

Fill in this information to identify the case:

Debtor 1 Gold's St. Louis, LLC

Debtor 2 _____
(Spouse, if filing)

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

Case number 20-31333-hdh11

E-Filed on 09/04/2020
Claim # 298

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>KIRKWOOD MISSOURI FITNESS, LP</u> Name of the current creditor (the person or entity to be paid for this claim)	
		Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?		<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>Anne K. Edwards, Smith, Gambrell & Russell</u> Name <u>444 South Flower Street Suite 1700</u> Number Street <u>Los Angeles</u> <u>CA</u> <u>90071</u> City State ZIP Code Contact phone <u>(213) 358-7210</u> Contact email <u>aedwards@sgrlaw.com</u>		<u>J. Michael Moore</u> Name <u>1748 W. Katella Avenue Suite 206</u> Number Street <u>Orange</u> <u>CA</u> <u>92867</u> City State ZIP Code Contact phone <u>(714) 516-2444</u> Contact email <u>mtitusproperties@yahoo.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? \$ 730,676.16. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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

Lease.

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. \$ 108,687.11

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).

Amount entitled to priority

\$ 0.00

☐ 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).

\$ 0.00

☐ 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).

\$ 0.00

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ 0.00

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ 0.00

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ 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 09/04/2020
MM / DD / YYYY

/s/ Anne K. Edwards
Signature

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

Name Anne K. Edwards
First name Middle name Last name

Title Attorney for Creditor, KIRKWOOD MISSOURI FITNESS, LP

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

Address
Number Street

City State ZIP Code

Contact phone Email

Attachment 1 - Attachment 1 - Lease Damages Calculation.pdf

Description - Damages Calculation

Gold's Gym

KIRKWOOD MISSOURI FITNESS, LP

Attachment to Proof of Claim - Damages Calculation

A: Unpaid rent due under the lease term at the time of filing (April and May, 2020)

Unpaid Master Landlord rent, paid by Kirkwood through April 30th, 2020	\$36,274.69
Unpaid Master Landlord rent and CAMS for May 2020	\$31,252.42
Unpaid rent due to Kirkwood Fitness for April 2020	\$20,580.00
Unpaid rent due to Kirkwood Fitness of May 2020	<u>\$20,580.00</u>

Total rent due under the term of the lease at the time of filing: \$108,687.11

B: The next 1 year of the lease term (12 months rent plus property taxes & insurance)
This includes Kirkwood rent due and Master Landlord rent, CAMS and property taxes

Base rent Kirkwood	\$20,580.00	x12	=	\$246,960.00
Base rent Master Landlord plus CAMS and Property Taxes	\$31,252.42	x12	=	<u>\$375,029.04</u>

Total 12 months rent, property taxes and insurance: \$621,989.04

C: **Total Lease Damages Claimed (A plus B)** \$730,676.15

Attachment 2 - Attachment 2A.pdf

Description - 24 Hour Fitness Lease dated January 26, 2006, between Landlord, Brown & Sons Foodliner, Inc. and Kirkwood Missouri Fitness, LP (“Kirkwood”), with attached Sublease dated January 26, 2006, between Kirkwood and 24 Hour Fitness USA, Inc. (“24 Hour Fitness”) (1 of 7)

24 HOUR FITNESS LEASE

BETWEEN

BROWN & SONS FOODLINER, INC. ("Landlord")

and

KIRKWOOD MISSOURI FITNESS, LP. ("Tenant")

LOCATION:

10320 Manchester Road
Kirkwood, Missouri

DATED

January 26, 2006

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24 HOUR FITNESS LEASE

THIS 24 HOUR FITNESS LEASE (the "Lease") dated _____, 2006, is entered into by and between **BROWN & SONS FOODLINER, INC.**, a Missouri corporation ("Landlord") and **KIRKWOOD MISSOURI FITNESS, LP.**, a Missouri limited partnership ("Tenant").

ARTICLE 1 BASIC LEASE PROVISIONS

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

- 1.1 Landlord's Address:** BROWN & SONS FOODLINER, INC.
c/o Novus Companies
#20 Allen Avenue, Suite 400
Webster Groves, Missouri 63119
Phone No.: 314.968.0842
Facsimile: 314.963.0241
Taxpayer I.D. No.: **Redacted**
- 1.2 Address of Premises:** 10320 Manchester Road
Kirkwood, Missouri
- 1.3 Tenant's Address:** KIRKWOOD MISSOURI FITNESS, LP
c/o Titus Properties, LLC
1748 W. Katella Ave., Suite 206
Orange, CA 92867
Phone No.: 714.516.2444

With copy to: 24 HOUR FITNESS USA, INC.
12647 Alcosta Blvd., Suite 500
San Ramon, CA 94583
Phone No.: 925.543.3100
Facsimile: 925.543.3221
Attention: Property Management

24 HOUR FITNESS USA, INC.
12647 Alcosta Blvd., Suite 500
San Ramon, CA 94583
Attention: Legal Department

COLLIERS INTERNATIONAL
 1610 Arden Way, Suite 242
 Sacramento, CA 95815
 Telephone: 916.648.2000
 Facsimile: 916.649.0001
 Attention: Corporate Services

1.4 Premises Square Footage: 22,100 square feet

1.5 Anticipated Delivery Date: January 24, 2006

1.6 Outside Delivery Date: February 20, 2006

1.7 Term: Twenty (20) years

1.8 Options to Extend: Two (2) 5-year options to extend

1.9 Annual Rent:	<u>Years</u>	<u>Annual Rent Per S.F.</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
	1-5	\$13.00/sf	\$287,300.00	\$23,941.67
	6-10	\$14.30/sf	\$316,030.00	\$26,335.83
	11-15	\$15.73/sf	\$347,633.00	\$28,969.42
	16-20	\$17.30/sf	\$382,330.00	\$31,860.83

	<u>Option</u>	<u>Years</u>	<u>Annual Rent Per S.F.</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
		21-25	\$20.00/sf	\$442,000.00	\$36,833.33
		26-30	\$23.00/sf	\$508,300.00	\$42,358.33

1.10 Broker: Pace Properties, Inc. and Novus Management Company

1.11 Tenant Improvement Allowance: None

1.12 Applicable Annual Interest Rate: Ten percent (10%) per annum.

1.13 Initial Operating Expenses: \$1.65 per square foot of leasable floor area in the Center.

1.14 Initial Real Property Taxes: \$2.15 per square foot of leasable floor area in the Center.

1.15 Tenant's Share: Not to exceed forty-six percent (46%)

EXHIBITS:

A	Legal Description of Center
B	Center Site Plan
C	Landlord's Work
D	Plans
E	Term/Rent Commencement Memorandum

F	Tenant Estoppel Certificate
G	Landlord Estoppel Certificate
H	Subordination and Non-Disturbance Agreement
I	Approved Signage
J	Memorandum of Lease
K	Title Commitment
L	Sublease

ARTICLE 2 DEFINITIONS

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

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

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

“Annual Rent” means the annual rental set forth in **Section 1.9**.

“Anticipated Delivery Date” is defined in **Section 1.5**.

“Applicable Annual Interest Rate” is defined in **Section 1.12**.

“Applicable Laws” means the present and future laws, statutes, ordinances and regulations of all governmental authorities having jurisdiction over the Center and/or Premises.

“Authorized Representatives” means a party’s authorized agents, representatives, contractors, subcontractors, suppliers and consultants.

“Broker” means the person(s) or entity(ies) identified in **Section 1.10**.

“Building” means the building in which the Premises are located.

“Casualty” means damage or destruction by fire, explosion, lightning, flood, earthquake, or other peril.

“Center” means that certain real property legally described on **Exhibit A**, and all improvements thereon, located within the boundaries of such property, and shown on the Center Site Plan.

Attachment 3 - Attachment 2B.pdf

Description - 24 Hour Fitness Lease dated January 26, 2006, between Landlord, Brown & Sons Foodliner, Inc. and Kirkwood Missouri Fitness, LP, with attached Sublease dated January 26, 2006, between Kirkwood and 24 Hour Fitness USA, Inc. (2 of 7)

“Center Site Plan” means that site plan attached as **Exhibit B**.

“City” means the city, if any, in which the Premises are located.

“Common Area” means all areas and facilities within the Center, exclusive of the Premises and other portions of the Center leased (or to be leased) exclusively to other tenants. The Common Area includes, but is not limited to, parking areas, access and perimeter roads, sidewalks, landscaped areas, enclosed courts and malls, service areas and similar areas and facilities.

“County” means the county in which the Premises are located.

“Event of Default” is defined in **Section 15.1**.

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

“Hazardous Materials” is defined in **Section 6.1**.

“HVAC” means the heating, ventilating and air conditioning system serving the Premises.

“Initial Operating Expenses” is defined in **Section 1.13**.

“Initial Real Property Taxes” is defined in **Section 1.14**.

“Land Use Approvals” means all governmental approvals (e.g., changes in zoning, special use permits and conditional use permits and any applicable site plan or parking approvals), in form acceptable to Tenant and Subtenant, necessary to operate the Premises for the uses set forth in **Section 5.1** and to operate the Premises 24 hours per day, 7 days per week.

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

“Landlord’s Work” means those items designated on **Exhibit C**.

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

“Monthly Rent” means the monthly rental set forth in **Section 1.9** which Tenant is to pay to Landlord pursuant to **Section 4.1**.

“Mortgagee” means any mortgagee of a mortgage, beneficiary of a deed of trust or lender having a lien on or covering the Center or any part thereof.

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

“Operating Expenses” are defined in **Section 7.3**.

“Outside Delivery Date” is set forth in **Section 1.6**.

“Plans” means the working drawings and specifications for the construction of the Tenant Improvements previously approved by Landlord and described on **Exhibit D**.

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

“Premises” means those premises shown on/described in **Exhibit B**. The Premises are located at the address set forth in **Section 1.2**.

“Premises Square Footage” is set forth in **Section 1.4**.

“Protected Parking Area” is defined in **Section 10.4**.

“Punch List” is defined in **Section 3.8**.

“Real Property Taxes” are defined in **Section 7.4**.

“Rent” means Annual/Monthly Rent and Additional Rent, collectively.

“Rent Commencement Date” is defined in **Section 4.5**.

“Subtenant” means 24 Hour Fitness USA, Inc., or any successor person or entity who uses and occupies the Premises pursuant to a written sublease agreement with Tenant and who satisfies the requirements of **Section 14.1** of this Lease.

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

“Tenant Improvements” means those initial improvements, if any, to be constructed on the Premises as provided in **Section 3.9**.

“Tenant’s Personal Property” means Tenant’s or Subtenant’s removable trade fixtures, furniture, equipment and other personal property located in or on the Premises from time to time.

“Tenant’s Share” means that portion of Operating Expenses or Real Property Taxes determined by multiplying the cost of such item by a fraction, the numerator of which is the Premises Square Footage and the denominator of which is the total square footage of leasable floor area in the Center; provided, however, in no event shall Tenant’s Share exceed that percentage set forth in **Section 1.15**.

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

“Term Commencement Date” is defined in **Section 3.2**.

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

"Title Documents" means a preliminary title report or title commitment, issued by a title company reasonably acceptable to Tenant, dated within ten (10) days prior to the date of this Lease, along with legible copies of all exceptions set forth in such preliminary report.

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

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

ARTICLE 3 PREMISES AND TERM

3.1 Lease of Premises.

(a) **Lease of Premises.** Subject to and upon the terms and conditions set forth in this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, together with all rights and appurtenances thereto. Landlord acknowledges that contemporaneously with the execution of this Lease, Tenant will be entering into a sublease, in the form of **Exhibit L** attached hereto, with Subtenant pursuant to which Subtenant will use and occupy the Premises.

(b) **Remeasurement of Premises.** [Intentionally Deleted]

3.2 Term; Term Commencement. Unless sooner terminated as provided in this Lease, the term of this Lease (the "Term") shall be for that period of years and months set forth in **Section 1.7**, as the same may be extended in accordance with any option or options to extend the Term granted in this Lease, and shall commence one hundred twenty (120) days (extended for any delays caused by labor strikes or other work actions that Tenant or Subtenant did not create) after the later to occur of: (i) the date upon which the City or County with jurisdiction over the Premises approves Tenant's Plans for the Tenant Improvements and issues the necessary permits and licenses for the construction of the Tenant Improvements; or (ii) the date upon which Landlord delivers exclusive possession of the Premises to Tenant in the condition required by this Lease (the "Term Commencement Date"). Once the Term Commencement Date has occurred, Landlord and Tenant shall execute a Term/Rent Commencement Memorandum.

3.3 Options to Extend Term. Tenant shall have two (2) options to extend the Term (the "Options") for additional periods of five (5) years each (the "Extension Terms") on the same terms and conditions as set forth in this Lease.

(a) **Exercise of Option.** Tenant may exercise an Option only by written notice delivered to Landlord not less than one hundred eighty (180) days prior to the expiration of the initial Term of the Lease, or, if Tenant has extended the Term by an Extension Term, not less than one hundred eighty (180) days prior to the expiration of the then existing Term. Subject to the provisions of **Section 3.3(b)** below, if Tenant fails to deliver notice of its exercise of an Option prior to the established deadline, the Option shall lapse, the Term shall expire at the end of the then existing Term, and there shall be no further right by Tenant to extend the Term. If Tenant properly exercises an Option or Options, "Term" as used in this Lease, shall be deemed to include any Extension Term(s).

(b) **Notice of Option.** Notwithstanding the provisions of **Section 3.3(a)** above to the contrary, it is the intention of the parties to avoid a forfeiture of Tenant's Options to extend the Term through inadvertent failure to give notice thereof within the time limits prescribed. Accordingly, if Tenant shall fail to give notice to Landlord of Tenant's election to extend the Term for any of the Extension Terms, Tenant's right to exercise its Option(s) shall nevertheless continue until twenty (20) days after Landlord shall have given Tenant notice (such notice not to be effective unless given after that date which is one hundred eighty (180) days prior to the expiration of the then-existing Term) of Landlord's election to terminate such Option and Tenant may exercise such Option at any time until the expiration of such twenty (20) day period. If Landlord shall give notice to Tenant placing the twenty (20) day limit on such Option and if Tenant shall fail to exercise such Option, then such Option and all subsequent Options to exercise an Extension Term shall be forfeited by Tenant, void and of no further force and effect whatsoever.

3.4 First Right to Negotiate. [Intentionally Deleted]

3.5 Early Entry. Landlord hereby grants to Tenant, Subtenant, and their employees and Authorized Representatives, an irrevocable license, coupled with an interest, to enter upon the Premises, at their sole risk and expense, prior to the Term Commencement Date, for the preparation of the Plans, construction of the Tenant Improvements and the conduct of Presale Activities. Further, Subtenant shall have the right, subject to Applicable Law, to locate a trailer in that portion of the Common Area designated on the Center Site Plan as the "Presale Trailer Area", at no cost to Tenant or Subtenant other than the cost of utilities used by Subtenant, for the purpose of conducting Presale Activities. Tenant shall remove such trailer from the Center within ten (10) days after Tenant opens for business in the Center. Neither early entry by Tenant or Subtenant nor conducting Presale Activities pursuant to this **Section 3.5** shall constitute opening for business for purposes of establishment of the Term Commencement Date.

3.6 Presale Space. Intentionally Deleted.

3.7 Delay in Possession. Landlord covenants to use its best efforts to deliver the Premises to Tenant in the condition required by this Lease by the Anticipated Delivery Date. If, after using its best efforts, Landlord cannot deliver possession of the Premises to Tenant in such condition

on or before the Anticipated Delivery Date, Landlord shall continue to use its best efforts to promptly deliver the Premises to Tenant. Provided, however: (a) if such delivery (in the condition required by this Lease) has not occurred by the Anticipated Delivery Date, then, in addition to all other remedies at law, in equity, or set forth in this Lease, commencing on the Rent Commencement Date, Annual/Monthly Rent shall be abated at the rate of two (2) days for each day beyond the Anticipated Delivery Date that delivery is delayed; (b) if such delivery (in the condition required by this Lease) has not occurred within thirty (30) days after the Anticipated Delivery Date, in addition to all other remedies at law, in equity, or set forth in the Lease, Tenant or Subtenant may, at their option, perform all work necessary to put the Premises in the condition required by this Lease, in which event the cost of performing such work (plus ten percent (10%) for Tenant's/Subtenant's overhead, plus interest at the Applicable Annual Interest Rate from the date costs are incurred by Tenant or Subtenant) shall be immediately paid by Landlord to Tenant, or at Tenant's election shall be deducted from Rent; and (c) if such delivery (in the condition required by this Lease) has not occurred by the Outside Delivery Date, in addition to all other remedies at law, in equity, or set forth in the Lease, Tenant may, at its option, by written notice to Landlord at any time thereafter and prior to delivery of the Premises in the condition required by this Lease, terminate this Lease, in which event the parties shall be discharged from all further obligations accruing hereunder, and Landlord shall promptly reimburse Tenant and Subtenant for the cost of the Plans. Landlord will indemnify, protect, defend and hold harmless Tenant and Subtenant from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or related to the failure to deliver the Premises to Tenant by the Outside Delivery Date. Anything in this Lease to the contrary notwithstanding, the dates set forth in this **Section 3.7** shall not be extended or excused by Unavoidable Delay (as set forth in **Section 19.15**).

3.8 Delivery of Premises. Landlord shall deliver the Premises to Tenant (i) free of asbestos (including required verification by all applicable governmental authorities), lead based paint, mold and all other Hazardous Materials (as defined in Section 6.1 below) and any underground storage tanks, (ii) in compliance with all Applicable Laws, (iii) in broom-clean condition, and (iv) with those items of work listed in Exhibit C completed. Notwithstanding the foregoing, Landlord and Tenant agree (a) that Landlord shall have sixty (60) days after the Execution Date within which to (i) install the required railing and make any necessary repairs to or replacement of the stairs to the loading dock area located outside the rear of the Premises, and (ii) refurbish the sign band above the Premises with EIFS or wood to match the remainder of the Center; (b) that the one hundred twenty (120) day period referenced in **Section 3.2** above will commence as provided in **Section 3.2** above, despite the fact that the work described in clause (a) of this sentence has not been completed when Landlord delivers the Premises to Tenant, but if such work is not completed within sixty (60) days after the Execution Date, the foregoing 120-day period shall be extended by one day for each day after sixty (60) that it takes for Landlord to complete such work and, in addition to Tenant's other rights and remedies, Tenant shall have the right to complete such work at Landlord's expenses as provided in clause (b) of **Section 3.7** above. Except as provided in the two immediately preceding sentences, and subject to Landlord's maintenance and repair obligations set forth in **Section 9.1**, Tenant acknowledges and agrees that it is taking the Premises in "As-Is" condition on the Execution Date.

3.9 Tenant Improvements. Tenant shall be responsible for the design and construction of the Tenant Improvements in accordance with the Plans. Tenant and Landlord acknowledge that the Plans have been previously approved by Landlord. Tenant shall retain (or shall cause Subtenant to retain) a reputable contractor(s), of its choice, to perform the construction of the Tenant Improvements. Such construction shall be performed in substantial compliance with the Plans and all Applicable Laws. Tenant shall have the Tenant Improvements constructed in a professional, workmanlike manner.

3.10 Contingencies.

(a) **Approvals.** [Intentionally Deleted]

(b) **Condition of Title.** Tenant's obligations under this Lease are contingent upon Subtenant's ability to obtain, within twenty (20) days after the Execution Date, a standard ALTA leasehold policy of title insurance (or an irrevocable and binding commitment to issue the same), subject only to those liens, claims or encumbrances identified as Nos. 19, 21, 22 and 24 on Schedule B – Section 1 and Nos 2 (but revised to reference only 2006 taxes), 5, and 6 on Schedule B – Section 2 of the title commitment attached hereto as **Exhibit K**. If Subtenant is unable to obtain such a policy, Tenant may terminate this Lease by written notice to Landlord within thirty (30) days after expiration of such twenty (20) day period. If Tenant elects to terminate this Lease pursuant to this **Section 3.10(b)**, such termination shall be effective upon Landlord's receipt of Tenant's termination notice. In addition to the foregoing, Landlord covenants and agrees to deliver to Commonwealth Land Title Insurance Company such authority documents and such owner's affidavits/ALTA statements reasonably necessary to issue Subtenant's title policy and remove the so-called "standard exceptions" from Subtenant's title policy.

(c) **Non-Disturbance Agreements.** Tenant's obligations under this Lease are contingent upon the execution (with signatures acknowledged) and delivery to Tenant and Subtenant of non-disturbance agreements, consistent with the non-disturbance agreement described in **Article 16**, within fifteen (15) days of the date of this Lease from each then-existing ground lessor and Mortgagee. If Landlord fails to deliver such non-disturbance agreements, Tenant may terminate this Lease by written notice to Landlord within thirty (30) days after expiration of such fifteen (15) day period. If Tenant elects to terminate this Lease pursuant to this **Section 3.10(c)**, such termination shall be effective upon Landlord's receipt of Tenant's termination notice, and Landlord will promptly reimburse Tenant for the reasonable cost of Tenant's Plans.

3.11 Tenant Improvement Allowance. [Intentionally Deleted]

3.12 Landlord's Title to Center. Landlord warrants, represents and covenants to Tenant and Subtenant that Landlord is the holder of good and marketable title in fee simple of the Center and the Premises, and that Landlord has the full right, lawful authority and power to enter into this Lease and to perform Landlord's obligations under this Lease.

ARTICLE 4 RENT AND ADJUSTMENTS

4.1 Monthly Rent. From and after the Rent Commencement Date, Tenant shall pay (or shall cause Subtenant to pay) to Landlord, for each calendar month of the Term, the Annual/Monthly Rent set forth in **Section 1.9**. Monthly Rent shall be due and payable to Landlord in lawful money of the United States, in advance, on the first (1st) day of each calendar month of the Term occurring after the Rent Commencement Date at Landlord's address set forth in **Section 1.1** or at such other place as Landlord may from time to time designate.

