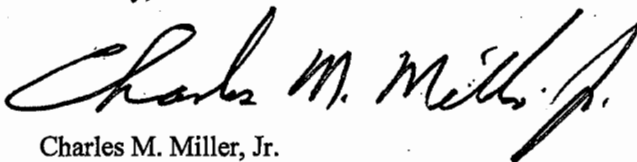
This consent does not release BAC Pelham, LLC, d/b/a Gold's Gym from its duties to perform each and all of its obligations and duties to the Landlord pursuant to the Lease.

All communication to the Landlord regarding property management and accounting items should come through BAC Pelham, LLC d/b/a Gold's Gym.

Also, all rental payments should continue to be made by BAC Pelham, LLC d/b/a Gold's Gym.

Please let us know if we can be of further assistance.

Sincerely,

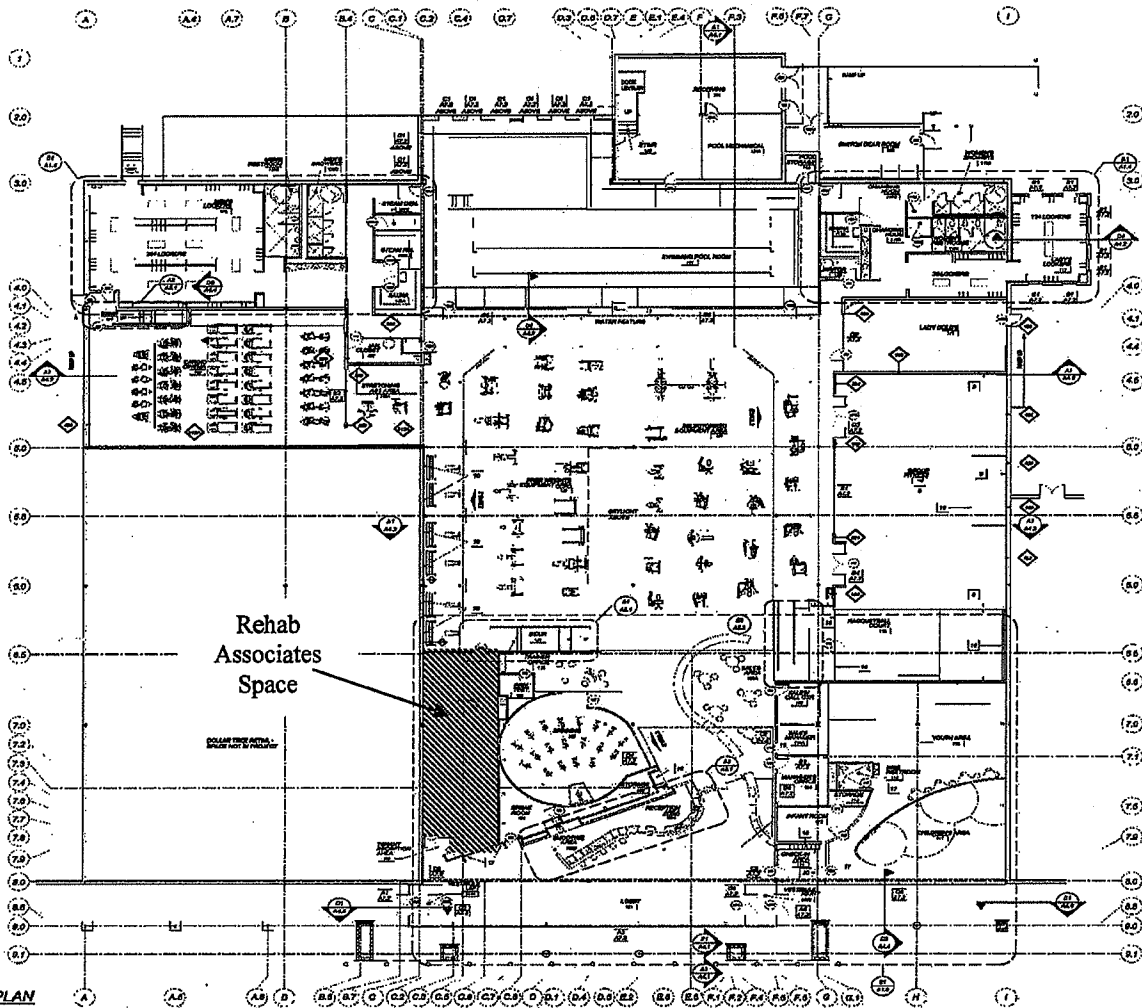


Charles M. Miller, Jr.
President

Exhibit A



= Space subleased to Rehab Associates, L.L.C.



FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

Attachment 2 - Golds Gym claim breakdown.pdf

Description - Breakdown of Claim Amount

Gold's Gym**Bankruptcy Claim**

5/4/2020 Possession Surrendered
5/4/2020 Lease Rejected
5/4/2020 Tenant Filed Ch 11

<u>Charges Billed and Outstanding</u>		Charge	Total	
4/1/2020	Base Rent	18,943.00		
4/1/2020	CAM	7,293.49		
5/1/2020	Base Rent	18,943.00		
5/1/2020	CAM	7,293.49	52,472.98	Pre-Petition Claim
6/1/2020	Base Rent	18,943.00		
6/1/2020	CAM	7,293.49		
7/1/2020	Base Rent	18,943.00		
7/1/2020	CAM	7,293.49		
8/1/2020	Base Rent	18,943.00		
8/1/2020	CAM	7,293.49		
9/1/2020	Base Rent	18,943.00		
9/1/2020	CAM	7,293.49		
10/1/2020	Base Rent	18,943.00		
10/1/2020	CAM	7,293.49		
11/1/2020	Base Rent	18,943.00		
11/1/2020	CAM	7,293.49		
12/1/2020	Base Rent	18,943.00		
12/1/2020	CAM	7,293.49		
1/1/2021	Base Rent	18,943.00		
1/1/2021	CAM	7,293.49		
2/1/2021	Base Rent	18,943.00		
2/1/2021	CAM	7,293.49		
3/1/2021	Base Rent	18,943.00		
3/1/2021	CAM	7,293.49		
4/1/2021	Base Rent	18,943.00		
4/1/2021	CAM	7,293.49		
5/1/2021	Base Rent	18,943.00		
5/1/2021	CAM	7,293.49	314,837.88	
Total			367,310.86	

Lease Rejection Claim

Golds - Rent + CAM 6/1/20-5/31/21 314,837.88
Less: net recovered by releasing premises (61,514.33)

Total Lease Rejection Claim	253,323.55
Pre-Petition Claim	52,472.98
Total Claims	305,796.53