4.2 Intentionally Deleted.

4.3 Intentionally Deleted.

4.4 Additional Rent. From and after the Rent Commencement Date, all Additional Rent shall be due and payable to Landlord in lawful money of the United States, at Landlord's address set forth in **Section 1.1** or at such other place as Landlord may from time to time designate, within thirty (30) days of Tenant's receipt of Landlord's invoice or statement for same or, if this Lease provides another time for the payment of certain items of Additional Rent, then at such other time.

4.5 Rent Commencement Date. The "Rent Commencement Date" shall be the same date as the Term Commencement Date.

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

4.7 Late Payment Charges. Tenant acknowledges that late payment by Tenant to Landlord of Rent under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Therefore, if any installment of Monthly Rent or any payment of Additional Rent due from Tenant is not received by Landlord within ten (10) days of Tenant's receipt after the original date due of a written notice of nonpayment, Tenant shall pay to Landlord a one-time additional sum equal to five percent (5%) of the amount overdue as a late charge for each such overdue payment, not to exceed One Thousand Dollars (\$1,000). Notwithstanding the foregoing, Landlord shall not be required to give Tenant more than one (1) notice of late payment in any calendar year before the late charge will apply (i.e. after the first notice of late payment given by Landlord to Tenant in any calendar year, any subsequent late payment(s) by Tenant in that calendar year shall be subject to the late charge, without Landlord having to give Tenant notice and opportunity to cure). The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant.

ARTICLE 5 USE

5.1 Tenant's Use. Tenant or Subtenant may operate on the Premises a health/physical fitness club or any other lawful use, which may include, without limitation, the following: aerobic classes, personal training, weight training, basketball, volleyball, racquetball, swimming, cardiovascular and resistance machines, yoga, pilates, indoor cycling and spa services. Tenant or Subtenant shall also be permitted to operate related activities, including without limitation the following: weight loss advising and related programs, chiropractic services, tanning, therapeutic massage, sports and rehabilitation therapy, babysitting, the sale of juice, sports beverages, yogurt, vitamins, supplements, nutrition bars, sports and workout apparel and spa-related products, and limited food service. Tenant or Subtenant may operate on the Premises 24 hours a day, 7 days a week. Tenant or Subtenant shall procure, maintain and make available for Landlord's inspection throughout the Term, all governmental approvals, licenses and permits required for the proper and lawful conduct of the permitted use of the Premises. Subject to the provisions of **Section 5.8** below and any exclusive uses then in effect in the Center, Tenant or Subtenant shall have the right to change or modify its use of the Premises to any lawful use. Tenant or Subtenant shall have the right to change the trade name under which the Premises (and/or one or more portions thereof) are operated.

5.2 Compliance With Applicable Laws. Throughout the Term, Tenant, at Tenant's expense, shall comply with Applicable Laws in its use and operation of the Premises, provided, however, that Tenant shall not (and Landlord shall) be required to make any structural or capital modifications, alterations or repairs to the Premises necessary to comply with Applicable Laws, unless such modifications, alterations or repairs are necessitated by Tenant's specific use of the Premises as a health club or on account of the physical requirements of the Tenant Improvements or of Tenant's subsequent alterations to the Premises (as opposed to being required or triggered because of the cost, extent, value or scope of such work). If Tenant is required to make any structural or capital modifications, alterations or repairs to the Premises pursuant to this **Section 5.2** during the last two (2) years of the Term, Tenant may terminate this Lease by giving written notice to Landlord. If Tenant elects to terminate this Lease pursuant to this **Section 5.2**, Tenant shall not be required to make such modifications, alterations or repairs and such termination shall become effective on the date set forth in the termination notice. Landlord represents and warrants to Tenant and Subtenant that the specified uses set forth in **Section 5.1** are, as of the date of execution of this Lease, allowable uses for the Premises, without restriction, 24 hours per day, seven days per week, under Applicable Laws, under all Title Documents and under any other covenants or restrictions affecting the Premises or the Center. Landlord further represents and warrants to Tenant and Subtenant that, as of the date of execution of this Lease, all conditions to the Special Use Permit (Ordinance 9541) with respect to Subtenant's use of the Premises have been satisfied.

5.3 Landlord's Right of Entry. Landlord shall have the right upon notice to Tenant and Subtenant as required in this **Section 5.3**, to enter the Premises at reasonable times to inspect the Premises, or to perform required maintenance, replacement and repairs. Landlord shall provide not less than forty-eight (48) hours notice if Landlord's entry is for the purpose of inspection and not less than one (1) week's notice if Landlord's entry is for purposes of maintenance or repair; no notice shall be required in the event of an emergency. Notice to Tenant and Subtenant

pursuant to this **Section 5.3** shall be provided to the Premises and at the addresses set forth in **Section 1.3**. The above rights are subject to Tenant's and Subtenant's reasonable security regulations, and in exercising its rights set forth herein, Landlord shall endeavor to cause the least possible interference with Tenant's or Subtenant's business activities. Landlord shall retain a key which unlocks all of the exterior doors to the Premises. Landlord shall have the right to use reasonable means to open the doors in an emergency to obtain entry to the Premises and any such reasonable entry to the Premises so obtained by Landlord shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant or Subtenant from the Premises. During any period where there is interference with Tenant's or Subtenant's use of the Premises due to Landlord's entry onto the Premises, Monthly Rent and Additional Rent shall be equitably abated in proportion to the degree of such interference.

5.4 Tenant's Business Operations. Subject to the provisions of **Section 5.5**, Tenant or Subtenant may extend its business days and hours beyond those business days and hours established by Landlord for the Center without Landlord's consent, and operate up to twenty-four (24) hours per day, seven (7) days per week. Landlord represents and warrants to Tenant and Subtenant that the consent of no other owner, tenant or occupant of the Center is required for Tenant or Subtenant to operate at the Premises for their intended uses as contemplated by this Lease.

5.5 Continuous Operation. Tenant or Subtenant shall have the right any time during the Term to cease operations at the Premises provided Tenant shall continue to pay Monthly Rent and Additional Rent due under this Lease and to perform all other terms and conditions of this Lease. If at any time while this Lease is in effect Tenant ceases operating its business in the Premises for a period of one hundred eighty (180) consecutive days or more (excluding the period consisting of Tenant's initial building and build-out, any period following a Casualty, or any other period when Tenant is precluded from operating due to factors outside of Tenant's control), Landlord may, after the expiration of such one hundred eighty (180) day period, at its option, terminate this Lease by giving written notice of such termination to Tenant if the failure to operate continues for thirty (30) days following notice. The termination of this Lease in accordance with this **Section 5.5** shall be Landlord's sole remedy in the event Tenant ceases to operate for the time periods set forth in this **Section 5.5**.

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

5.7 Exclusivity. Landlord shall not use nor permit any other space in the Center to be used as a health and/or physical fitness club, nor for any of the following activities: aerobic classes, personal training, weight training, basketball, volleyball, swimming, racquetball, cardiovascular and resistance machine operation, operation of a juice bar, the sale of nutritional supplements and related products (except by a nationally recognized chain retailer specializing in something other than the sale of nutritional and/or energy supplements/products [e.g., groceries]), yoga, indoor cycling, pilates, weight loss advising and related programs, tanning, and/or therapeutic massage. Notwithstanding the foregoing, however, the provisions of this **Section 5.7** shall not apply to and shall be subject to the rights of Weight Watchers North America, Inc. (d/b/a Weight Watchers) for the term of its existing lease (including option terms) in the Center, to the extent

that the provisions of its existing lease permits use of its premises in violation of the foregoing exclusive use rights of Tenant/Subtenant. Landlord hereby warrants that: (i) except for the Weight Watchers North America, Inc. (d/b/a Weight Watchers) lease, no existing lease for space in the Center allows a use which would conflict with the exclusive use rights set forth in this **Section 5.7**; (ii) all future leases and extensions of existing or future leases will specifically prohibit such uses; and (iii) Landlord will take all actions necessary to stop any use prohibited by this **Section 5.7**. For purposes of this **Section 5.7** only, the term "Center" shall include any expansions to the Center and with respect to space used primarily as a health and/or physical fitness club, other property(ies) whose controlling interest is owned or operated by Landlord (or any person directly or indirectly having an ownership interest in Landlord, or any entity owning, owned by, or under common ownership with Landlord) which is/are located within a radius of one (1) mile from the Premises. In the event that any business in the Center is opened in violation of this **Section 5.7** and said violation continues for a period of sixty (60) days after written notice of such violation from Tenant or Subtenant to Landlord, during any time such business is operating (after the expiration of the foregoing 60-day period), Tenant shall pay as Monthly Rent an amount equal to fifty percent (50%) of the amount of Monthly Rent otherwise payable under the Lease.

5.8 Prohibited Uses. Landlord shall not use, or permit any portion of the Center, to be used, and Tenant shall not use, or permit any portion of the Premises, to be used, as a billiard room, game arcade or amusement center (provided that a restaurant or other establishment may have no more than two game machines located on its premises if incidental to its primary use), gambling establishment, night club, dance hall (but not including a dance studio), bar or tavern (except if incidental to the operation of a restaurant or delicatessen), pawn shop, second hand store, "adult" book or video store, massage parlor, "training or education facility," beauty school or barber college, reading room, place of instruction (other than a dance studio or uses related to Tenant's operation of a fitness center) or any other operation catering primarily to students or trainees rather than to customers, or for auctions or for the sale or display of motor vehicles, boats, trailers, or motor homes. Notwithstanding the foregoing, with respect to a beauty school, Tenant agrees that if Landlord comes to Tenant with a plan to locate a beauty school of a size and location within the Center that will not materially adversely affect Tenant's parking within in the Center, Tenant agrees that it will not unreasonably withhold its consent to a waiver of the foregoing restriction against a beauty school.

ARTICLE 6

HAZARDOUS MATERIALS AND ASBESTOS

6.1 Definition of Hazardous Materials. For purposes of this Lease, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state in which the Premises are located or the United States. Hazardous Materials include, without limitation, the following: (i) any pollutant, oil or hazardous substance, identified or listed pursuant to Sections 307, 311 or 502 of the Federal Water Pollution Control Act (33 U.S.C. §1317, §1321 and §1362); (ii) any element, compound, mixture, solution or substance designated pursuant to Section 102 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 U.S.C. §9602); (iii) any substance or material having the characteristics identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C.

§6921) or equivalent law or regulation in the state in which the Premises are located; (iv) any petroleum, crude oil, or any fraction of either which is not otherwise specifically listed or designated under items (i)-(iii); (v) any hazardous waste, extremely hazardous waste, hazardous substance or hazardous material, as defined or listed under Applicable Laws; and (vi) any waste, material or building contaminant, including asbestos, lead, and mold, which is listed or meets any identification or toxicity criterion under Applicable Laws.

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

6.3 Landlord's Warranty. Landlord warrants and represents to Tenant and Subtenant that to the best of Landlord's knowledge and except as set forth in that certain Phase I & Phase II Environmental and Asbestos Assessment, Greentree Center Property, Kirkwood, Missouri dated June 30, 1998, and that certain Asbestos Survey prepared by SCI Engineering, Inc. and dated January 6, 2006 (collectively, the "Environmental Reports") (a) as of the date of Landlord's delivery of the Premises to Tenant, the Center and the Premises are free of asbestos, lead-based paint, mold, and all other Hazardous Materials and any underground storage tanks, and (b) prior to the date of this Lease, Landlord has delivered to Tenant complete and accurate copies of all environmental reports, findings, studies, assessments, and other documents related to the environmental condition of the Center and the Premises in Landlord's possession or of which Landlord has knowledge.

6.4 Indemnifications. Tenant hereby agrees to indemnify, protect, defend and hold harmless Landlord from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or related to the use, generation, storage, treatment, disposal or transportation of Hazardous Materials brought onto the Premises or Center by Tenant, Subtenant, or their respective agents, employees, or contractors. Landlord hereby agrees to indemnify, protect, defend and hold harmless Tenant and Subtenant from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or related to: (i) the breach by Landlord of the warranty and representation set forth in **Section 6.3** above; (ii) the presence, use, generation, storage, treatment, disposal, transportation, or migration of Hazardous Materials in, onto or about the Premises or Center, whether or not disclosed in the Environmental Reports; or (iii) the presence of any underground storage tanks under or about the Premises or Center, except to the extent such Hazardous Materials are brought onto the Premises or Center by Tenant, Subtenant, or their respective agents, employees, or contractors. Landlord further agrees that if the removal or abatement of any Hazardous Materials is required by Applicable Law (or where asbestos, lead-based paint or mold is present, if requested by Tenant or Subtenant to be removed), then, except if such Hazardous Materials was brought onto the Premises or Center by Tenant, Subtenant, or their employees or contractors, Landlord shall at its sole cost and expense remove all such Hazardous Materials

from the Premises and Center. Such removal shall be performed so as to minimize any interference with Tenant's or Subtenant's operations at, and the access to and visibility of, the Premises. Monthly Rent shall be abated during any such removal to the extent that despite Landlord's best efforts, the removal materially interferes with Tenant's or Subtenant's operations, access or visibility. Landlord shall coordinate with Tenant and Subtenant the scheduling of such removal work.

ARTICLE 7

OPERATING EXPENSES; TAXES; UTILITIES

7.1 Tenant's Share of Operating Expenses. From and after the Rent Commencement Date, Tenant shall pay to Landlord Tenant's Share of Operating Expenses to the extent such Operating Expenses accrue during the Term of this Lease. Prior to the Rent Commencement Date and thereafter prior to the commencement of each calendar year during the Term, Landlord shall give Tenant a written estimate of Tenant's Share of Operating Expenses for the ensuing calendar year or partial calendar year, as the case may be. Tenant shall pay, as an item of Additional Rent, such estimated amount in equal monthly installments, in advance, on or before the first (1st) day of each month concurrent with its payment of Monthly Rent. If Landlord has not furnished its written estimate by the time set forth above, Tenant shall pay monthly installments of Operating Expenses at the rates established for the prior calendar year, if any; provided, however, that when the new estimate is delivered to Tenant, Tenant shall at the next monthly payment date pay Landlord any accrued deficiency based on the new estimate, or Landlord shall credit any accrued overpayment based on such estimate toward Tenant's next installment payment(s) of Operating Expenses. Within ninety (90) days after the end of each calendar year, Landlord shall furnish Tenant a statement (the "Annual Statement") showing in detail Tenant's Share of the actual Operating Expenses incurred for the period in question. If Tenant's payments for that calendar year are less than Tenant's Share of the actual Operating Expenses as shown by the applicable Annual Statement, Tenant shall pay the difference to Landlord within thirty (30) days thereafter. If Tenant shall have overpaid Landlord, Landlord shall credit such overpayment toward Tenant's future installment payments of Operating Expenses. If Landlord fails to deliver any Annual Statement to Tenant within the foregoing 90-day period, and such failure continues for ten (10) days after notice of such failure from Tenant and opportunity to cure, Landlord agrees that, in addition to all remedies available to Tenant at law or in equity, Tenant shall be entitled to cease paying Tenant's Share of Operating Expenses until such time as Landlord delivers all delinquent Annual Statements. When the final determination is made of Tenant's Share of the actual Operating Expenses for the calendar year in which this Lease expires or terminates, Tenant shall, even if this Lease has expired or terminated, pay to Landlord upon notice the excess of Tenant's Share of such actual Operating Expenses over the estimate of Tenant's Share of such Operating Expenses paid. Conversely, any overpayment shall be rebated by Landlord to Tenant. Landlord shall keep or cause to be kept separate and complete books of accounting covering all Operating Expenses and showing the method of calculating Tenant's Share of Operating Expenses and shall preserve for at least three (3) years after the close of each calendar year all material documents evidencing such Operating Expenses for that calendar year. Tenant, at its sole cost and expense, shall have the right, during reasonable business hours and not more frequently than once during any calendar year, either itself, by Subtenant or through their accountants or other Authorized Representatives, to examine and/or audit the books and documents mentioned above evidencing such costs and expenses for previous calendar years. If such audit should disclose

Attachment 4 - Attachment 2C.pdf

Description - 24 Hour Fitness Lease dated January 26, 2006, between Landlord, Brown & Sons Foodliner, Inc. and Kirkwood Missouri Fitness, LP, with attached Sublease dated January 26, 2006, between Kirkwood and 24 Hour Fitness USA, Inc. (3 of 7)

that Tenant has been overcharged by Landlord for Tenant's Share of Operating Expenses for any year, Tenant shall be credited for such overpayment or if the Lease has expired, Landlord shall promptly refund such amount to Tenant. If the amount of any such overcharge exceeds three and one-half percent (3.5%) of Tenant's Share of Operating Expenses for that year, Landlord shall promptly reimburse Tenant for the reasonable costs of such audit. Notwithstanding anything in this **Section 7.1** to the contrary, in no event shall Operating Expenses for the calendar year containing the Term Commencement Date exceed the Initial Operating Expenses set forth in **Section 1.13** (as prorated for a partial calendar year).

7.2 Tenant's Share of Real Property Taxes. From and after the Rent Commencement Date and during the Term, Tenant shall pay to Landlord Tenant's Share of Real Property Taxes to the extent such Real Property Taxes accrue during the Term of this Lease. Periodically, Landlord shall submit to Tenant an invoice showing Real Property Taxes that are owing, and Tenant's Share thereof; Tenant shall pay to Landlord Tenant's Share of the Real Property Taxes shown on such invoice within thirty (30) days after receipt of the invoice (including a copy of the applicable tax bill) from Landlord, but in no event sooner than fifteen (15) days before such payment is delinquent. Landlord shall keep or cause to be kept separate and complete books of accounting covering the Real Property Taxes and showing the method of calculating Tenant's Share of Real Property Taxes and shall preserve for at least three (3) years after the close of each fiscal tax year all material documents evidencing said Real Property Taxes for that fiscal tax year. Tenant, at its sole cost and expense, shall have the right, during reasonable business hours and not more frequently than once during any calendar year, either itself, by Subtenant or through their accountants or other Authorized Representatives, to examine and/or audit the books and documents mentioned above evidencing such Real Property Taxes for previous calendar years. If such audit should disclose that Tenant has been overcharged for Tenant's Share of Real Property Taxes, Tenant shall be credited for such overpayment, or if this Lease has expired, Landlord shall refund such amount to Tenant. If the amount of any such overcharge exceeds two percent (2%) of Tenant's Share of Real Property Taxes for a particular fiscal tax year, Landlord shall promptly reimburse Tenant for the reasonable costs of such audit. Notwithstanding anything in this **Section 7.2** to the contrary, in no event shall actual Real Property Taxes for the fiscal tax year containing the Term Commencement Date exceed the Initial Real Property Taxes set forth in **Section 1.14** (as prorated for a partial calendar year). Upon request by Tenant, Landlord shall provide Tenant with all tax parcel identification numbers (or similar identifying information) of all tax parcels comprising the Center.

7.3 Definition of Operating Expenses. The term "Operating Expenses" shall mean those costs and expenses reasonably necessary for Landlord to operate, maintain, repair, manage, clean, protect, insure, landscape and illuminate the Center. Landlord shall use reasonable efforts to obtain competitive prices for goods and services included in Operating Expenses. In no event shall any of the following items be included in Landlord's determination of Operating Expenses: (i) any item of a capital nature (except for (a) cost-saving capital expenditures to the extent that costs are actually saved and (b) or capital improvements to the Premises or Center incurred in order to comply with any future change(s) in Applicable Law), parking lot resurfacing, and HVAC and roof replacement, provided, with regard to any such allowable capital expenditures, such expenditures shall be amortized over the useful life of the improvement and Landlord may only include the appropriate annual amortized amount as an Operating Expense for a particular year; (ii) costs associated with other tenants in the Center, Landlord's cost for marketing space in

the Center (including broker's commissions and finder's fees) and Landlord's costs (including, without limitation, attorneys' fees) associated with the negotiation of any lease for space in the Center; (iii) costs of Landlord's employees, except to the extent that such employees perform work directly related to Landlord's operation of the Center; (iv) any item charged to Tenant elsewhere in this Lease or any item charged directly to other tenants of the Center; (v) land acquisition costs or payments under any ground or master lease; (vi) hard and soft costs related to any expansion or upgrade of existing structures or the construction of additional structures or improvements; (vii) any cost related to existing or future food courts; (viii) charges for any item for which Landlord has established a reserve until such reserve has been depleted; (ix) any cost disallowed anywhere else in this Lease; (x) any expense or cost not directly attributable to the operation, management, maintenance and repair of the Center; (xi) costs or expenses that are not considered operating expenses under generally accepted accounting principles; (xii) services not used by Tenant; (xiii) depreciation or amortization of all or any part of the improvements on the Center (except as expressly permitted in item (i) of this **Section 7.3**); (xiv) any cost or expense covered by any policy of insurance, or any cost or expense that would have been covered by insurance had Landlord carried the insurance required hereunder; (xv) any insurance premiums for flood, earthquake or terrorism coverage or coverage which is in excess of the prudent industry practice for shopping centers located in the region of the Center; (xvi) insurance deductibles in excess of commercially-reasonable amounts; (xvii) costs to remediate any design or construction defects in the improvements on the Center; (xviii) costs, fines or penalties imposed on Landlord related to any violation of any Applicable Laws; (xix) costs of tests, surveys, removal, clean-up, abatement or remediation of asbestos or Hazardous Materials in, on or about the Center; (xx) costs of tests, surveys, removal or remediation related to any underground storage tanks; (xxi) costs incurred to operate, repair and maintain any paid parking areas in the Center, except to the extent that such costs exceed the gross revenue generated from operating such parking areas; (xxii) management fees to the extent they exceed seven percent (7%) of the total Operating Expenses (minus insurance premiums); (xxiii) Operating Expenses (excluding insurance premiums, utility usage fees and the cost of snow removal) for any calendar year during the Term to the extent they exceed Operating Expenses (excluding insurance premiums, utility usage fees and the cost of snow removal) for the immediately prior calendar year by more than five percent (5%); and (xxiv) promotional/advertising fees.

7.4 Definition of Real Property Taxes. The term "Real Property Taxes" means any real property tax or assessment now or hereafter imposed with respect to the Center or any part thereof by an authority having the direct or indirect power to tax, or by any city, county, state or federal government or any improvement district or other district or division thereof. With regard to assessments which Landlord has the option of either retiring by payment of a lump sum or alternatively paying over a period of years, Landlord shall be deemed to have elected to pay such assessment over a period of years, and only the then current year's payment shall be included as an item of Real Property Taxes. The foregoing notwithstanding, in no event shall any gross or net income taxes, gross receipts taxes, franchise taxes, inheritance taxes, estate, successor or gift taxes, rental taxes, transfer taxes, business, business license or business location taxes or fees, late payment fine, penalty, interest, or any supplemental taxes and assessments which accrued or were incurred prior to the Term be included as a component of Real Property Taxes.

Furthermore, Real Property Taxes shall not include costs incurred by Landlord to negotiate or contest taxes or assessments, except to the extent that Real Property Taxes are actually reduced as a result of such efforts.

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

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

7.7 Utilities and Services. Landlord agrees to furnish to the Premises electricity, water, gas, telephone, and sewer service on a 24-hour per day basis. Landlord shall install separate meters for the utilities provided to the Premises, at Landlord's sole expense, and Tenant shall pay all charges of the separately metered utilities during the Term. In the event that any utilities are submetered by Landlord, the rates charged to Tenant shall not exceed those which would be charged by the local public utility company if such service were furnished directly to Tenant. If there is any disruption of utility service to the Premises, Landlord shall endeavor to restore such utility service as promptly as possible. If such disruption of service continues for more than twenty-four (24) hours, Tenant's Monthly Rent and Additional Rent shall be abated during such continued period of disruption in proportion to the interference with Tenant's/Subtenant's use of the Premises due to such disruption; provided, however, that Tenant shall not be entitled to abatement of Monthly Rent and Additional Rent pursuant to this **Section 7.7** if such disruption of utility service is a result of Tenant's/Subtenant's negligence or willful misconduct.

ARTICLE 8 ALTERATIONS

8.1 Tenant Alterations. Tenant or Subtenant shall have the right at all times to make, at its own expense, such Alterations to the Premises as Tenant or Subtenant may desire; provided, however, such work will not impair the structural integrity or soundness of the Premises and if any of the proposed work would change the exterior appearance of the Premises, then before undertaking such work, Tenant or Subtenant shall obtain Landlord's written consent to such work, which consent Landlord agrees shall not be unreasonably withheld, conditioned or delayed. All such work shall be done in compliance with all Applicable Laws, and prior to the commencement of any such work on the Premises, Tenant or Subtenant shall obtain, at its sole cost and expense, all necessary permits and licenses for such work. Landlord hereby constitutes and appoints Tenant as Landlord's true and lawful attorney-in-fact in Landlord's name to apply for and secure from any governmental authority having jurisdiction over the Premises, such permits and licenses as may be necessary in connection with any work which Tenant or Subtenant is authorized to perform under the provisions of this **Section 8.1** and Landlord agrees upon request by Tenant or Subtenant to execute or join in the execution of any application for such permits and licenses. Tenant or Subtenant shall also have the right at all times to install, at its own cost, and without Landlord's consent, partitions, draperies, shelves, cabinet work, floor

and wall coverings, trade fixtures and equipment (including the relocation of such trade fixtures and equipment), and one or more separate exterior doors to provide ingress to and egress from portions of the Premises used for incidental uses. Before commencing work on any Alteration to be performed by third parties, Tenant or Subtenant shall give Landlord at least five (5) days' written notice of the proposed commencement of such work. Tenant, at Tenant's cost, shall repair any damage to the Premises or Center caused by Tenant, Subtenant or their contractors during performance of Alterations in or on the Premises. Any provision of this Lease to the contrary notwithstanding, Tenant and Subtenant shall have the right to remove their trade fixtures, furnishings, equipment, signage and inventory from the Premises.

8.2 Communication Devices; Pay Phones. Tenant and Subtenant shall have the right to install satellite dishes and/or other antennae, and/or other facilities for telecommunications ("Communications Equipment") on, and affix Communications Equipment to, the roof of the Building, provided such Communications Equipment shall be installed and used solely to support Tenant's and/or Subtenant's use and operations of the Premises (i.e. Tenant and Subtenant may not license use of the roof to third parties not using or occupying the Premises). In the event Tenant or Subtenant installs Communications Equipment, Tenant or Subtenant shall do so at its sole cost and expense, and Tenant and Subtenant shall obtain, at their sole cost and expense, any and all permits, authorizations and certificates, including, without limitation, zoning variances or changes, as may be required with respect to such Communications Equipment from all governmental agencies (provided that Landlord agrees to reasonably cooperate with Tenant and Subtenant to obtain same if required by applicable governmental agencies). Tenant's and Subtenant's rights to install Communications Equipment is subject to the following: (i) the installation shall be performed by a licensed contractor who is experienced in the installation of such equipment; (ii) Tenant shall be responsible for all costs of repairs and improvements, including, without limitation, any patching or strengthening of the roof of the building, which may be necessary on account of, or be necessary for, the installation of the Communications Equipment, and (iii) the consent of Landlord as to the location and screening of such Communications Equipment, such consent not to be unreasonably withheld, conditioned or delayed. Tenant shall have the exclusive right to install pay phones and communication devices on or at the Premises. Landlord shall not have the right to install Communications Equipment, signage or other devices on the roof or exterior walls of the Premises, except to the extent required by municipal authorities.

8.3 Courier Box. Notwithstanding Section 8.1, Tenant and Subtenant shall have the right to install, in a professional manner, a courier box on the Premises or on the exterior of the Building (in an area reasonably approved by Landlord) for purposes of transferring parcels and documents to, and receiving same from, one or more courier services during the period from the Execution Date to the Rent Commencement Date. Upon removal of this courier box, Tenant shall promptly repair all damage caused by this removal.

8.4 Mechanics' Liens. Tenant agrees that any mechanic's lien filed against the Premises or any portion of the Center for work done for, or materials furnished to, Tenant or Subtenant will be discharged by Tenant or Subtenant, by bond or otherwise, within sixty (60) days after Tenant is notified thereof. Landlord shall have the right at all appropriate times to post and keep posted on the Premises notices of nonresponsibility for protection from such liens. If any such liens are filed and Tenant fails to have such liens released within the required timeframe, Landlord may

cause such liens to be released by any reasonable means it shall deem proper, including payment in satisfaction of the claim giving rise to such liens. Tenant shall pay to Landlord promptly, upon notice by Landlord, any reasonable sum paid by Landlord to remove such liens, together with Landlord's cost and expenses (including reasonable attorneys' fees) incurred in removing the same.

ARTICLE 9 MAINTENANCE AND REPAIR

9.1 Landlord's Maintenance and Repair Obligations. Landlord shall, subject to Tenant's obligations pursuant to **Section 9.2** and subject to the provisions of **Article 12** and **Article 13**, maintain in good condition, repair and replace (when necessary) the roof (including all components and systems thereof and the roof membrane), walls, all structural members and components, floor slabs, subfloors and foundations of the Premises, exterior painting of the Premises and Center as and when such painting becomes necessary, and repair, maintain and replace (when necessary) the fire sprinkler systems which service the Premises (up to the point of entry into the Premises). In addition, Landlord shall repair, maintain and replace (when necessary) all gas, electric, water, telephone and sanitary or storm sewer systems required to provide the Premises with utilities (up to the point of entry into the Premises). Costs and expenses incurred by Landlord in effecting its maintenance, repair and replacement obligations under this **Section 9.1** may be included in Operating Expenses to the extent permitted by the provisions of **Article 7** above, but in no event may any capital expense be included. Landlord represents that the roof will be watertight when the Premises are delivered to Tenant.

9.2 Tenant's Maintenance and Repair Obligations. Except for those items to be maintained, repaired or replaced by Landlord pursuant to the terms of this Lease, including **Section 9.1** above, Tenant shall, during the Term, clean, maintain and repair or shall cause to be cleaned, maintained and repaired the interior of the Premises, including floor and wall coverings and all gas, electric, water, telephone, sanitary and storm sewer systems and fire sprinkler systems located within and exclusively serving the Premises. Tenant shall also clean, maintain, repair and, if necessary, replace all exterior windows, unless damaged due to the negligence or intentional acts of Landlord, its employees, agents or contractors. In no event shall Tenant or Subtenant be required to make repairs or improvements of a structural nature.

9.3 Citations. Landlord agrees that if any authority cites the Center, Common Area or any part of either as being unsafe, or not in conformity with Applicable Laws, Landlord, at its own cost and expense, will promptly make such changes, alterations or repairs (structural or nonstructural) as may be necessary to comply with such Applicable Laws, or with the requirements of the applicable authority; provided, however, that nothing herein shall impair or defeat Landlord's right to contest or to defend against such citation so long as Tenant's or Subtenant's operations and use of the Premises are not impaired thereby. If, during the time such unsafe, nonconforming or noncomplying condition exists or changes, alterations or repairs are being performed to the Center, Common Area or the Premises, the Premises are rendered, in Tenant's reasonable business judgment, unsuitable for occupancy and use by Tenant or Subtenant, Monthly Rent and Additional Rent shall abate. If only a portion of the Premises is rendered unsuitable for such occupancy and use because of such unsafe, nonconforming or noncomplying condition, then the Monthly Rent and Additional Rent shall abate proportionately

to Tenant's or Subtenant's loss of use of the Premises. In the event the Premises or any part thereof are cited as being unsafe or not in conformity with the applicable laws and regulations due to the defective condition or use of supplies, materials, and/or equipment owned or used by Tenant or Subtenant, or due to a defective condition of any part of the Premises Tenant is required to maintain pursuant to this Lease, then, notwithstanding the foregoing, Tenant, at its own cost and expense agrees to make such changes, alterations and repairs in the Premises and equipment or the use of the same as may be necessary to comply with such laws and regulations, or with the requirements of the applicable authority; provided, however, that nothing herein shall impair or defeat Tenant's right to contest or defend against such citation.

9.4 Self-Help. If Landlord refuses or fails to repair, replace and maintain the Premises or Common Area as required by this Lease within thirty (30) days from the date on which Tenant or Subtenant makes a written demand on Landlord to effect such repair, replacement or maintenance, or at any time in the event of an emergency, Tenant or Subtenant may make such repairs or perform such maintenance or replacement. All sums reasonably disbursed, deposited or incurred by Tenant or Subtenant in connection with such repairs or maintenance or replacement, plus ten percent (10%) for overhead plus interest at the Applicable Annual Interest Rate, shall be paid by Landlord to Tenant within fifteen (15) days of demand, or alternatively, Tenant at its election may offset such amounts against Rent.

ARTICLE 10 COMMON AREA AND PARKING

10.1 Grant of Nonexclusive Common Area License and Right. Landlord hereby grants to Tenant, Subtenant, their patrons, members, customers, employees, Authorized Representatives, successors, subtenants, concessionaires and assigns, a nonexclusive right to use the Common Area within the Center for vehicular parking, and for pedestrian and vehicular ingress, egress and travel, all on a 24-hour per day, 7-day per week basis.

10.2 Control of Common Area. All Common Area and all improvements located from time to time within the Common Area are for the general use, in common, of Landlord, and Landlord's tenants and subtenants and all persons, firms and corporations conducting business in the Center and their respective patrons, members, customers, guests, licensees, invitees, employees and agents. Landlord shall have the right to: (i) construct, maintain, replace and operate lighting facilities within the Common Area; (ii) police the Common Area from time to time; (iii) close temporarily all or any portion of the Common Area and/or the improvements thereon to the extent necessary for maintenance, repairs or alterations; (iv) discourage unauthorized parking; and (v) do and perform such other acts in and to said Common Area and improvements thereon as, in the use of good business judgment, Landlord shall determine to be advisable. Landlord reserves the right to change the boundary lines of the Center and install, use, maintain, repair, alter or relocate, expand and replace any Common Area. Landlord shall be responsible for ensuring that the Common Area complies with Applicable Laws. Landlord shall not change the name or address of the Center to include the name of any other tenant in the Center nor the name of one of Tenant's or Subtenant's competitors. Parking within the Common Area shall be limited to striped parking stalls, and no parking shall be permitted in any driveways, accessways or in any which would prohibit or impede the free flow of traffic with the Common Area. In the event Landlord ever determines to charge for parking in the Center, or

portion of the Center, Landlord shall institute a validation procedure which allows free parking for Tenant's and Subtenant's patrons and employees. Landlord shall use reasonable efforts to enforce the parking regulations.

The foregoing notwithstanding, the following shall pertain with regard to the Common Area, Landlord's management and administration of same, Landlord's and Tenant's rights in connection therewith, and alterations/improvements thereto: (i) Landlord shall provide Tenant and Subtenant with not less than seven (7) days' notice of any work to occur in the Common Area that, in Landlord's reasonable judgment, may materially interfere with Tenant's or Subtenant's operations; (ii) Landlord shall use its best efforts to ensure that, in connection with any work in or alterations to the Common Area, interference with Tenant's or Subtenant's operations is minimized; (iii) in no event shall access to or visibility of the Premises be materially impaired or affected; (iv) in no event shall the number of parking spaces available in the Center be decreased below the number available on the Execution Date, except for temporary reductions due to necessary maintenance or repair of the Common Area or Center; (v) the ratio of the number of parking spaces in the Center to the leasable square footage in the Center shall not be less than the ratio as of the Execution Date; (vi) Landlord shall not discriminate against Tenant or Subtenant (or their employees, patrons or members) in Landlord's management of parking for the Center, and shall not promulgate or enforce any rules, regulations, or restrictions which would have the effect of discriminating against Tenant or Subtenant (or their employees, patrons or members); and (vii) in no event shall Landlord install, or allow the installation of, a public telephone and/or vending machines within fifty (50) feet of the Premises.

10.3 Maintenance of Common Area. Landlord shall operate and maintain the Common Area in a first class condition consistent with industry practice in the region where the Center is located. The cost of such maintenance of the Common Area may be included as part of the Operating Expenses, except to the extent items are disallowed pursuant to the terms of **Section 7.3**. Landlord shall keep the Common Area (including all parking areas used by Tenant's or Subtenant's patrons and employees) adequately illuminated for the period from thirty (30) minutes prior to Tenant's or Subtenant's opening until thirty (30) minutes after Tenant's or Subtenant's closing, or during all night time hours if Tenant or Subtenant is open for business twenty-four (24) hours per day, seven (7) days per week.

10.4 Protected Parking Area. Any other provision of this Lease notwithstanding, Landlord warrants and represents that the area designated on the Center Site Plan as the "Protected Parking Area" shall not be modified or reconfigured, that no structures shall be erected thereon, and that the Protected Parking Area shall not be used for promotional activities (such as carnivals, car shows, etc.), farmers' markets, flea markets, or other similar activities that would prevent or impede the use of vehicle parking spaces by Tenant, Subtenant, their agents, employees, customers or invitees. Notwithstanding the foregoing, Tenant agrees that Landlord may, at some time in the future, construct a bank building (for banking uses only) in the northeast corner of the Protected Parking Area, provided all of the following conditions are met: (i) after the construction of such bank building, the Protected Parking Area will contain a minimum one hundred eighty five (185) parking spaces (with a minimum stall size of 9 feet by 19 feet) and drives aisles of not less than twenty-two feet in width, and (ii) the number of parking spaces that are removed from the Protected Parking Area in connection with the construction of the bank building are replaced with at least that number of parking spaces in a new parking field to be

constructed directly behind the Center. The Protected Parking Area shall be available for non-exclusive use by Tenant's or Subtenant's employees, members and patrons throughout the Term. In the event that Landlord violates any provision of this **Section 10.4** related to the Protected Parking Area, Monthly Rent shall be abated during the time of such violation.

ARTICLE 11 INDEMNITY AND INSURANCE

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

11.2 Property Insurance. Landlord shall obtain and keep in force during the Term a policy or policies of insurance, with commercially reasonable deductible limits, covering loss or damage to the Center and the Premises, at least in the amount of the full replacement cost thereof, and in no event less than the total amount required by Mortgagees, against all perils included within the classification of "special form" coverage (as such term is used in the insurance industry) and contractual liability. A stipulated value or agreed amount endorsement deleting any co-insurance provision of such policy or policies shall be procured with the insurance. Landlord shall also maintain in full force and effect at all times during the Term, at its sole cost and expense, for the protection of Landlord (with Tenant and Subtenant named as additional insureds), general liability insurance with a minimum combined single limit of Three Million Dollars (\$3,000,000) (such coverage to be afforded utilizing one or more commercial general liability and/or umbrella liability policies). All insurance required to be carried by Landlord may be carried under a blanket policy covering the Premises, Center and other locations, provided that the coverage afforded by reason of the use of such blanket policy shall not be reduced or diminished from the requirements for such insurance set forth in this **Section 11.2**. The cost of such insurance policies may be included in Operating Expenses. Such

insurance policies shall provide for payment of loss thereunder to Landlord or, at Landlord's election, to the Mortgagees. Landlord shall also obtain and keep in force during the Term a policy or policies of insurance covering objects owned by Landlord which are normally covered under a "Boiler and Machinery" policy (as such term is used in the insurance industry), with policy limits which are reasonable under prudent industry standards for shopping centers in the region in which the Center is located.

11.3 Tenant's Insurance. Tenant shall maintain, or cause Subtenant to maintain, in full force and effect at all times during the Term, at its sole cost and expense, for the protection of Tenant and Subtenant (with Landlord named as an additional insured), general liability insurance with a minimum combined single limit of Three Million Dollars (\$3,000,000) (such coverage to be afforded utilizing one or more commercial general liability and/or umbrella liability policies). Tenant shall also obtain and keep in force, or cause Subtenant to obtain and keep in force, during the Term a policy or policies of insurance, with commercially reasonable deductible limits (Landlord hereby acknowledging that Subtenant's current deductible of \$250,000.00 is commercially reasonable given Subtenant's current size and financial strength and that even higher limits may be commercially reasonable over time), covering loss or damage to the Tenant Improvements and Tenant's Personal Property against all perils included within the classification of "special form" coverage (as such term is used in the insurance industry). Tenant or Subtenant shall be permitted to carry the insurance required in this Lease under a blanket policy which also covers other locations of Tenant or Subtenant, provided that the coverage afforded by reason of the use of such blanket policy shall not be reduced or diminished from the amount set forth in this **Section 11.3**. In addition, during the conduct of any construction or alterations to the Premises, Tenant shall maintain, or cause Subtenant or Tenant's or Subtenant's contractors to maintain, reasonable and customary builder's risk and worker's compensation insurance.

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

11.5 Waivers of Subrogation. Landlord and Tenant each hereby waive all rights of recovery against the other (and against Subtenant) on account of loss and damage occasioned to such waiving party to the extent that such loss or damage is insured or is required to be insured against under any insurance policies required by this **Article 11**. Tenant/Subtenant and Landlord shall, upon obtaining policies of insurance required in this Lease or otherwise covering the Premises or Center, give notice to the insurance carriers that the foregoing waiver of subrogation is contained in this Lease. Each party shall cause each insurance policy(ies) required of it pursuant to this Lease or otherwise carried by such party to provide that the insurance company acquiesces to the waiver of claims (i.e., waiver of subrogation) under this **Section 11.5** and each party shall

provide the other with written evidence of an endorsement of such waiver of subrogation by the insurer.

ARTICLE 12

DAMAGE OR DESTRUCTION

12.1 Landlord's Obligation to Rebuild. If the Premises and/or the Center are damaged or destroyed by a Casualty, Landlord shall promptly commence the process of obtaining necessary permits and approvals for the repair of the Premises (including the building shell and the Tenant Improvements) and/or Center, and shall commence such repair and diligently prosecute the same to completion as soon thereafter as is practicable at Landlord's expense, unless Landlord has the right to terminate this Lease as provided in **Section 12.2** and Landlord elects to so terminate.

12.2 Landlord's Right to Terminate. Landlord shall have the right to terminate this Lease following a Casualty if more than twenty five percent (25%) of the Premises is damaged by a Casualty which is not a risk normally covered by the insurance Landlord is required to carry pursuant to **Section 11.2** and the cost to repair such damage exceeds fifteen percent (15%) of the full replacement cost of the Premises. If Landlord elects to terminate this Lease following a Casualty pursuant to this **Section 12.2**, Landlord shall give Tenant written notice of its election to terminate within thirty (30) days after Landlord has knowledge of such Casualty, and this Lease shall terminate thirty (30) days after the date of such notice. However, Tenant shall have the right to fund the uninsured portion of any such Casualty which exceeds fifteen percent (15%) of the full replacement cost of the Premises. Tenant may exercise such right by providing Landlord with written notice within thirty (30) days from the date of receipt of Landlord's notice of termination. If Tenant does not elect to fund the uninsured portion of the Casualty, this Lease shall terminate thirty (30) days after the date of Landlord's notice of termination. If Landlord does not elect to so terminate this Lease or if Tenant provides Landlord with notice of its intent to fund the uninsured portion which exceeds fifteen percent (15%) of the full replacement cost of the Premises, this Lease will continue in full force and effect, and Landlord shall promptly commence the process of obtaining necessary permits and approvals for the repair of the Premises and/or Center, and shall commence such repair and diligently prosecute the same to completion as soon thereafter as is practicable at Landlord's expense. Tenant shall fully cooperate with Landlord in removing Tenant's Personal Property from the Premises to facilitate the making of such repairs.

12.3 Landlord's Repair Obligations. Landlord's obligation, should it elect or be obligated to repair the Premises and/or Center following a Casualty, shall include the basic building components (i.e. everything except the Tenant Improvements) and the improvements to the Common Area, and Tenant shall, at its expense, be responsible for repair and replacement of Tenant's Personal Property, the Tenant Improvements and Alterations installed by Tenant or Subtenant and existing at the time of such Casualty.

12.4 Abatement of Rent. During any period when there is interference with Tenant's or Subtenant's use of the Premises by reason of a Casualty or repair of a Casualty or reconstruction of the Premises or Center, Monthly Rent and Additional Rent shall be equitably abated in proportion to the degree of such interference. Such abatement shall commence upon the date of such Casualty and shall end upon the date which is the earlier of (i) one hundred fifty (150) days

Attachment 5 - Attachment 2D.pdf

Description - 24 Hour Fitness Lease dated January 26, 2006, between Landlord, Brown & Sons Foodliner, Inc. and Kirkwood Missouri Fitness, LP, with attached Sublease dated January 26, 2006, between Kirkwood and 24 Hour Fitness USA, Inc. (4 of 7)

after the completion of the repair of the Premises which Landlord undertakes or is obligated to undertake hereunder or (ii) the date Tenant reopens for business in the Premises.

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

12.6 Tenant's Right to Terminate. If following any damage to the Premises or the rest of the Center (including, without limitation, the Common Area and/or Protected Parking Area, as applicable) that Landlord is obligated to or elects to repair, Landlord either has not: (i) commenced the repair work within six (6) months, or (ii) completed the repair work within twelve (12) months after the date of damage, Tenant may terminate this Lease by written notice to Landlord at any time after such six-month or twelve-month period, as the case may be, and before Landlord materially commences or completes such repair work, as the case may be. Furthermore, if either a Casualty or the resultant repairs and reconstruction are of such a nature that Tenant or Subtenant, in its reasonable business judgment, determines that it is economically impractical to operate the Premises and such condition continues for more than ninety (90) days, Tenant shall have the right to terminate this Lease upon written notice to Landlord at any time after such ninety (90) day period and prior to the remediation of such condition. In the event a Casualty occurs during the last two (2) years of the Term, Tenant may terminate this Lease upon written notice to Landlord within ninety (90) days after the date of Casualty. If Tenant elects to terminate this Lease pursuant to this **Section 12.6**, this Lease shall terminate thirty (30) days after Landlord's receipt of such termination notice.

12.7 Reconstruction After Termination. [Intentionally Deleted].

ARTICLE 13 EMINENT DOMAIN

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

13.2 Taking Not Resulting in Termination. If any part of the Premises is taken for any public or quasi-public use under any statute or by right of eminent domain (or is transferred in lieu thereof) and the remaining part is reasonably suitable for Tenant's/Subtenant's continued occupancy for the uses permitted by this Lease, as determined in Tenant's or Subtenant's reasonable business judgment, this Lease shall, as to the part so taken, be modified as of the date that possession of such part of the Premises is taken and the Monthly Rent and Additional Rent shall be reduced in the same proportion that the floor area of the portion of the Premises so taken bears to the original floor area of the Premises immediately prior to such taking. Landlord shall, at its own cost and expense, promptly make all necessary repairs or alterations to the Premises

(including the Landlord's Work and the Tenant Improvements) so as to restore the remainder of the Premises to substantially the same condition as existed prior to such taking. Monthly Rent and Additional Rent due and payable hereunder shall be temporarily abated during any such restoration period in proportion to the degree to which there is interference with Tenant's or Subtenant's use of Premises. Each party hereby waives any present or future law allowing either party to petition the court to terminate this Lease in the event of a partial taking of the Premises.

13.3 Common Area Taking. If a portion of the Common Area or any points of access to the Premises and/or Center is taken for any public or quasi-public use under any statute or by right of eminent domain (or is transferred in lieu thereof) and the reduction of or reconfiguration of the Common Area or loss of points of access has a material impact upon Tenant's or Subtenant's operation of the Premises, as determined in Tenant's or Subtenant's reasonable business judgment, then Tenant shall have the right to terminate this Lease by providing Landlord with written notice of such election within thirty (30) days of such taking. If Tenant elects to terminate this Lease pursuant to this **Section 13.3**, this Lease shall terminate thirty (30) days after Landlord's receipt of Tenant's termination notice.

13.4 Temporary Taking. No temporary taking of the Premises (which for purposes of this **Section 13.4** shall mean a taking of all or any part of the Premises for ninety (90) days or less) shall terminate this Lease, or give Tenant any right to any abatement of Rent; any award made to Tenant or Landlord by reason of such temporary taking shall belong entirely to Tenant and Landlord shall not be entitled to share therein. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this **Section 13.4**.

13.5 Business Closure. If a taking of either the Premises, Common Area or portion of either is of such a nature that it creates a condition that causes Tenant or Subtenant, in their reasonable business judgment, to determine that it is economically impractical to operate the Premises, and such conditions continue for more than ninety (90) days, Tenant shall have the right to terminate this Lease upon written notice to Landlord at any time after such ninety (90) day period and prior to the remediation of such condition. If Tenant elects to terminate the Lease pursuant to this **Section 13.5**, this Lease shall terminate thirty (30) days after Landlord's receipt of such termination notice.

13.6 Taking Awards. Landlord and Tenant shall each be entitled to receive and retain such separate awards and/or portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. In the event the condemning authority awards one lump sum to Landlord for any taking, Tenant shall be entitled to a reasonable and equitable portion of such sum for Tenant's loss of leasehold, the value of improvements paid for by Tenant, and removal and relocation of its personal property, to the extent the award includes such matters; Landlord hereby assigns such portion of such sum to Tenant. The termination of this Lease shall not affect the rights of the respective parties to such awards; provided, however, if in the sole judgment of the Tenant it is necessary for the Term to continue notwithstanding any taking or condemnation in order to ensure that Tenant has an enforceable interest in the Premises under the applicable laws of eminent domain, then notwithstanding anything contained herein to the contrary, the Term shall continue at Tenant's sole option but all of Tenant's maintenance, Monthly Rent, Additional Rent, insurance and Tenant's other obligations under this Lease shall abate as of the date of such taking or condemnation.

ARTICLE 14

ASSIGNMENT, SUBLETTING AND CONCESSIONAIRES

14.1 Assignment and Subletting. Tenant, with Landlord's consent (such consent not to be unreasonably withheld, conditioned or delayed), may assign or sublet its interest in this Lease or the Premises. Tenant shall also have the right, without Landlord's consent, to (i) assign this Lease to any one or more partners, shareholders or other equity interest holders of Tenant or any entity in which such one or more partners, shareholders or equity interest holders maintains a controlling interest, or (ii) sublet the Premises to Subtenant or any affiliate of Subtenant or to assign this Lease to Subtenant or any affiliate of Subtenant. In addition, Subtenant shall have the right, without Landlord's consent, to assign this Lease or its sublease or to sublet the Premises to: (i) a parent corporation or entity; (ii) any subsidiary corporation or entity of Subtenant or Subtenant's parent corporation or entity; or (iii) an affiliated entity in which Subtenant, or its subsidiaries or parent corporation or entity holds a majority of the outstanding shares or ownership interest; or (iv) any person or entity which holds or acquires a majority of Subtenant's similar clubs in the region of the Premises. Tenant may, without Landlord's consent or approval, subject its interest under the Lease to a leasehold mortgage or deed of trust; in connection therewith, Landlord agrees to execute and deliver to Tenant and its lender a Tenant and Landlord Consent in such form as may be reasonable and customary in connection with such leasehold financing within twenty (20) days after Tenant's written request therefore. Landlord agrees that Landlord will accept the payment of all Rent and performance of Tenant's other obligations under the terms of this Lease directly from Subtenant, and Tenant agrees that such acceptance by Landlord shall not relieve Tenant from its obligations under this Lease.

14.2 Concessionaires. Tenant and Subtenant shall have the right, without Landlord's consent, to sublet a portion of the Premises and/or allow the use of a portion of the Premises by concessionaires, provided that: (i) the subtenant or concessionaire uses the Premises to operate an incidental activity (e.g., physical therapy, sports rehabilitation and/or food operations); (ii) the total area of the Premises devoted to all concessionaires and subtenants does not exceed twenty-five percent (25%) of the Premises Square Footage, and (iii) all necessary permits and licenses for such concessionaires' operations are obtained prior to such concessionaires' conduct of any business in the Premises. Each such subtenant and/or concessionaire shall be subject to the provisions of this Lease.

14.3 Landlord's Consent. If Tenant requests Landlord's consent to an assignment or subletting and Landlord fails to respond within fifteen (15) days of such request, Landlord will be deemed to have consented to the proposed assignment or subletting. In the event Landlord consents to any assignment or subletting, such consent shall not constitute a waiver of any of the restrictions of this **Article 14** and the same shall apply to each successive assignment of this Lease or subletting of the Premises (or portion of the Premises), if any. In no event shall any assignment or subletting, including any assignment or subletting to which Landlord consents, affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee(s)), or relieve Tenant of any of its obligations hereunder without an express written release being given by Landlord. Any such assignment or subletting agreement shall be duly executed and a fully executed copy thereof shall be delivered by Tenant to Landlord.

14.4 Notice and Opportunity to Cure. In the event that Tenant has assigned its interest in this Lease pursuant to this **Article 14**, thereafter contemporaneously with Landlord's delivery of a notice of default to any assignee, Landlord shall provide Tenant with a copy of such notice and Landlord shall provide Tenant with a reasonable period of time after expiration of the assignee's cure period within which to cure such default.

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

ARTICLE 15 DEFAULTS AND REMEDIES

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

(a) Tenant fails to pay the Monthly Rent or Additional Rent within ten (10) days of a written notice of nonpayment from Landlord.

(b) Tenant fails to observe, keep, perform or cure, within thirty (30) days after written notice by Landlord, any of the other terms, covenants, agreements or conditions contained in this Lease which Tenant is obligated to observe or perform. In the event such default reasonably

could not be cured or corrected within such thirty (30) day period, then Tenant shall not be in default of this Lease if Tenant commences the cure or correction of such default within such initial thirty (30) day period and diligently prosecutes the same to completion.

Notices given under this **Section 15.1** shall specify the alleged default by Tenant and shall demand that Tenant perform the provisions of this Lease or pay the Rent that is in arrears, as the case may be, within the applicable period of time.

Subtenant shall be permitted to cure, and Landlord shall accept cure by Subtenant, of any default by Tenant so long as such cure is effected within the cure periods provided above.

15.2 Landlord's Remedies. Upon the occurrence of an Event of Default, then Landlord may, at its option, cumulatively or in the alternative, exercise the following remedies:

(a) Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant, Subtenant and any other person who may be occupying the Premises or any part thereof.

(b) Landlord may enter upon and take possession of the Premises and expel and permanently exclude Tenant, Subtenant and any other person who may be occupying the Premises or any part thereof, with or without having terminated this Lease. Landlord shall use commercially reasonable efforts to relet the Premises on Landlord's terms and receive the rent therefor; and Tenant agrees to pay to Landlord, on demand, any deficiency that may arise by reason of such reletting for the remainder of the Term of this Lease. In the event that Landlord elects to repossess the Premises without terminating this Lease, then Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein all rent and other amounts payable to Landlord pursuant to the terms of this Lease which have accrued to the date of such repossession, plus total rent and other amounts required to be paid by Tenant to Landlord during the remainder of the Term of this Lease until the stated date of expiration of the Term of this Lease, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period (after deducting expenses incurred by Landlord as provided hereinafter). In no event shall Tenant be entitled to any excess of any rental obtained by reletting over and above the rent herein reserved. Actions to collect amounts due by Tenant to Landlord as provided in this subsection (b) may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Term of this Lease. In case of any event of default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above, broker's fees incurred by Landlord in connection with reletting the whole or any part of the Premises (but only that portion related to the remainder of the Term); the costs of removing and storing Tenant's, Subtenant's or other occupant's property; and all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees.

(c) Landlord may perform any obligation Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) and Tenant agrees to reimburse Landlord upon demand for any expenses which Landlord may incur

in thus effecting compliance with Tenant's obligations under this Lease, plus interest thereon at the lesser of the highest nonusurious rate permitted by law or the Applicable Annual Interest Rate.

Any provision of this Lease to the contrary notwithstanding: (i) Landlord shall in no event be entitled to accelerate Rent (unless such Rents are first reduced by the fair market rental value of the Premises); (ii) Landlord hereby waives any right to accelerate Rent Landlord may otherwise have at law or in equity; (iii) Landlord shall not exercise any remedies otherwise available to Landlord under this Lease and/or at law or in equity without having given the notices and allowed the cure periods set forth in **Section 15.1**; (iv) except as provided in this **Section 14.2**, Landlord shall not be entitled to exercise any self-help remedies it may have at law or in equity; and (v) Landlord shall not be entitled to recover from Tenant the costs of altering or renovating the Premises or installing new tenant improvements. Landlord shall use reasonable efforts to mitigate damages resulting from any default of Tenant, and in no event shall Landlord be entitled to double recovery of damages.

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

15.4 Lien Waiver. Landlord hereby waives any lien or security interest in Tenant's or Subtenant's inventory, equipment, trade fixtures, furnishings, accounts and any other property of Tenant or Subtenant at the Premises that Landlord might otherwise have at law or in equity.

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

15.6 Tenant's Remedies. If Landlord, after expiration of any applicable cure period, is in default of any of its obligations under this Lease, Tenant, at its option, may: (i) declare the Term ended and vacate the Premises and be relieved from all further obligations under this Lease; (ii) pay any sum necessary to perform any obligation of Landlord hereunder and deduct the cost thereof (plus ten percent (10%) for Tenant's overhead), together with interest thereon at an annual rate of ten percent (10%), from Monthly Rent and Additional Rent due and to become due; (iii) deduct from Monthly Rent and Additional Rent due and to become due any amount Landlord owes Tenant which is due and unpaid, together with interest thereon at an annual rate of ten percent (10%); and/or (iv) sue for injunctive relief, specific performance, and/or damages as the case may be. The performance of each and every agreement contained in this Lease on the

part of Landlord shall be a condition precedent to the right of Landlord to collect Rent hereunder or to enforce this Lease against Tenant. Tenant's remedies as provided for in this **Section 15.6** shall be in addition to all remedies available to Tenant in law and in equity and Tenant's remedies shall be cumulative rather than exclusive.

15.7 Mortgages. Landlord shall make all payments required to be made under the terms of any agreement which is secured by Landlord's interest in the Center in a timely manner. Landlord warrants and represents that as of the date of this Lease, Landlord is not in default under any mortgage, deed of trust, ground lease or other security instrument which is secured by Landlord's interest in the Center. Landlord further represents and warrants that St. John's Bank & Trust Company is the only existing Mortgagee of the Center.

ARTICLE 16

SUBORDINATION; ESTOPPEL CERTIFICATE

16.1 Subordination, Attornment and Non-Disturbance. Tenant covenants and agrees, that upon request by Landlord, Tenant will execute and deliver a subordination, non-disturbance and attornment agreement ("SNDA Agreement"), in a form substantially similar to **Exhibit H** (or such other form as is reasonably acceptable to Tenant and Landlord's lender), evidencing the subordination of this Lease with respect to any ground leases or underlying leases (which may now exist or hereafter be executed affecting the Premises or Center, or both) and the lien of any mortgage, deed of trust, or other security device (which may now exist or hereafter be executed, in any amount for which the Center, ground lease(s) or underlying lease(s), or Landlord's interest or estate in any of said items is specified as security). Landlord or any such Mortgagee or ground lessor shall have the right, at its election, to subordinate or cause to be subordinated any such mortgage, deed of trust, other security device, ground lease or underlying lease to this Lease. No subordination shall permit interference with Tenant's or Subtenant's rights hereunder, and any ground lessor or Mortgagee shall formally recognize in writing Tenant and its permitted successors and assigns as the tenant of the Premises and shall not disturb Tenant's or Subtenant's right to quiet possession of the Premises during the Term. If Landlord's interest in the Premises is acquired by any ground lessor or Mortgagee, or in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage, deed of trust or other security device made by Landlord covering the Premises or any part thereof, or in the event a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination and upon the request of such successor in interest to Landlord, attorn to and become the tenant of the successor in interest to Landlord and recognize such successor in interest as the Landlord under this Lease, provided that such successor in interest agrees to formally recognize in writing Tenant and its permitted successors and assigns as the tenant of the Premises and shall not disturb Tenant's right to quiet possession of the Premises during the Term.

16.2 Estoppel Certificates. Tenant shall, within fifteen (15) business days following written request by Landlord, execute and deliver to Landlord a Tenant Estoppel Certificate: (i) certifying that this Lease is unmodified and in full force and effect or, if this Lease has been modified, attaching a copy of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the

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

ARTICLE 17

SIGNS, GRAPHICS AND ADVERTISING

17.1 Tenant's Signage. Tenant and Subtenant shall have the right, subject to Applicable Law, to install and maintain the signage set forth in **Exhibit I** at the locations indicated therein, all of which are hereby approved by Landlord. Tenant/Subtenant shall be responsible for obtaining, at their sole cost and expense, all necessary governmental consents, approvals and/or permits for Tenant's/Subtenant's signage. Tenant and Subtenant also shall have the right to install and maintain signs and graphics in, on and about the Premises, provided that all such signage shall be in compliance with Applicable Laws. The cost of all signs and graphics, including the installation, maintenance and removal thereof, shall be at Tenant's sole cost and expense. If Tenant or Subtenant fails to maintain its signs, or if Tenant or Subtenant fails to remove same upon termination of this Lease and repair any damage caused by such removal (including, but not limited to, repainting the affected area, if required by Landlord), Landlord may do so at Tenant's expense. All sums reasonably disbursed, deposited or incurred by Landlord in connection with such removal and repair, shall be due and payable by Tenant to Landlord within thirty (30) days after demand by Landlord. Any signage used by Tenant or Subtenant at the Premises shall be prepared in a professional manner. Landlord represents and warrants that the approved signage as set forth in **Exhibit I** complies with Landlord's signage criteria, all Title Documents and any other non-governmental restrictions affecting the Premises and/or Center. Tenant acknowledges that the approval of the City of Kirkwood is necessary for the signage set forth in **Exhibit I** and that it is Tenant's responsibility, at its sole cost and expense, to obtain such approval.

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

17.3 Special Promotions. To the extent allowed by Applicable Laws, Tenant and Subtenant shall have the right to advertise their business at the Premises by utilizing banners and promotional items during its pre-opening and grand opening and from time to time during the Term.

ARTICLE 18 SURRENDER; HOLDING OVER

18.1 Surrender of the Premises. Subject to the provisions of **Article 12, Article 13** and **Section 9.1**, upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in good condition, except for normal wear and tear, Casualties and acts of God and any items which Landlord is obligated to repair, maintain or replace. Tenant shall at Tenant's option remove from the Premises all of Tenant's Personal Property, and shall repair any damage and perform any restoration work necessitated by such removal.

18.2 Holding Over. If Tenant or Subtenant continue to occupy the Premises following the expiration or termination of this Lease without Landlord's written consent, such holding over shall constitute renewal of the Lease on a month to month basis, at a Monthly Rent equal to one hundred fifty percent (150%) of the Monthly Rent which was in effect on the date of such expiration or termination, and otherwise on the terms of this Lease. Such monthly tenancy shall be terminable by either party upon one month's notice.

18.3 Outstanding Credits. If, upon Tenant's surrender of the Premises to Landlord, Tenant shall have a surplus of unused credits and offsets against Monthly Rent and/or Additional Rent, Landlord shall pay the sum of such unused credits and offsets to Tenant within fifteen (15) days of Tenant's written request for reimbursement.

ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 First Right of Refusal to Lease Adjacent Space. [Intentionally Deleted].

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

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

party to this Lease may from time to time, by written notice to the other in accordance with this **Section 19.3**, designate a different address than that set forth above for the purposes of notice.

19.4 Memorandum of Lease, Owner's Affidavit and Other Documents. On or before the Execution Date, Landlord shall execute, acknowledge and deliver to Tenant: (i) a Memorandum of Lease in the form set forth in **Exhibit J**, which Tenant, at its option, may record in the official records of the County; (ii) an owner's affidavit in a form reasonably acceptable to Tenant's title company; and (iii) any other related documents reasonably required by Tenant's title company in order to issue Tenant's leasehold policy in form and content reasonably acceptable to Tenant.

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

Attorneys' fees incurred by either party to this Lease in enforcing any judgment on any action brought to resolve any controversy arising under this Lease, to enforce any of its terms or for the breach of this Lease, shall be recoverable by the prevailing party. Such right to recover post-judgment attorneys' fees shall be separate and distinct from the right to recover attorneys' fees pursuant to the immediately preceding subparagraph. The provisions of this subparagraph shall be severable from all other provisions of this Lease, shall survive any judgment and shall not be deemed merged into any judgment.

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

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

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

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

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

Attachment 6 - Attachment 2E.pdf

Description - 24 Hour Fitness Lease dated January 26, 2006, between Landlord, Brown & Sons Foodliner, Inc. and Kirkwood Missouri Fitness, LP, with attached Sublease dated January 26, 2006, between Kirkwood and 24 Hour Fitness USA, Inc. (5 of 7)

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

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

19.13 Successors. The terms, covenants, conditions and agreements contained in this Lease shall, subject to the provisions as to assignment, subletting, and bankruptcy contained herein and any other provisions restricting successors or assigns, apply to and bind the heirs, successors, legal representatives and assigns of the parties to this Lease. In entering into this Lease, Landlord and Tenant acknowledge that, at least initially, the Premises will be used and occupied by Subtenant, and Subtenant is intended to be a third party beneficiary of the terms and provisions in this Lease, whether or not a particular provision specifically refers to Subtenant.

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

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

19.16 Entire Agreement. This Lease is the entire agreement between the parties, and supersedes any prior agreements, representations, negotiations or correspondence between the parties except as expressed herein. No agreement shall be effective to change, modify, or terminate this Lease in whole or in part unless such is in writing and duly signed by the Landlord, Tenant, and 24 Hour Fitness USA, Inc., as guarantor.

19.17 Authority. If Landlord or Tenant is not a natural person, each individual executing this Lease on behalf of an entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the entity in accordance with its governing documents. If requested, a party, within thirty (30) days of the request, will deliver to the other party evidence of the authority of such party to enter into and deliver this Lease, which evidence shall be certified by an officer, partner or member of the entity, as appropriate.

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

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

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

19.21 Landlord's Approval. In every instance in which Landlord's approval or consent is required pursuant to this Lease, Landlord shall not unreasonably withhold or delay its consent and any disapproval of Landlord shall include a reasonably detailed explanation of the basis of that disapproval.


THIS LEASE is effective as of the Effective Date.

LANDLORD:

BROWN & SONS FOODLINER, INC., a
Missouri corporation

TENANT:

KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: 
Name: Jonathan P. Browne
Its: President
Date: 1/26/06

By: KIRKWOOD TITUS UNITED, LLC, its
general partner

By: _____
Its: _____
Date: _____

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

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

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

19.21 Landlord's Approval. In every instance in which Landlord's approval or consent is required pursuant to this Lease, Landlord shall not unreasonably withhold or delay its consent and any disapproval of Landlord shall include a reasonably detailed explanation of the basis of that disapproval.

THIS LEASE is effective as of the Effective Date.

LANDLORD:

BROWN & SONS FOODLINER, INC., a
Missouri corporation

TENANT:

KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: _____
Name: _____
Its: _____
Date: _____

By: KIRKWOOD TITUS UNITED, LLC, its
general partner

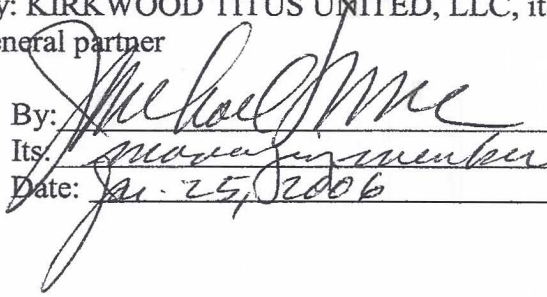
By: 
Its: managing member
Date: Jan. 25, 2006

EXHIBIT A
LEGAL DESCRIPTION OF CENTER

[See Attached]

EXHIBIT A

A tract of land being part of Lot 1 of FLEMING SUBDIVISION according to the plat thereof recorded in Plat Book 9 page 14 of the St. Louis County Records and part of Lot 2 of the Subdivision of the Estate of Thomas Harrison in the Northeast 1/4 of Section 36, Township 45 North, Range 5 East, St. Louis County, Missouri and described as follows:

Beginning at a point on the West line of Woodlawn Avenue, said point being the Southeast corner of a tract of land conveyed to Albert E. Berkel and Florence Berkel, his wife, by deed recorded in Book 6678 page 355 of the St. Louis County Records, and being also a point on the North line of a tract of land conveyed to Leohard M. Wingfield and wife, by deed recorded in Book 1635 page 410 of the St. Louis County Records; thence South 86 degrees 56 minutes 00 seconds West, along the North line of said Wingfield property 370.70 feet to a point on the East line of a tract of land conveyed to Ford Leasing Development Co.; thence North 0 degrees 25 minutes 00 seconds East, along the East line of Ford Leasing Development Co., property, 479.89 feet to the Northeast corner of the Ford Leasing Development Co., property, said point being a point on the South line of Manchester Road; thence North 86 degrees 55 minutes 45 seconds East, along the south line of Manchester Road, 273.52 feet to a point of curve; thence Southeastwardly along the arc of a curve to the right, having a radius of 70.00 feet, 106.76 feet to a point of tangency on the West line of Woodlawn Avenue; thence along the West line of Woodlawn Avenue South 5 degrees 41 minutes 26 seconds East 220.13 feet and South 0 degrees 30 minutes 00 seconds West 192.71 feet to the point of beginning, according to survey thereof executed by Lapin-Ellis & Dabler, dated November 12, 1977 and revised November 17, 1977.

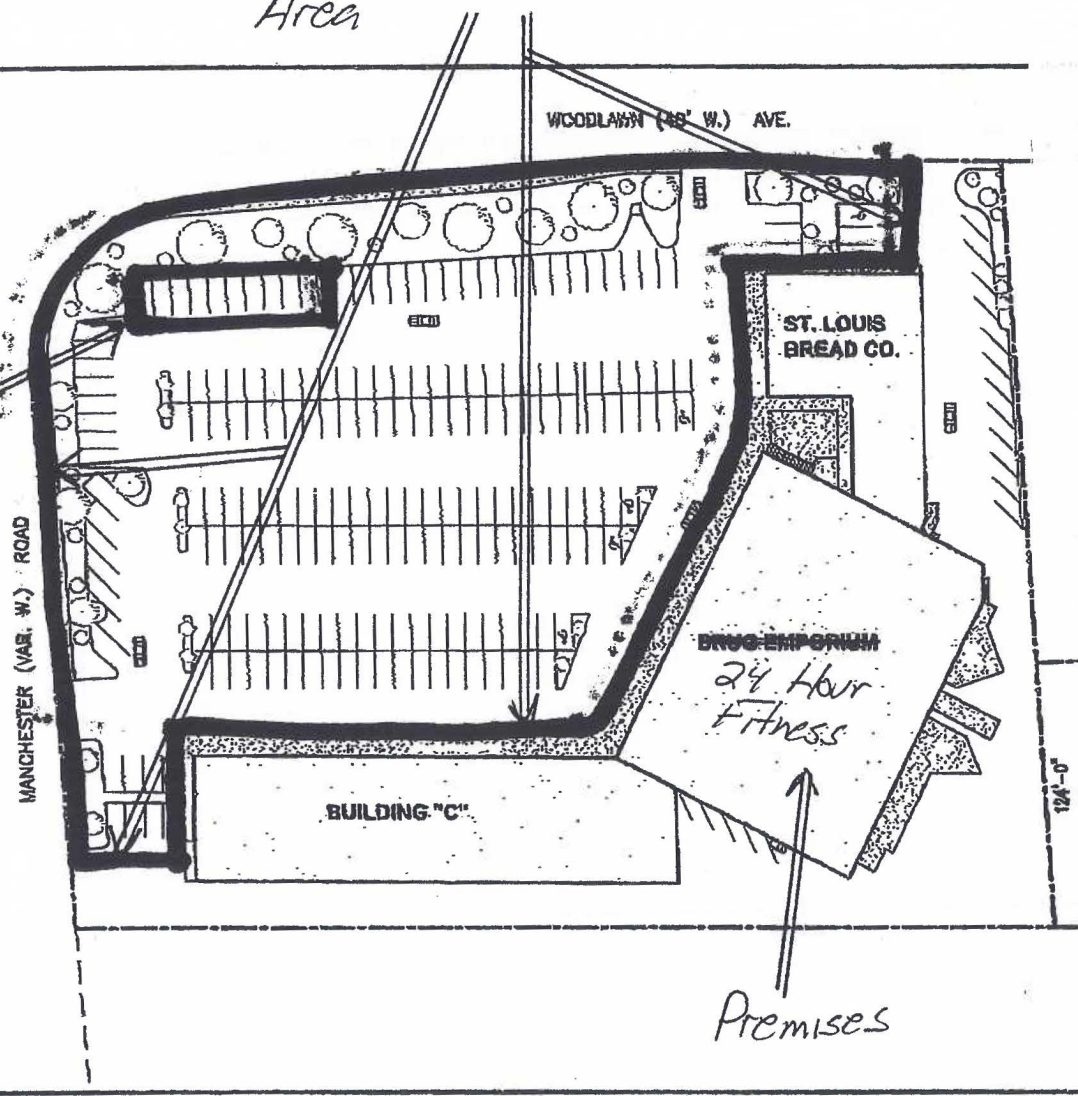
EXHIBIT B
CENTER SITE PLAN

[See Attached]

01-22-'06 14:08 FROM-NOVUS CO 314-963-0241 T-271 P003/003 F-624

Protected Parking Area

Presale Trailer Area



NOVUS COMPANIES

300 ALLEN AVENUE, SUITE 200
WEBSTER GROVES, MO

THE LAWRENCE GROUP

320 N. 4TH ST., SUITE 200
ST. LOUIS, MO 63102

NORTH
1" = 60'
26 APRIL, 2005

GREEN TREE CENTER EXISTING SITE PLAN

NOTE: ALL DIMENSIONS
ARE APPROXIMATE

EXHIBIT C

LANDLORD WORK LETTER (Existing Shell, Part of Shopping Center or Standalone)

Landlord recognizes the intent of Subtenant to use the Premises as a full-service fitness center, which generally determines the occupancy as an "A-3" occupancy. In connection with this "A-3" or other applicable occupancy requirement, Landlord agrees to deliver the Premises to Tenant with the items of work listed below (collectively "Landlord's Work") completed in a good workmanlike manner and in compliance with Applicable Laws.

1. Asbestos And Hazardous Materials Abatement. Landlord shall survey, test and abate, as necessary, in order to furnish Tenant and Subtenant with documentation certifying the Premises are free of asbestos, lead-based paint, pests and mold, and all other Hazardous Materials.

2. Exterior; On-site and Off-Site Improvements.

2.1. ADA Access. Landlord shall provide ADA approved public access from parking lot to all entries and exits of Premises, including signage and marking.

2.2. Hardscape and Landscape. Landlord shall provide all exterior hardscape and landscaping such that water flows to or through face of curb or to approved storm drains and does not create ponding in landscaped areas, walkways or against Tenant's exterior walls.

2.3. Pedestrian and Parking Area Lighting. Landlord shall provide exterior pedestrian area lighting to a magnitude of not less than 2 lumens or foot candles and parking area lighting to a magnitude of not less than 8.5 lumens, 24 hours a day, 7 days a week.

2.4. Trash Enclosure. Landlord shall provide a non-exclusive exterior trash enclosure to contain at least two 3-yard bins.

2.5. Other Off-site and On-Site Improvements. Landlord shall provide all other on-site and off-site improvements required by Applicable Laws and/or by municipalities (Federal, state and local), including but not limited to: (i) all off-site (vehicular/pedestrian) rights-of-way and easements, and all off-site improvements and utilities (including, without limitation, all driveways, curbs, gutters, sidewalks, storm drains, pavements, lighting, hardscape, utilities, concrete block walls, screen walls, retaining walls, landscape and irrigation); and (ii) all on-site driveways, curbs, gutters, sidewalks, storm drains, pavements, parking lot striping in accordance with all laws and ADA requirements, hardscape, utilities, concrete block walls, screen walls, retaining walls, landscape and irrigation. Landlord is responsible for repainting of exterior of building.

EXHIBIT D

PLANS

Such plans as submitted to and approved by the City of Kirkwood.

EXHIBIT E

TERM/RENT COMMENCEMENT MEMORANDUM

LANDLORD: _____

TENANT: KIRKWOOD MISSOURI FITNESS, LP

PREMISES: _____

DATE: _____

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

LANDLORD:

TENANT:

KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: _____
Name: _____
Its: _____
Date: _____

By: KIRKWOOD TITUS UNITED, LLC, its
general partner

By: _____
Its: _____
Date: _____

EXHIBIT F

TENANT ESTOPPEL CERTIFICATE

Ladies and Gentlemen:

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

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

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

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

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

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

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

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

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

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

10. The provisions of the preceding paragraphs and any other provision in this Estoppel Certificate to the contrary notwithstanding, in the event of a conflict or inconsistency between the provisions of this Estoppel Certificate and the Lease, the provisions of the Lease shall govern. Under no circumstances shall this Estoppel Certificate amend the Lease.

11. This Estoppel Certificate may only be relied upon by Landlord and its lender.

EXECUTED: _____

KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: KIRKWOOD TITUS UNITED, LLC,
its general partner

By: _____

Its: _____

Date: _____

ATTACHMENT A
TO TENANT ESTOPPEL CERTIFICATE

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

EXHIBIT G

LANDLORD ESTOPPEL CERTIFICATE

Ladies and Gentlemen:

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

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

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

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

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

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

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

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

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

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

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

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

EXECUTED: _____

By: _____

Name: _____

Its: _____

ATTACHMENT A
TO LANDLORD ESTOPPEL CERTIFICATE

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

EXHIBIT H
SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT

[RECORDER'S USE ONLY]

TITLE OF DOCUMENT: SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT

DATE OF DOCUMENT: January ____, 2006

GRANTOR: KIRKWOOD MISSOURI FITNESS, LP
Mailing Address: c/o Titus Properties, LLC
1748 W. Katella Ave., Suite 206
Orange, CA 92867

GRANTEE: ST. JOHN'S BANK & TRUST COMPANY
Mailing Address: 8924 St. Charles Rock Road
St. Louis, Missouri 63114

LEGAL DESCRIPTION: See Exhibit A attached hereto

REFERENCE TO BOOK(S) AND PAGE(S): N/A

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

24 Hour Fitness USA, Inc.
12647 Alcosta Blvd., Suite 500
San Ramon, California 94583
Attention: Legal Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of the _____ day of _____ 2006, by and between ST. JOHN'S BANK & TRUST COMPANY ("Mortgagee"), and KIRKWOOD MISSOURI FITNESS, LP ("Tenant").

WITNESSETH:

WHEREAS, Mortgagee is the holder of a Note in the original principal amount of Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000.00), secured by a Deed of Trust dated February 26, 2002, by Brown & Sons Foodliner, Inc., a Missouri corporation ("Landlord"), recorded on March 6, 2002, in Book 13667, Page 786, as modified by instrument dated March 26, 2003, and recorded in Book 14781, Page 1696, both in the Official Records of St. Louis County, Missouri, covering the property legally described on **Exhibit A** attached hereto and made a part hereof (the "Center");

WHEREAS, by 24 Hour Fitness Lease dated January ___, 2006 ("Lease"), Landlord, as landlord, leased to Tenant, as tenant, certain premises located in the Center and containing approximately 22,100 square feet of leaseable area ("Leased Premises");

WHEREAS, Mortgagee and Tenant desire to confirm their understanding with respect to the Lease and the Mortgage;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the parties agree as follows:

1. Subject to the covenants, terms and conditions of this Agreement, the Lease is subordinate to the lien of the Mortgage.
2. In the event Mortgagee or any other party acquires title or right of possession of the Leased Premises under the Mortgage through foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise, the Lease shall remain in full force and effect and Tenant shall continue occupancy of the Leased Premises in accordance with the terms and provisions of the

Lease. In such event, Mortgagee or any other party shall be in all respects bound by the Lease as Landlord and shall observe all of Tenant's rights thereunder.

3. So long as Mortgagee shall be bound by the terms and conditions of the Lease, Tenant shall attorn to Mortgagee when Mortgagee is in possession of the Leased Premises, whether such possession is pursuant to Mortgagee's rights under the Mortgage, or otherwise, and Tenant will continue occupancy of the Leased Premises under the same terms and conditions of the Lease.

4. Mortgagee shall not include Tenant in any foreclosure proceeding, trustee's sale or similar proceeding involving the Leased Premises.

5. Mortgagee shall use its best efforts to promptly advise Tenant upon the release, cancellation, or termination of the Mortgage by written notice to Tenant at such address as Tenant shall supply to Mortgagee from time to time..

6. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall be construed as running with the land. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

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

MORTGAGEE:
ST. JOHN'S BANK & TRUST COMPANY

TENANT:
KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: _____
Name: _____
Its: _____

By: KIRKWOOD TITUS UNITED, LLC, its
general partner

By: _____
Its: _____
Date: _____

STATE OF MISSOURI)
)ss.
COUNTY OF)

On this ____ day of _____, 2006, before me appeared _____,
to me personally known, who, being by me duly sworn did say that he is the
_____ of St. John's Bank & Trust Company, a _____ and that
said instrument was signed and sealed in behalf of said company by authority of its Board of
Directors, and he acknowledged said instrument to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my
official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires: _____

STATE OF)
)ss.
COUNTY OF)

On this ____ day of _____, 2006, before me appeared _____,
to me personally known, who, being by me duly sworn did say that he is the
_____ of KIRKWOOD TITUS UNITED, LLC, a Missouri limited liability
company, the general partner of KIRKWOOD MISSOURI FITNESS, LP and that said
instrument was signed and sealed in behalf of said limited liability company as the free act and
deed of said limited liability company and said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my
official seal in the County and State aforesaid, the day and year first above written.

Notary Public

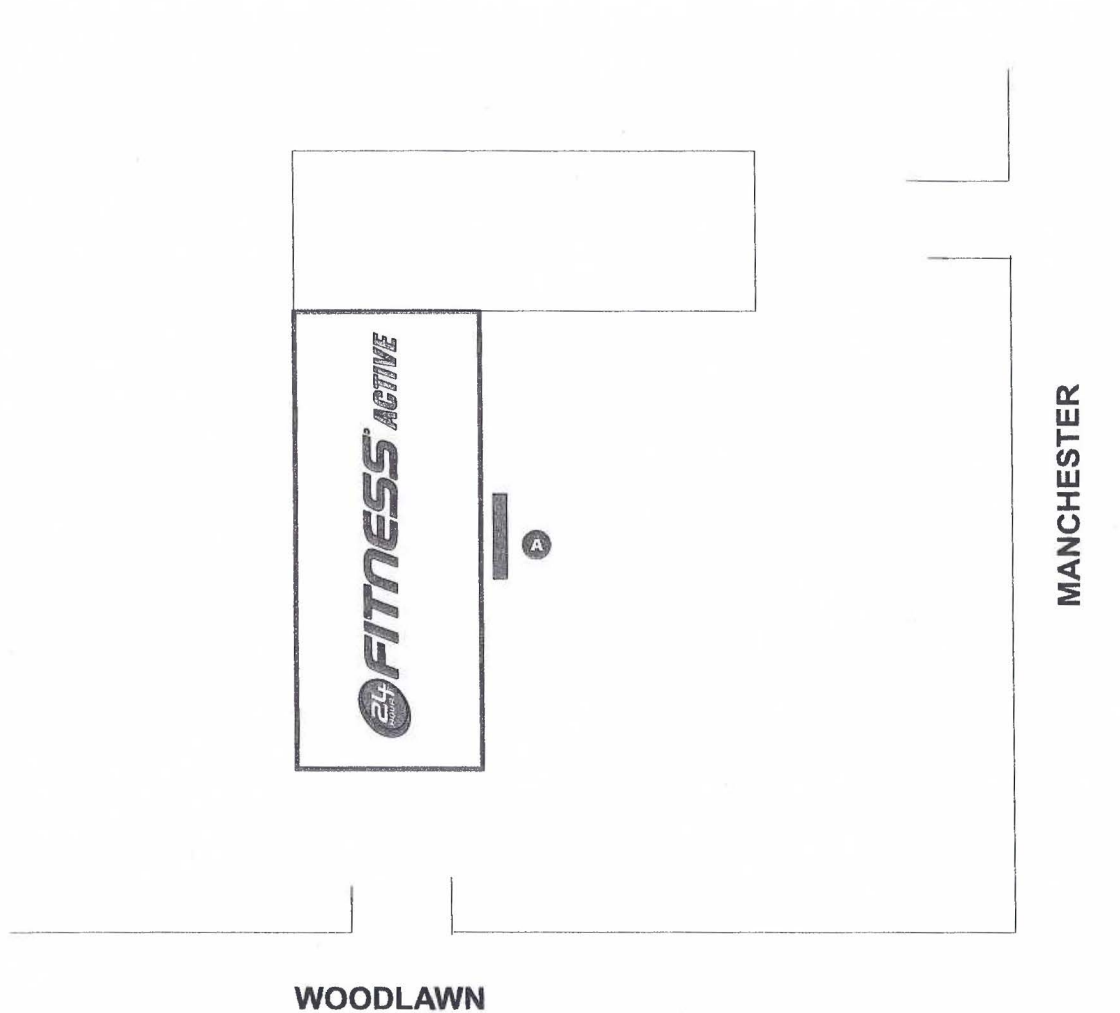
My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT I
APPROVED SIGNAGE

[See Attached]

PRELIMINARY EXHIBIT
ALL DIMENSIONS & CONDITIONS
TO BE FIELD VERIFIED



SITE PLAN
NTS



3201 Manor Way
Dallas, TX 75235
12106 Valliant Drive
San Antonio, TX 78216
P.O. Box 43732
Louisville, KY 40253

214-902-2000
Fax 214-902-2044
210-349-3804
Fax 210-349-8724
502-489-3440
Fax 502-254-3843

750 E. Hwy. 24 - Bldg. 2, Ste. 200
Woodland Park, CO 80863
2420 Vista Way - Ste. 200
Oceanside, CA 92054
719-687-2507
Fax 719-687-2506
760-967-7003
Fax 760-967-7033
This drawing is the property of Chandler Signs, L.P. and all rights to its use for reproduction are reserved by Chandler Signs, L.P.

REVISION / DATE
R1 MAG-092005 RMVD SIGN (R)

APPROVAL / DATE

Client	
Sales	
Estimating	
Art	
Engineering	
Landlord	

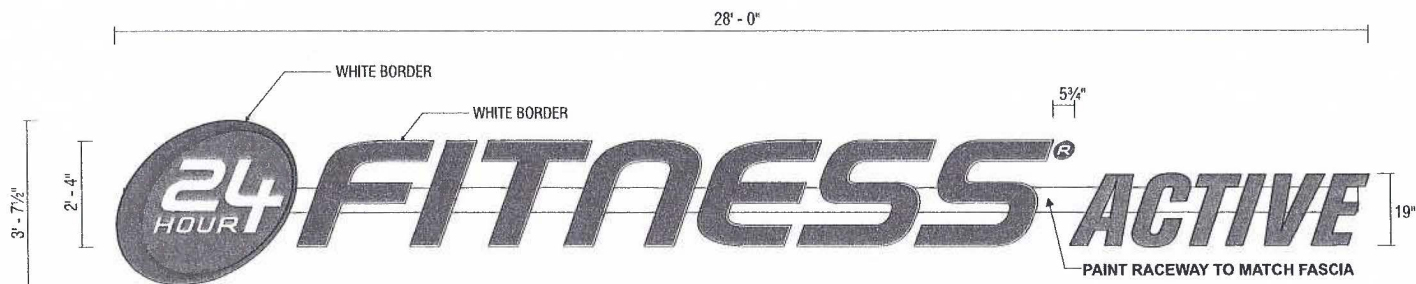
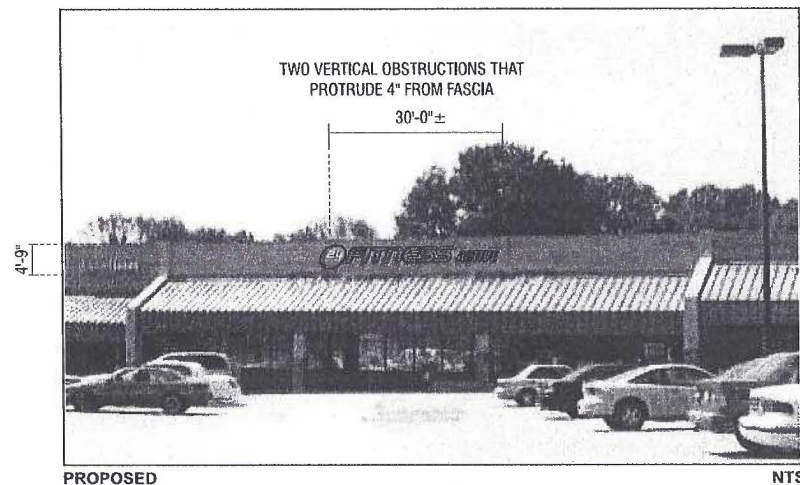
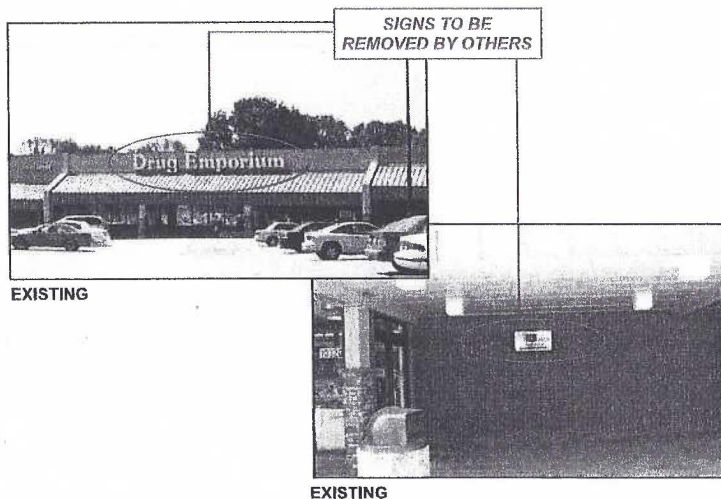
Design # C44747R1 Sheet 1 of 3
Sales/Coordinator J. MUELLER
Designer S.FELSER Date 06/17/04



Client 24HR FITNESS
Street 10320 MANCHESTER RD
City / State KIRKWOOD, MO

**FINAL ELECTRICAL
CONNECTION
BY CUSTOMER**
SIGN IS TO BE MANUFACTURED
TO U.S. SPECIFICATIONS AND
MATERIALS SHALL BE USED
MATERIALS SHALL BE USED
MATERIALS SHALL BE USED

PRELIMINARY EXHIBIT
ALL DIMENSIONS & CONDITIONS
TO BE FIELD VERIFIED



A ONE (1) SET OF INTERNALLY ILLUMINATED CHANNEL LETTERS (SPECIAL CONDITION LOGO) - ON RACEWAY

SCALE : 3 / 8 " = 1 ' - 0 "

Chandler Signs
www.chandler-signs.com

3201 Manor Way
Dallas, TX 75235
13056 Valliant Drive
San Antonio, TX 78216
P.O. Box 43123
Louisville, KY 40253

214-902-2000
Fax 214-902-2044
210-340-3804
Fax 210-349-8724
502-469-3640
Fax 502-254-3843

750 E. Hwy. 24 - Bldg. 2, Ste. 200 719-667-2507
Woodland Park, CO 80863 Fax 719-667-2506
1430 Vista Way - Ste. 200 760-967-7003
Oceanside, CA 92054 Fax 760-967-7003
This drawing is the property of Chandler Signs, L.P. and all rights
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REVISION DATE
R1 AUG 09/2005 RMVD SIGN (B)

APPROVAL DATE

Client	
Sales	
Estimating	
Art	
Engineering	
Landlord	

Design # C44747R1 Sheet 2 of 3
Sales / Coordinator J. MUELLER
Designer S.FELSER Date 06/17/04



Client 24HR FITNESS
Street 10320 MANCHESTER RD
City / State KIRKWOOD, MO

**FINAL ELECTRICAL
CONNECTION
BY CUSTOMER**
UL
SIGNAGE TO BE MANUFACTURED
TO U.S. AND CANADIAN STANDARDS
AND WILL BE IN ACCORDANCE WITH
NATIONAL ELECTRICAL CODES

PRELIMINARY EXHIBIT
ALL DIMENSIONS & CONDITIONS
TO BE FIELD VERIFIED

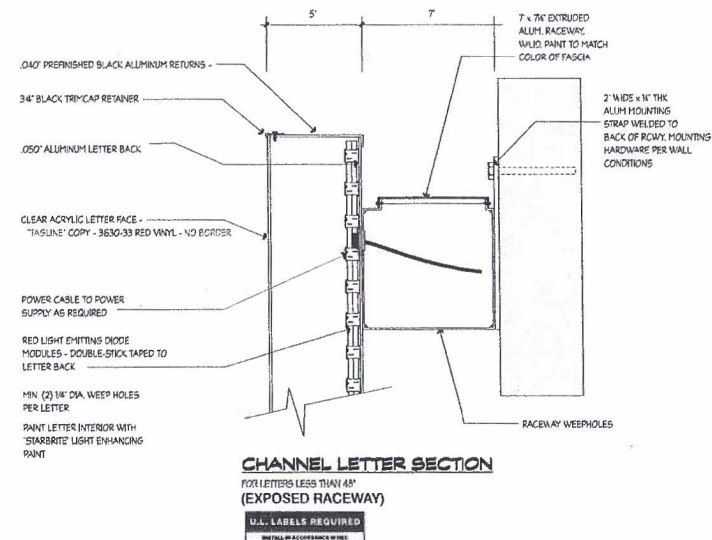
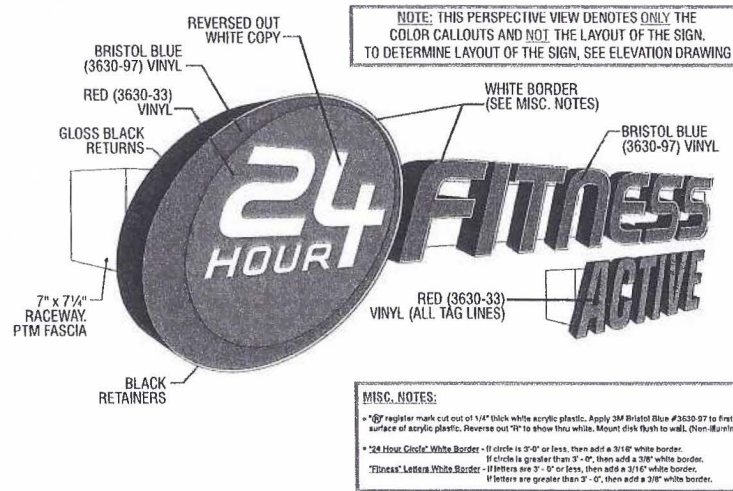
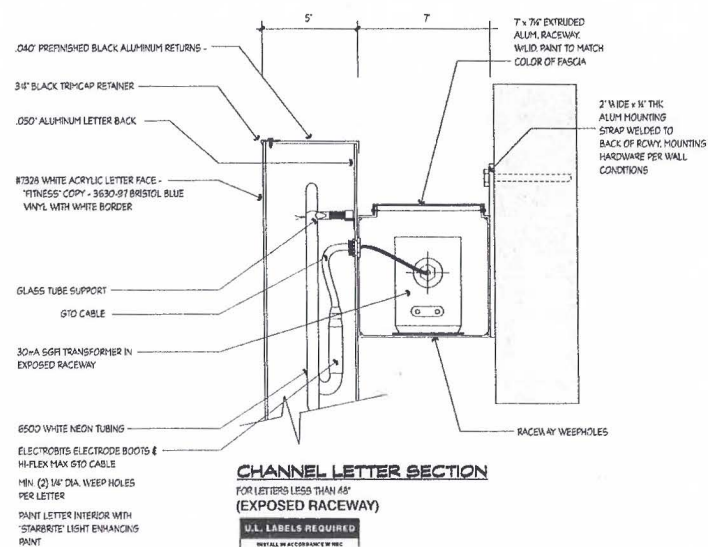
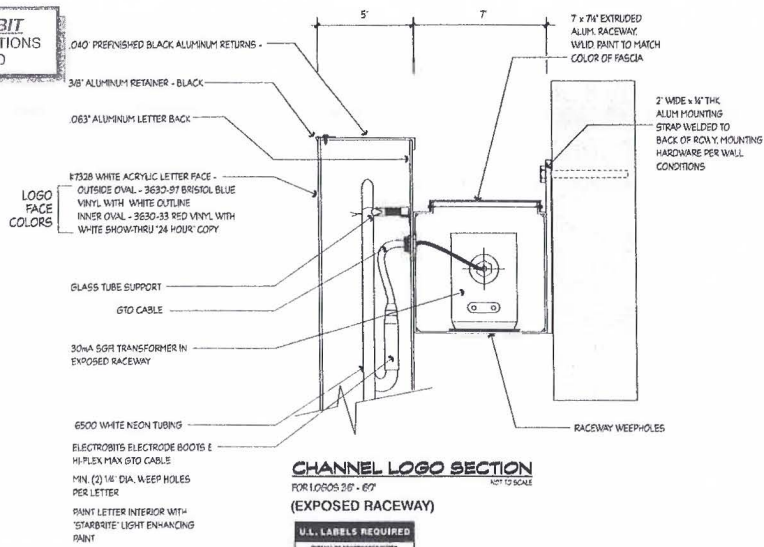


EXHIBIT J
MEMORANDUM OF LEASE

[RECORDER'S USE ONLY]

TITLE OF DOCUMENT: MEMORANDUM OF LEASE

DATE OF DOCUMENT: January ___, 2006

GRANTOR: BROWN & SONS FOODLINER, INC.
Mailing Address: c/o Novus Companies
#20 Allen Avenue, Suite 400
Webster Groves, Missouri 63119

GRANTEE: KIRKWOOD MISSOURI FITNESS, LP
Mailing Address: c/o Titus Properties, LLC
1748 W. Katella Ave., Suite 206
Orange, CA 92867

LEGAL DESCRIPTION: See Exhibit A attached hereto

REFERENCE TO BOOK(S) AND PAGE(S): N/A

RETURN RECORDED DOCUMENT TO:

24 Hour Fitness USA, Inc.
12647 Alcosta Boulevard, Suite 500
San Ramon, CA 94583
Attn.: Legal Department

MEMORANDUM OF LEASE

By this Memorandum of Lease, made the ____ day of _____, 2006, between **BROWN & SONS FOODLINER, INC.**, a Missouri corporation, hereinafter called "Landlord," and **KIRKWOOD MISSOURI FITNESS, LP**, a Missouri limited partnership, hereinafter called "Tenant":

Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, for the term commencing on the Term Commencement Date (as defined in the Lease) and continuing for a period of twenty (20) years thereafter, as such dates shall be adjusted pursuant to a lease of even date herewith between the parties hereto (the "Lease") and subject to prior termination or to extension as therein provided, those premises (the "Leased Premises") described in the Lease, which Leased Premises comprise a portion of that real property located in the City of Kirkwood, County of St. Louis, State of Missouri, and described in the attached **Exhibit A**.

The Leased Premises and Tenant's Protected Parking Area and other areas discussed in the Lease are identified on **Exhibit B** attached hereto and made a part hereof.

Provisions for rent and the other terms, covenants and conditions of said letting including, without limitation, the options on the part of Tenant for prior termination and for extension (including two (2) 5-year options to extend the term), rights to negotiate and rights of first refusal, are set forth at length in the Lease and all of said provisions, terms, covenants and conditions are, by reference thereto, hereby incorporated in and made a part of this Memorandum of Lease. The Lease, among other things, contains provisions dealing with exclusive use rights and prohibited uses that pertain to the center where the Premises are located; excerpts from these provisions are attached to this Memorandum of Lease as **Exhibit C**, which is made a part hereof.

This instrument shall also bind and benefit, as the case may require, the heirs, legal representatives, assigns and successors of the respective parties, and all covenants, conditions and agreements herein contained shall be construed as covenants running with the land. This instrument shall not become binding upon the parties until it shall have been executed and delivered by both Landlord and Tenant. This Memorandum of Lease may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

This Memorandum of Lease is made and executed by the parties hereto solely for the purpose of recording the same in the office of the public records of St. Louis County, Missouri, and is subject in each and every respect, to the rents and other terms, covenants and conditions of the Lease, and this Memorandum of Lease is executed and delivered with the understanding and

agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of the Lease. In the event of any conflict or inconsistency between the terms, covenants and conditions of the Lease and the provisions of this Memorandum of Lease, the terms, covenants and conditions of the Lease shall control.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease, as of the day and year first above written.

BROWN & SONS FOODLINER, INC., a
Missouri corporation

KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: _____
Name: _____
Title: _____

By: KIRKWOOD TITUS UNITED, LLC, its
general partner

By: _____
Its: _____
Date: _____

STATE OF MISSOURI)
)ss.
COUNTY OF)

On this ____ day of _____, 2006, before me appeared _____, to me personally known, who, being by me duly sworn did say that he is the _____ of BROWN & SONS FOODLINER, INC., a Missouri corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires: _____

Attachment 7 - Attachment 2F.pdf

Description - 24 Hour Fitness Lease dated January 26, 2006, between Landlord, Brown & Sons Foodliner, Inc. and Kirkwood Missouri Fitness, LP, with attached Sublease dated January 26, 2006, between Kirkwood and 24 Hour Fitness USA, Inc. (6 of 7)

STATE OF)
)ss.
COUNTY OF)

On this ____ day of _____, 2006, before me appeared _____,
to me personally known, who, being by me duly sworn did say that he is the
_____ of KIRKWOOD TITUS UNITED, LLC, a Missouri limited liability
company, the general partner of KIRKWOOD MISSOURI FITNESS, LP and that said
instrument was signed and sealed in behalf of said limited liability company as the free act and
deed of said limited liability company and said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my
official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
COMMON AREAS

EXHIBIT C

EXCERPTS FROM EXCLUSIVE USE/PROHIBITED USE PROVISIONS IN LEASE

Section 5.7 Exclusivity. Landlord shall not use nor permit any other space in the Center to be used as a health and/or physical fitness club, nor for any of the following activities: aerobic classes, personal training, weight training, basketball, volleyball, swimming, racquetball, cardiovascular and resistance machine operation, operation of a juice bar, the sale of nutritional supplements and related products (except by a nationally recognized chain retailer specializing in something other than the sale of nutritional and/or energy supplements/products [e.g., groceries]), yoga, indoor cycling, pilates, weight loss advising and related programs, tanning, and/or therapeutic massage. Notwithstanding the foregoing, however, the provisions of this **Section 5.7** shall not apply to and shall be subject to the rights of North America, Inc. (d/b/a Weight Watchers) for the term of its existing lease (including option terms) in the Center, to the extent that the provisions of its existing lease permits use of its premises in violation of the foregoing exclusive use rights of Tenant/Subtenant.

Section 5.8 Prohibited Uses. Landlord shall not use, or permit any portion of the Center, to be used, and Tenant shall not use, or permit any portion of the Premises, to be used, as a billiard room, game arcade or amusement center (provided that a restaurant or other establishment may have no more than two game machines located on its premises if incidental to its primary use), gambling establishment, night club, dance hall (but not including a dance studio), bar or tavern (except if incidental to the operation of a restaurant or delicatessen), pawn shop, second hand store, "adult" book or video store, massage parlor, "training or education facility," beauty school or barber college, reading room, place of instruction (other than a dance studio or uses related to Tenant's operation of a fitness center) or any other operation catering primarily to students or trainees rather than to customers, or for auctions or for the sale or display of motor vehicles, boats, trailers, or motor homes. Notwithstanding the foregoing, with respect to a beauty school, Tenant agrees that if Landlord comes to Tenant with a plan to locate a beauty school of a size and location within the Center that will not materially adversely affect Tenant's parking within in the Center, Tenant agrees that it will not unreasonably withhold its consent to a waiver of the foregoing restriction against a beauty school.

EXHIBIT K
TITLE COMMITMENT

[See Attached]



LandAmerica Commercial Services
165 N. Meramec
Suite 200
St. Louis, MO 63105
Phone:
Fax:

Customer No: Redacted

ANY INQUIRIES CONSULT

Examiner: Beth Caulfield, 314-803-3025

Closing Officer: Ruth Gordon, 314-802-3013

SCHEDULE A

1. Effective Date: August 3, 2005 at 8:00 am

2. Policy or Policies to be issued:

☐ ALTA Owner's Policy - 1992 (Amended 10-17-92) \$2,000,000.00

Proposed Insured:

24 Hour Fitness USA, Inc.

☐ ALTA Loan Policy - 1992 (Amended 10-17-92) \$0.00

Proposed Insured:

☐ ALTA Loan Policy (2) - 1992 (Amended 10-17-92) \$0.00

Proposed Insured:

3. The estate or interest in the land described or referred to in the Commitment and covered herein is Fee Simple and is at the effective date hereof vested in:

SEE ATTACHED EXHIBIT "B"

4. The land referred to in this Commitment is situated in the County of St Louis, State of Missouri, and described as follows:

SEE ATTACHED EXHIBIT "A"

COUNTERSIGNED:



Authorized Officer or Agent

SUBJECT TO INSURING PROVISIONS, EXCLUSIONS FROM COVERAGE, CONDITIONS, AND
STIPULATIONS OF ALTA STANDARD LOAN POLICY 1992 (AMENDED 10/17/92)

SCHEDULE B - SECTION 1

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

1. Instrument creating the estate of interest to be insured must be executed and filed for record, to-wit:
The Procuring and recording of the necessary deeds to insure the Policy or Policies to be issued under Item 2 Schedule A of this Commitment for Title Insurance.
2. Pay the full consideration to, or for the account of, the grantors, or mortgagors.
3. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
4. Provide proof that any improvements, repairs or alterations have been completed and that all contractors, sub-contractors, labor and materialmen are all paid.
5. The survey exception will be deleted from our title policy if we are provided with an accurate survey of said property showing no title objections, and no easements or claims of easements not shown by the Public Records.
6. IF ANY PORTION OF THE PROCEEDS OF THE DEED OF TRUST TO BE INSURED HEREUNDER, ARE USED FOR ANY TYPE OF NEW CONSTRUCTION, INCLUDING REHAB CONSTRUCTION OR REMODELING, THIS COMPANY MUST BE NOTIFIED IN WRITING BEFORE CLOSING. FAILURE TO DO SO WILL INVALIDATE ANY MECHANIC LIEN COVERAGE GIVEN IN THE POLICY. IF THE COMPANY IS NOTIFIED THAT ANY PORTION OF THE LOAN PROCEEDS ARE BEING USED FOR NEW CONSTRUCTION, REHAB CONSTRUCTION OR REMODELING, THE COMPANY HEREBY RESERVES THE RIGHT TO ADD ADDITIONAL REQUIREMENTS TO THIS COMMITMENT.
7. PURSUANT TO SENATE BILL NO. 664 EFFECTIVE AUGUST 28, 1996 REAL ESTATE SETTLEMENT FUNDS MUST BE IN THE FORM OF CASHIER'S CHECK, CERTIFIED CHECK, TELLER'S CHECK OR WIRE TRANSFER. IF COMMONWEALTH LAND TITLE INSURANCE COMPANY IS CLOSING THIS TRANSACTION WE REQUIRE COMPLIANCE WITH SENATE BILL NO. 664.
8. **IF THIS COMPANY IS PREPARING A HUD 1 SETTLEMENT STATEMENT IN CONNECTION WITH THIS COMMITMENT, WE MUST RECEIVE FIGURES AT LEAST 24 HOURS IN ADVANCE OF CLOSING**
9. ALL DOCUMENTS TO BE RECORDED IN CONNECTION WITH THIS TRANSACTION MUST COMPLY WITH REVISED SECTIONS 59.005, 59.310 and 59.313 OF THE MISSOURI STATUTES EFFECTIVE JANUARY 1, 2002.
10. Provide the company with a complete copy of the Lease to be insured under this commitment. (Note: Upon review by this company further requirements may be necessary.)
11. Record the above required Lease as an acceptable memorandum thereof.
12. Provide proof that the corporation named herein has duly complied with the laws of the State of Missouri requiring the annual registration of private corporations, and has paid all Franchise Taxes, including those for the year of 2005. Corporation: 24 Hour Fitness USA, Inc..
13. Provide this company with a resolution of the Board of Directors of the named Corporation authorizing the execution of the following Documents: All Documents necessary to effectuate the proposed transaction. Corporation : 24 Hour Fitness USA, Inc..
14. Pay any unpaid general and/or special taxes by the City of Kirkwood.
15. Provide proof that the corporation named herein has duly complied with the laws of the State of Missouri requiring the annual registration of private corporations, and has paid all Franchise Taxes, including those for the year of 2005. Corporation: Brown & Sons Foodliner, Inc..
16. Provide this company with a resolution of the Board of Directors of the named Corporation authorizing the execution of the following Documents: All Documents necessary to effectuate the proposed transaction. Corporation : Brown & Sons Foodliner, Inc..

17. Provide proof that the corporation named herein has duly complied with the laws of the State of Missouri requiring the annual registration of private corporations, and has paid all Franchise Taxes, including those for the year of 2005. Corporation: Novus Development, Inc..
18. Provide this company with a resolution of the Board of Directors of the named Corporation authorizing the execution of the following Documents: All Documents necessary to effectuate the proposed transaction. Corporation : Novus Development, Inc..
19. Deed of Trust dated February 26, 2002 in the amount of \$3,850,000.00 executed by Brown & Sons Foodliner, Inc. to Ronal E. Johnson, trustee for St. John's Bank & Trust Company, and recorded March 6, 2002 in Book 13667 Page 786.
20. The above Deed of Trust contains provisions for future advances under Section 443.055 of the Revised Statutes of Missouri.
21. Assignment of Rents and Leases to St. John's Bank & Trust Company by instrument recorded in Book 13667 Page 799.
22. The above Deed of Trust was modified and/or extended by instrument recorded in Book 14781 Page 1696.
23. Financing Statement by and between: Robert A. Breitenback and Dairy Queen Enterprises, Inc.. Recorded in Book 13472 Page 2374.
24. Financing Statement by and between: Oberweis Dairy, Inc. and M&I First National Leasing Corp.. Recorded April 15, 2003 in Book 14763 Page 2932.
25. Deed of Trust dated April 18, 2005 in the amount of \$199,800.00 executed by Jonathan P. Browne and Lisa E. Browne, husband and wife to Donald P. Herron, trustee for Merrlin Mortgage Corporation, and recorded April 25, 2005 in Book 16493 Page 1769.
26. The above Deed of Trust does not contain provisions for future advances under Section 443.004 of the Revised Statutes Missouri.
27. Assignment of the above Deed of Trust to Mortgage Electronic Registration System, Inc. according to the instrument recorded in Book 16493 Page 1788.
28. Pay any unpaid assessments by the trustees of said subdivision, if any.
29. Pay any unpaid assessments for sanitary sewer service, if any.

SCHEDULE B - SECTION 2

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

Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first 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 thereon covered by this Commitment.
2. General taxes due and payable in the year shown below subsequent years, and special assessments that become a lien after the date hereof.
Year: 2005
3. Any discrepancy between the actual boundaries of the land and the apparent boundaries as indicated by fences, plantings or other improvements.
4. Unrecorded Lease dated August 18, 2000 by Novus Management Company and The WW Group West, L.L.C., a limited liability company, as evidenced of recorded by the memorandum of lease recorded in Book 12769 Page 1673. NOTE: No record title in said party.
5. Easement granted Metropolitan St. Louis Sewer District according to the instrument recorded in Book 6518 Page 314 and Book 6519 page 89.
6. Easement granted City of Kirkwood according to the instrument recorded in Book 1557 Page 544 and Book 6825 page 2030.
7. Rights of parties in possession under any unrecorded leases or month to month tenancies. (Leasehold Title Not Examined)
8. Pay any unpaid assessments for lateral sewer charges, if any.
9. Assessments by the trustees of said subdivision, if any.
10. Assessments for sanitary sewer service, if any.
11. PROPERTY ADDRESS: 10300 Manchester Rd
LOCATOR NO.: 22M241124
ASSESSED VALUATION: \$1,014,020.00
TAX RATE 7.4424 (2004) Add Commercial Surcharge
CITY OF: Kirkwood

NOTE: A POLICY(S) ISSUED IN CONNECTION WITH THIS COMMITMENT WILL CONTAIN THE FOLLOWING PRE-PRINTED EXCEPTIONS:

1. Rights or claims of parties other than Insured in actual possession of any or all of the property.
2. Discrepancies or conflicts in boundary lines, shortage in area and encroachments which an accurate and complete survey would disclose.
3. Easements or claims of easement, not shown by the Public Records.
4. Unfiled mechanic's or materialmen's liens.
5. The Marital Rights of the spouse of any individual named insured.

EXHIBIT A

A tract of land being part of Lot 1 of FLEMING SUBDIVISION according to the plat thereof recorded in Plat Book 9 page 14 of the St. Louis County Records and part of Lot 2 of the Subdivision of the Estate of Thomas Harrison in the Northeast 1/4 of Section 36, Township 45 North, Range 5 East, St. Louis County, Missouri and described as follows:

Beginning at a point on the West line of Woodlawn Avenue, said point being the Southeast corner of a tract of land conveyed to Albert E. Berkel and Florence Berkel, his wife, by deed recorded in Book 6678 page 355 of the St. Louis County Records, and being also a point on the North line of a tract of land conveyed to Leonhard M. Wingfield and wife, by deed recorded in Book 1635 page 410 of the St. Louis County Records; thence South 86 degrees 56 minutes 00 seconds West, along the North line of said Wingfield property 370.70 feet to a point on the East line of a tract of land conveyed to Ford Leasing Development Co.; thence North 0 degrees 25 minutes 00 seconds East, along the East line of Ford Leasing Development Co., property, 479.89 feet to the Northeast corner of the Ford Leasing Development Co., property, said point being a point on the South line of Manchester Road; thence North 86 degrees 55 minutes 45 seconds East, along the south line of Manchester Road, 273.52 feet to a point of curve; thence Southeastwardly along the arc of a curve to the right, having a radius of 70.00 feet, 106.76 feet to a point of tangency on the West line of Woodlawn Avenue; thence along the West line of Woodlawn Avenue South 5 degrees 41 minutes 26 seconds East 220.13 feet and South 0 degrees 30 minutes 00 seconds West 192.71 feet to the point of beginning, according to survey thereof executed by Lapin-Ellis & Dabler, dated November 12, 1977 and revised November 17, 1977.

File **Redacted**

Exhibit "B"

Brown and Sons Foodliner, Inc.

EXHIBIT L

SUBLEASE

[See Attached]

SUBLEASE

KIRKWOOD

THIS SUBLEASE is made as of the 26th day of January, 2006 ("Effective Date"), by and between KIRKWOOD MISSOURI FITNESS, LP, a Missouri limited partnership ("Sublandlord") and 24 HOUR FITNESS USA, INC., a California corporation ("Subtenant").

RECITALS

A. Brown & Sons Foodliner, Inc., a Missouri corporation, as landlord ("Landlord"), and Sublandlord, as tenant, have entered into that certain 24 Hour Fitness Lease dated January 26 2006 ("Master Lease") with respect to certain premises (the "Premises") containing approximately 22,100 square feet and located at 10320 Manchester Road, Kirkwood, Missouri. A copy of the Master Lease is attached hereto as **Exhibit A**.

B. Sublandlord and Subtenant desire (i) that Subtenant sublease the Premises from Sublandlord, (ii) that Sublandlord provide a tenant improvement allowance to be used by Subtenant in making certain improvements to the Premises, and (iii) that Subtenant use and occupy the Premises pursuant to the terms of this Sublease.

SUBLEASE AGREEMENT

In consideration of the obligations of Subtenant to pay rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Sublandlord hereby sublets to Subtenant and Subtenant hereby sublets from Sublandlord the entire Premises upon and subject to the terms and provisions of this Sublease.

1. **Defined Terms.** Capitalized terms used but not otherwise defined in this Sublease shall have the meanings given to them in the Master Lease.

2. **Basic Sublease Summary.**

Effective Date:	The date of this Sublease
Base Rent:	\$20,580 per month
Base Rent Commencement Date:	As set forth in Paragraph 4(c) below

Expiration Date: Twenty (20) years, less one day, from and after the Term Commencement Date of the Master Lease, unless the Term of this Sublease is sooner terminated or extended (including, without limitation, by the exercise of one or more options to extend)

Landlord: Brown & Sons Foodliner, Inc., a Missouri corporation

Landlord's Address: Brown & Sons Foodliner, Inc.
c/o Novus Companies
#20 Allen Avenue, Suite 400
Webster Groves, Missouri 63119

Master Lease: As defined in **Recital A** above

Permitted Use: That use of the Premises permitted by Section 5.1 of the Master Lease

Premises: As defined in **Recital A** above, and more particularly described in the Master Lease

Subtenant: 24 Hour Fitness USA, Inc., a California corporation

Subtenant's Address: 24 Hour Fitness USA, Inc.
12647 Alcosta Boulevard, Suite 500
San Ramon, CA 94583
Attention: Property Management

With copies to:

24 Hour Fitness USA, Inc.
12647 Alcosta Boulevard, Suite 500
San Ramon, CA 94583
Attention: Legal Department

Colliers International
610 Arden Way, Suite 242
Sacramento, CA 95815
Attention: Corporate Services

Sublandlord: Kirkwood Missouri Fitness, LP

Sublandlord's Address:

Kirkwood Missouri Fitness, LP
c/o TITUS Properties, LLC
1748 W. Katella Ave., Suite 206
Orange, California 92867

**Sublandlord's Federal Tax
Identification Number**

**Subtenant Improvement
Allowance**

One Million Five Hundred Thousand and
no/100 Dollars

Term:

Twenty (20) years, less one day, with two (2)
5-year options

Exhibits:

A - Master Lease

3. Term.

(a) **Term.** The initial term of this Sublease shall begin on the date hereof (the "Effective Date") and shall continue for a period of twenty (20) years, less one (1) day, from and after the Term Commencement Date of the Master Lease (the "Expiration Date"), unless this Sublease is sooner terminated pursuant to its terms, the Master Lease is sooner terminated pursuant to its terms, or Subtenant exercises one or more of its options to extend pursuant to **Paragraph 3(b)** below. The initial Term, plus any option periods exercised by Subtenant, shall constitute the "Term" of this Sublease.

(b) **Option to Extend.** Subtenant shall have two (2) 5-year options to extend the Term of this Sublease. So long as Subtenant requests that Sublandlord exercise any Option to extend the term under the Master Lease by an Extension Term (such request to be made at least seven (7) days before the last day on which Sublandlord can effectively exercise an Option under the terms of the Master Lease), Sublandlord shall exercise such Option(s) under the Master Lease, and such exercise shall also constitute an exercise by Subtenant of its corresponding option to extend the Term of this Sublease. Subtenant shall have no obligation to exercise any option to extend the Master Lease or this Sublease.

4. Rent.

(a) **Minimum Annual Rent.** During the Term, Subtenant shall, on or prior to the due date thereof, pay directly to Landlord the Monthly Rent pursuant to Sections 4.1 of the Master Lease.

(b) **Taxes, Common Area Costs and Additional Rent.** During the Term, Subtenant shall pay directly to Landlord Tenant's Share of Operating Expenses pursuant to Article 7 of the Master Lease, Tenant's Share of Real Property Taxes pursuant to Article 7 of the Master Lease, all other items of Additional Rent (as defined in Section 4.4 of the Master Lease) under the Master Lease (other than any Additional Rent payable due to a default by Sublandlord under the terms of the Master Lease or this Sublease), and all other sums due and payable under the Master Lease (other than any sums payable due to a default by Sublandlord under the terms

Attachment 8 - Attachment 2G.pdf

Description - 24 Hour Fitness Lease dated January 26, 2006, between Landlord, Brown & Sons Foodliner, Inc. and Kirkwood Missouri Fitness, LP, with attached Sublease dated January 26, 2006, between Kirkwood and 24 Hour Fitness USA, Inc. (7 of 7)

of the Master Lease or this Sublease). Other than with respect to regularly occurring payments in amounts that have previously been determined, Subtenant shall not be responsible for making any such payments to Landlord until twenty (20) days after Subtenant has received from Sublandlord (or directly from Landlord) written notice requesting payment and indicating the amount of the payment due.

(c) **Base Rent.** Commencing on the date which is the earlier of (i) thirty (30) days after the payment of the last installment of the Subtenant Improvement Allowance to Subtenant pursuant to the provisions of **Paragraph 5(a)** below, or (ii) two hundred seventy (270) days after the payment of the first installment of the Subtenant Improvement Allowance to Subtenant pursuant to the provisions of **Paragraph 5(a)** below ("Base Rent Commencement Date"), and thereafter during the Term (including any extension terms exercised by Subtenant), on the first day of each calendar month, Subtenant shall pay directly to Sublandlord as monthly base rent ("Base Rent") for the Premises equal monthly installments of Twenty Thousand Five Hundred Eighty Dollars (\$20,580.00). Such amount shall not be adjusted due to any remeasurement of the Premises under the Master Lease. Notwithstanding the foregoing, in the event the Base Rent Commencement Date occurs prior to the payment of all installments of the Subtenant Improvement Allowance to Subtenant, the amount of Base Rent payable by Subtenant to Sublandlord shall be proportionately adjusted (e.g. if only one-half of the Subtenant Improvement Allowance has been paid out, Base Rent will be one-half of the Base Rent set forth above) until all such installments of the Subtenant Improvement Allowance have been paid to Subtenant.

Base Rent for any partial calendar month coming at the beginning or end of the Term shall be prorated on a daily basis. Base Rent shall be payable without notice or demand and, except as otherwise provided in this Sublease, without any deduction, offset, or abatement, in lawful money of the United States of America. Base Rent shall be paid to Sublandlord at Sublandlord's address as set forth in the Basic Sublease Summary, or such other address as may be designated in writing by Sublandlord.

(d) **Definition of Rent.** All monies other than Base Rent required to be paid by Subtenant under this Sublease, including, without limitation, Monthly Rent, Tenant's Share of Operating Expenses, Tenant's Share of Real Property Taxes and Addition Rent payable by Subtenant directly to Landlord, shall be deemed additional rent ("Additional Sublease Rent"). The payment of Additional Sublease Rent shall be subject to such offsets and abatements as are provided for under the Master Lease.

(e) **Late Charge.** If Subtenant fails to pay to Sublandlord any amount required to be paid to Sublandlord hereunder within five (5) days after receipt of written notice that such sum was not received when due, Subtenant shall pay Sublandlord upon demand a late charge equal to five percent (5%) of the delinquent amount. The parties agree that the foregoing late charge represents a reasonable estimate of the cost and expense which Sublandlord will incur in processing any delinquent payment. Sublandlord's acceptance of any late charge shall not waive Subtenant's default in failing to pay the delinquent amount.

(f) **Certain Payments to Sublandlord upon Termination of Master Lease.** If at any time during the initial term (i.e. years 1 through 20) of this Sublease, the Master Lease

(and thus, this Sublease) is terminated pursuant to the provisions of Article 12 ("Damage or Destruction") or Article 13 ("Eminent Domain") of the Master Lease, Subtenant agrees to pay to Sublandlord the unamortized portion of the Subtenant Improvement Allowance (as defined in **Paragraph 5(a)** below); for purposes of this Sublease, the Subtenant Improvement Allowance shall be amortized on a straight-line basis over a period of twenty (20) years. Provided Subtenant pays to Landlord such unamortized portion of the Subtenant Improvement Allowance, all condemnation and insurance proceeds payable to Tenant under the Master Lease shall be the property of and payable to Subtenant.

If at any time during the initial term (i.e. years 1 through 20) of this Sublease, the Master Lease (and thus, this Sublease) is terminated pursuant to any of the provisions of Article 15 ("Defaults and Remedies") of the Master Lease because a default by Subtenant under the terms of this Sublease causes an Event of Default under the Master Lease, Sublandlord shall be entitled to all such monetary damages as are available to Sublandlord at law or in equity, including recovery of the unamortized portion of the Subtenant Improvement Allowance, provided that other items of monetary damage (e.g., Base Rent) shall be reduced or adjusted so as to exclude any component that is attributable, directly or indirectly, to the unamortized portion of the Subtenant Improvement Allowance; Sublandlord shall not be entitled to double recovery of any damages.

5. Subtenant Improvement Allowance.

(a) **Payment by Sublandlord.** Sublandlord shall pay to Subtenant, or at Subtenant's election, directly to architects, engineers, contractors, subcontractors and suppliers designated by Subtenant, in cash and in accordance with the provisions of this **Paragraph 5(a)**, a tenant improvement allowance ("Subtenant Improvement Allowance") in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00). The Subtenant Improvement Allowance shall be used to pay for costs associated with Subtenant's design and construction of the Tenant Improvements and its occupancy of the Premises, which costs may include, but shall not be limited to: (a) all costs charged to Subtenant by contractors, subcontractors and suppliers for construction of the Tenant Improvements and installation of Subtenant's equipment; (b) fees, assessments and costs associated with securing approvals, permits and licenses; (c) costs of construction insurance (including, without limitation, casualty, liability, theft and worker's compensation insurance); (d) utility hookup fees; (e) premiums for any bonds required by Subtenant; and (f) architectural, design and engineering fees related to the Tenant Improvements. Sublandlord shall pay the amount of the Subtenant Improvement Allowance in progress payments (payable no less frequently than monthly) after the Effective Date. Such progress payments shall be made by Sublandlord not later than ten (10) days after receipt by Sublandlord from Subtenant of copies of invoices evidencing completed work and/or services provided. Each invoice shall be accompanied by a written statement verifying that the work evidenced by such invoice has been completed, and/or that services evidenced by such invoice have been performed; such verification shall be rendered by Subtenant's architect, except that with regard to costs, fees and assessments not charged by contractors, subcontractors, or suppliers, such verification may be rendered by a representative of Subtenant. Each invoice (starting with the invoice for the second draw) shall also be accompanied by lien waivers from Subtenant's general contractor and all material subcontractors and material suppliers (i.e., those supplying labor or materials in excess of \$10,000) with respect to payments made under the prior

draw; notwithstanding the foregoing, if Subtenant has met the conditions to the payment of the Subtenant Improvement Allowance, other than the receipt of one or more lien waivers, Sublandlord shall nonetheless pay the applicable portion of the Subtenant Improvement Allowance to Subtenant, less an amount equal to 110% of the amount of the missing lien waivers (the "Holdback Amount"). Sublandlord shall pay the Holdback Amount to Subtenant upon the earlier of the receipt of the missing lien waivers or the expiration of the applicable lien period with no liens outstanding. Sublandlord shall have no obligation to make any progress payment while an uncured default is continuing (provided that payment shall be subsequently made by Sublandlord once the default is cured) and the total of all such progress payments will in no event exceed the amount of the Subtenant Improvement Allowance. To the extent Tenant Improvements have been paid for by the Subtenant Improvement Allowance, such Tenant Improvements shall be deemed at all times to be Sublandlord's property. Upon Subtenant's request, Sublandlord shall demonstrate, to Subtenant's reasonable satisfaction, Sublandlord's ability to fund the Subtenant Improvement Allowance. In no event shall Sublandlord be responsible for payment of any sums for Tenant Improvements in excess of the Subtenant Improvement Allowance.

(b) Responsibility for Tenant Improvements. Sublandlord and Subtenant agree that Subtenant is taking the Premises in their current condition (subject to work to be performed by and the obligations of Landlord under the Master Lease), and Sublandlord shall not be responsible for making any existing or future mechanical or structural improvements to the Premises. Sublandlord shall not be liable or responsible for any incidental or consequential damages (including strict or absolute liability in tort) with respect to the Tenant Improvements. Further, Sublandlord shall not be liable for any claim caused directly or indirectly by the inadequacy of the Tenant Improvements for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any loss of business which is related thereto, all of which shall be the sole risk and responsibility of Subtenant unless otherwise provided to be the responsibility of Landlord under the Master Lease. In performing the Tenant Improvements, Subtenant shall have the right to select its own architect and contractor, and Sublandlord shall not charge any fees for construction management or supervision in connection with the Tenant Improvements. Prior to Subtenant's occupancy of the Premises for the purpose of operating its business thereon, Subtenant shall provide Sublandlord with written documentation from the City of Kirkwood that the Premises may be occupied for the Permitted Use. The foregoing notwithstanding, nothing in this **Paragraph 5(b)** shall minimize or affect: (i) Landlord's obligations under the Master Lease; (ii) Landlord's obligation to perform Landlord's Work, if any, under the Master Lease; (iii) requirements and provisions in the Master Lease concerning the condition of the Premises; or (iv) Sublandlord's obligation to cause Landlord to perform its obligations under the Master Lease.

(c) Sublandlord's Failure to Pay. Anything in this Sublease to the contrary notwithstanding, in the event Sublandlord does not make one or more payments of the Subtenant Improvement Allowance when required hereunder, and should such failure continue for a period of twenty (20) days, in addition to all other rights and remedies available to Subtenant, Subtenant shall have the right to offset against Base Rent until paid in full that portion of the Subtenant Improvement Allowance then payable hereunder which has not been paid by Sublandlord, together with interest on such unpaid amount. Such interest shall accrue at an annual rate of twelve percent (12%) on the amount payable but unpaid from time to time.

6. Delivery of Possession; Condition of Premises. Sublandlord shall deliver possession of the Premises to Subtenant on the date required for delivery of the Premises by Landlord to Sublandlord under the terms of the Master Lease. In addition, to the extent access is granted to "Tenant" under the Master Lease, Subtenant shall have access to the Premises on a rent free basis prior to the Tem Commencement Date for purposes of the preparation of Subtenant's plans and construction of the Subtenant's leasehold improvements. Subtenant acknowledges that Sublandlord has not been responsible for, and has made no representations of any kind in connection with, the Premises, including the Tenant Improvements, or physical conditions of the Premises. Subtenant shall rely solely on Subtenant's own inspection and examination of such items and on Landlord's representations and other commitments and obligations under the Master Lease, and not on any representations of Sublandlord, express or implied. Without limiting Sublandlord's obligations under **Paragraph 7(d)** below, Subtenant further recognizes and agrees that Sublandlord shall not be required to perform any work of construction, alteration or maintenance of or to the Premises, including the Tenant Improvements. Subtenant shall look solely to Landlord for performance of any repairs required to be performed by Landlord under the terms of the Master Lease.

7. Other Sublease Terms.

(a) Incorporation By Reference. Except as otherwise provided in this **Section 7** or elsewhere in this Sublease to the contrary, all terms and conditions of the Master Lease are incorporated into and made a part of this Sublease, as between Sublandlord and Subtenant only, as if Sublandlord were the Landlord thereunder and Subtenant the Tenant thereunder. Notwithstanding the foregoing: (i) each reference in the Master Lease to "Lease" shall be deemed a reference to this "Sublease;" (ii) with respect to work, services, repairs, restoration, provision of insurance or the performance of any other obligation of Landlord under the Master Lease, Sublandlord's obligations shall be limited as provided in **Paragraph 7(d)(v)** below; (iii) with respect to any obligation of Subtenant to be performed under this Sublease, wherever the Master Lease grants to Sublandlord (as Tenant) a specified number of days to perform its obligations under the Master Lease, Subtenant shall have two (2) fewer days to perform the obligation. If and to the extent that any provisions incorporated by reference from the Master Lease pursuant to the provisions of this **Paragraph 7(a)** conflict with the express provisions of any other portion of this Sublease, the express provisions of any other portion of this Sublease shall control.

(b) Provisions Excluded From Incorporation or Only Applicable to Landlord. Notwithstanding the provisions of **Paragraph 7(a)** to the contrary, the following provisions of the Master Lease hereby are excluded from incorporation into this Sublease: Section 1.9 ("Annual Rent"); Section 1.10 ("Broker"); Section 3.2 ("Term; Term Commencement"); Section 3.3 ("Options to Extend Term"); Section 4.1 ("Monthly Rent"); Section 4.4 ("Additional Rent"); Section 4.7 ("Late Payment Charges"); Section 7.1 ("Tenant's Share of Operating Expenses"); Section 7.2 ("Tenant's Share of Real Property Taxes"); and Section 19.2 ("Broker").

In addition, references to "Landlord" in the following Sections and Articles shall be construed to create rights only in favor of Landlord and impose burdens and obligations only upon Landlord: Section 3.5 ("Early Entry"); Section 3.7 ("Delay in Possession"); Section 3.8

("Delivery of Premises"); Section 3.12 ("Landlord's Title to Center"); Section 5.2 ("Compliance With Applicable Laws"); Section 9.1 ("Landlord's Maintenance and Repair Obligations"); Section 9.3 ("Citations"); Section 10.3 ("Maintenance of Common Area"); Section 11.1 ("Indemnification"); Section 11.2 ("Property Insurance"); Section 12.1 ("Landlord's Obligation to Rebuild"); Section 12.2 ("Landlord's Right to Terminate"); Section 12.3 ("Landlord's Repair Obligations"); Section 13.2 ("Taking Not Resulting in Termination"); and Exhibit C; provided, however, upon the request by Subtenant, with respect to such provisions Sublandlord will use its diligent, good faith efforts to enforce such provisions against Landlord for the benefit of Subtenant as contemplated in **Paragraph 7(d)(v)** below.

With respect to any right of "Tenant" to terminate the Master Lease, such right shall be exercised by Subtenant in its sole and absolute discretion, and shall not be independently exercised by Sublandlord. Any audit rights or rights to receive refunds of Tenant's Share of Operating Expenses or Real Property Taxes or any other sums due and payable under the Master Lease shall inure to the benefit of, be exercisable by and/or payable to Subtenant. Whenever rental abatement or the right of offset is provided for under the Master Lease, such abatement and offset rights shall pertain as to Subtenant's obligation to pay all items of Monthly Rent and Additional Rent, but shall not apply to Subtenant's obligation to pay Base Rent to Sublandlord hereunder.

(c) Specific Obligations of Subtenant. Subtenant agrees not to take any action or fail to take any action that would constitute an Event of Default under the terms of the Master Lease. Subtenant shall use and occupy the Premises in compliance with and subject to the terms and provisions of the Master Lease.

(d) Specific Obligations of Sublandlord.

(i) Sublandlord agrees not to take any action or fail to take any action that would constitute an Event of Default under the terms of the Master Lease.

(ii) Sublandlord will not amend, modify, terminate or surrender the Master Lease, or grant any consent or approval under the Master Lease, or enter into any document or agreement relating to the Master Lease without the prior written consent of Subtenant, such consent not to be unreasonably withheld or delayed.

(iii) Upon the written request of Subtenant, but only upon the written request of Subtenant, Sublandlord will exercise any option to extend the term of the Master Lease, any right to terminate the Master Lease or any other right or option of the Tenant under the Master Lease.

(iv) Upon the written request of Subtenant, Sublandlord will give such notices as Tenant to Landlord under the Master Lease as Subtenant may reasonably request.

(v) If Landlord shall fail to perform its obligations in accordance with the terms of the Master Lease, Sublandlord, upon receipt of written notice from Subtenant, shall use diligent, good faith efforts to enforce all obligations of Landlord under the Master Lease. If, after receipt of written request from Subtenant, Sublandlord shall fail or refuse to take action for the enforcement of Sublandlord's rights against Landlord with respect to the Premises

("Action"), or should such Action be unsuccessful, in addition to any other rights and remedies Subtenant may have, Subtenant shall have the right to take such Action in its own name, and for that purpose and only to such extent, such rights of Sublandlord as Tenant under the Master Lease hereby are conferred upon and assigned to Subtenant. If any such Action against Landlord in Subtenant's name shall be barred by reason of lack of privity, nonassignability or otherwise, Subtenant may take such Action in Sublandlord's name, provided, that Subtenant shall indemnify, protect, defend by counsel reasonably satisfactory to Sublandlord and hold Sublandlord harmless from and against any and all liability, loss, claims, demands, suits, penalties or damage (including, without being limited to, reasonable attorneys' fees and expenses) which Sublandlord may incur or suffer by reason of such Action, except for any such liability, loss, claims, demands, suits, penalties or damage which Sublandlord may incur or suffer by reason of Sublandlord's negligent acts or omissions. Sublandlord shall sign such documents as Subtenant may reasonably request in connection with such Action and shall otherwise reasonably cooperate with Subtenant in the taking or prosecution of such Action. Sublandlord promptly shall deliver to Subtenant copies of all notices, demands and requests that Sublandlord may receive under the Master Lease.

(vi) Upon the written request of Subtenant, Sublandlord will exercise (for the benefit of Subtenant) any option to extend the term of the Master Lease, any right to terminate the Master Lease, any audit right or any other right or option of the Tenant under the Master Lease.

(e) **Intention of the Foregoing Paragraphs.** Sublandlord and Subtenant agree that it is the intention of the foregoing paragraphs of this **Section 7**, and this Sublease as a whole, (i) that Subtenant improve, possess, occupy and utilize the entire Premises as if Subtenant were the Tenant under the Master Lease, (ii) that Subtenant have and enjoy all of the rights and benefits of the Premises as if Subtenant were the Tenant under the Master Lease, (iii) that Subtenant be bound, as a direct pass-through, by all the duties and obligations of Tenant under the Sublease (except to the extent that such duties and obligations arise out of the acts or omissions of Sublandlord or are contrary to the provisions of this Sublease), and (iv) that Sublandlord not be directly responsible for the obligations of Landlord under the Master Lease, but that Sublandlord cooperate with Subtenant and utilize Sublandlord's diligent, good faith efforts to enforce the provisions of the Master Lease as against Landlord for the benefit of Subtenant.

8. Indemnity:

(a) Except to the extent caused by the negligence or willful misconduct of Sublandlord, its agents, employees, contractors or invitees, or the breach by Sublandlord of this Sublease, Subtenant shall indemnify, protect, defend with counsel reasonably acceptable to Sublandlord and hold Sublandlord harmless from and against any and all claims, liabilities, judgments, causes of action, damages, costs and expenses (including reasonable attorneys' and experts' fees), caused by or arising in connection with: (i) the use, occupancy or condition of the Premises; (ii) the negligence or willful misconduct of Subtenant or its agents, employees, contractors, or invitees; or (iii) a breach of Subtenant's obligations under this Sublease or the provisions of the Master Lease assumed by Subtenant hereunder. Subtenant's indemnification of Sublandlord shall survive termination of this Sublease.

(b) Except to the extent caused by the negligence or willful misconduct of Subtenant, its agents, employees, contractors or invitees, or the breach by Subtenant of this Sublease, Sublandlord shall indemnify, protect, defend with counsel reasonably acceptable to Subtenant and hold Subtenant harmless from and against any and all claims, liabilities, judgments, causes of action, damages, costs and expenses (including reasonable attorneys' and experts' fees) caused by or arising in connection with: (i) a breach of Sublandlord's obligations under this Sublease; (ii) any act or omission of Sublandlord causing a breach of the obligations of Tenant under the Master Lease; or (iii) the negligence or willful misconduct of Sublandlord, its agents, employees, contractors or invitees. Sublandlord's indemnification of Subtenant shall survive termination of this Sublease.

9. **Use.** Subtenant may use the Premises for the Permitted Use and for no other purpose without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld or delayed; provided, in no event shall the Premises be used for a purpose or use prohibited by the Master Lease.

10. **Default.** Subtenant shall be in default under this Sublease if Subtenant commits any default, beyond applicable cure periods, under this Sublease or any of the defaults, beyond applicable cure periods, set forth in Section 15.1 of the Master Lease. The "applicable cure periods" for a default under this Sublease shall be seven (7) days after receipt of notice of default from Sublandlord to cure a monetary default and thirty (30) days (or if such default cannot reasonably be cured within 30 days, such additional period of time as is reasonably necessary to cure such default, provided Subtenant commences such cure within 30 days and thereafter diligently prosecutes such cure to completion) after receipt of notice of default from Sublandlord to cure any non-monetary default.

11. **Remedies.** In the event of any default by Subtenant under this Sublease, Sublandlord shall have all remedies provided by applicable law. In the event of any default by Sublandlord under this Sublease, Subtenant shall have all remedies provided by applicable law, including, without limitation, all rights and remedies available to "Tenant" under the Master Lease; and in addition thereto and in addition to the offset right provided for in **Paragraph 5(c)** above, in the event Sublandlord fails to pay to Subtenant any portion of the Subtenant Improvement Allowance within twenty (20) days after receipt of written notice that the same was not received from Sublandlord when due, Sublandlord shall, upon the request of Subtenant, assign Sublandlord's interest as Tenant in the Master Lease to Subtenant, and upon such assignment, this Sublease shall be deemed terminated and of no further force and effect. All rights of and remedies of the parties shall be cumulative, and both parties agree to use reasonable efforts to mitigate damages.

12. **No Broker.** Sublandlord and Subtenant each represent to the other that they have dealt with no real estate brokers, finders, agents or salesmen in connection with this transaction. Each party agrees to hold the other party harmless from and against all claims for brokerage commissions, finder's fees or other compensation made by any agent, broker, salesman or finder as a consequence of said party's actions or dealings with such agent, broker, salesman, or finder.

13. **Notices.** Unless at least five (5) days' prior written notice is given in the manner set forth in Section 19.3 of the Master Lease, the address of each party for all purposes connected

with this Sublease shall be those addresses set forth in the Basic Sublease Summary. All notices, demands or communications in connection with this Sublease shall be delivered as set forth in Section 19.3 of the Master Lease. Sublandlord shall immediately forward to Subtenant a copy of any notice or other communication received from Landlord.

14. Severability. If any term of this Sublease is held to be invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Sublease shall remain in full force and effect to the fullest extent permitted under the law, and shall not be affected or impaired. This Sublease shall be governed by the laws of the State of Missouri.

15. Amendment. This Sublease may not be amended except by written agreement executed by both parties hereto.

16. Attorneys' Fees. If either party brings any action or legal proceeding for damages or for an alleged breach of any provision of this Sublease or to recover rents or to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, experts' fees, and court costs as part of such action or proceeding.

17. Authority to Execute. Subtenant and Sublandlord each represent and warrant to the other that each person executing this Sublease on behalf of each party is duly authorized to execute and deliver this Sublease on behalf of that party, and to bind the party to the terms and conditions hereof.

18. Sublandlord Financing. Sublandlord agrees that it will not mortgage or otherwise encumber its interest in the Master Lease or this Sublease without first causing Sublandlord's lender to enter into a non-disturbance agreement with Subtenant in form and substance reasonably acceptable to Subtenant.

19. Quiet Enjoyment; Right to Cure. Subtenant shall peacefully have, hold and enjoy the Premises, subject to the terms and conditions of this Sublease, provided that Subtenant pays all rent and performs all of Subtenant's covenants and agreements contained in this Sublease. In the event, however, that Sublandlord defaults in the performance or observance of any of Sublandlord's obligations under the Master Lease or fails to perform Sublandlord's stated obligations under this Sublease, including, without limitation, to enforce, for Subtenant's benefit, Landlord's obligations under the Master Lease, then Subtenant shall give Sublandlord notice specifying in what manner Sublandlord has defaulted, and if such default shall not be cured by Sublandlord within thirty (30) days thereafter (except that if such default cannot be cured within said thirty (30)-day period, this period shall be extended for an additional reasonable time, provided that Sublandlord commences to cure such default within such thirty (30)-day period and proceeds diligently thereafter to effect such cure as quickly as possible), then in addition to all other rights and remedies Subtenant may have hereunder or at law or in equity, Subtenant shall be entitled, at Subtenant's option, to cure such default and promptly collect from Sublandlord Subtenant's reasonable expenses in so doing (including, without limitation, reasonable attorneys' fees and court costs). Subtenant shall not be required, however, to wait the entire cure period described herein if earlier action is required due to emergency circumstances,

to comply with the Master Lease or to comply with any applicable governmental law, regulation or order.

20. This Sublease may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

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

"Sublandlord"

KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: KIRKWOOD TITUS UNITED, LLC, its
general partner

By: 

Its: managing member

"Subtenant"

24 HOUR FITNESS USA, INC., a California
corporation

By: _____

Anthony J. Bakos II
Executive Vice President

to comply with the Master Lease or to comply with any applicable governmental law, regulation or order.

20. This Sublease may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

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

"Sublandlord"

KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: KIRKWOOD TITUS UNITED, LLC, its
general partner

By: _____
Its: _____

"Subtenant"

24 HOUR FITNESS USA, INC., a California
corporation

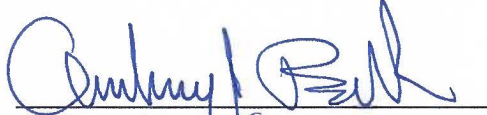
By: 
Anthony J. Bakos II
Executive Vice President

EXHIBIT A
MASTER LEASE

KIRKWOOD MISSOURI FITNESS, LP

1748 W. Katella Ave., Suite 206

Orange, CA

714-516-2444

714-516-2442 fax

TRANSMITTAL

Date: June 30, 2006

To: Allan Steele

314-963-0241

From: Michael Moore

Project: 24 Hour Fitness
10320 Manchester Rd.
Kirkwood, Missouri

Attached is the Term/ Rent Commencement Memorandum with corrections based upon our discussion with 24 Hour Fitness. Based upon your acceptance please make the necessary corrections and forward to my attention 4 executed originals and I will sign and return two.

A handwritten signature in cursive script that reads "Michael Moore". The signature is written in dark ink and is positioned below the typed text of the letter.

TERM/RENT COMMENCEMENT MEMORANDUM**LANDLORD:** BROWN & SONS FOODLINER, INC.**TENANT:** KIRKWOOD MISSOURI FITNESS, LP**PREMISES:** 10320 Manchester Road, Kirkwood, Missouri 63122**DATE:** June ~~26~~, 2006

Landlord and Tenant hereby agree and stipulate that the Term Commencement Date, as defined in and determined in accordance with the Lease, dated January 26, 2006, between Landlord and Tenant for the Premises described above is hereby stipulated for all purposes to be ~~May 27, 2006~~ and that the Rent Commencement Date is hereby stipulated for all purposes to be ~~May 27, 2006~~ June 1, 2006 *JS*

June 1, 2006 JS
LANDLORD:
BROWN & SONS FOODLINER, INC.,
a Missouri corporation

TENANT:
KIRKWOOD MISSOURI FITNESS, LP, a
Missouri limited partnership

By: *Jonathan P. Browne*

Name: Jonathan P. Browne

Its: President

Date: June 26, 2006

By: KIRKWOOD TITUS UNITED, LLC,
its general partner

By: *[Signature]*

Its: *Managing member*

Date: 6-27-06

EXHIBIT E

TERM/RENT COMMENCEMENT MEMORANDUM

LANDLORD: BROWN & SONS FOODLINER, INC., a Missouri Corporation

TENANT: 24 HOUR FITNESS USA, INC., a California Corporation

PREMISES: 10320 Manchester Road, Kirkwood, MO

DATE: November 2, 2006

Landlord and Tenant hereby agree and stipulate that the Term Commencement Date, as defined in and determined in accordance with the Lease, dated 01/26/2006 between 24 Hour Fitness USA, Inc. and BROWN & SONS FOODLINER, INC. for the Premises described above is hereby stipulated for all purposes to be 05/28/2006 and that the Rent Commencement Date is hereby stipulated for all purposes to be 05/28/2006. The Initial Lease term will expire on 05/31/2026.

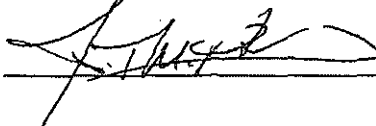
LANDLORD:

TENANT:

BROWN & SONS FOODLINER, INC., a
Missouri corporation

24 HOUR FITNESS USA, INC., a California
corporation

By: 

By: 

Name: Jonathan P. Browne

Name: James T. McPhail

Its: President

Its: SVP - Real Estate and Development
24 Hour Fitness, USA, Inc.

Date: 13 Nov 2006

Date: _____

Attachment 9 - Attachment 3 - Assignment of Sublease to Genesis.PDF

Description - Lease Assignment Agreement dated June 15, 2016, between 24 Hour Fitness and Genesis Health Clubs of the Midwest LLC (“Genesis”)

LEASE ASSIGNMENT AGREEMENT

THIS LEASE ASSIGNMENT AGREEMENT (the "Assignment") is made as of June 15, 2016, by and between 24 Hour Fitness USA, Inc., a California corporation ("Assignor"), and Genesis Health Clubs of the Midwest LLC, a Kansas limited liability company ("Assignee"), who hereby agree as follows:

RECITALS

WHEREAS, Assignor is a party, as lessee, to the real property leases and subleases (including all modifications, amendments, assignments, subordination agreements, non-disturbance agreements, letter agreements, side letters and supplements thereto) set forth on Schedule A hereto (the "Real Property Leases");

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase and Sale Agreement (the "Purchase Agreement"), dated April 22, 2016, pursuant to which Assignor agreed to assign to Assignee all of Assignor's right, title and interest in and to the Real Property Leases as of the Closing Date (as defined in the Purchase Agreement), and Assignee agreed to assume and thereafter pay, perform and discharge when due all Liabilities (as defined in the Purchase Agreement) of Assignor with respect to the period commencing on or after the Closing Date; and

WHEREAS, Assignor desires to assign all of its rights, title and interest in and to the Real Property Leases to Assignee, and Assignee desires to accept the same, on the terms and conditions set forth in this Assignment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and set forth in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

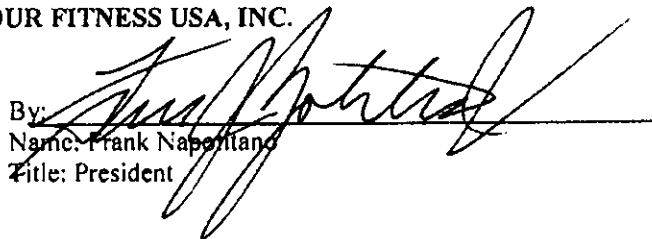
1. Assignor hereby assigns and transfers to Assignee Assignor's rights, title and interest in and to the Real Property Leases, and Assignee hereby accepts the assignment and assumes and agrees to pay, perform and discharge when due, from and after the Closing Date, all of the Assignor's obligations under the Real Property Leases.
2. This Assignment shall be governed by, and construed in accordance with, the Laws of the State of Delaware.
3. This Assignment is executed and delivered pursuant to the Agreement and in all respects is subject to the covenants, representations, warranties and other provisions thereof. No provision set forth in this Assignment shall be deemed to enlarge, alter or amend the terms or provisions of the Agreement. In the event of any conflict between the provisions of this instrument and the provisions of the Agreement, the provisions of the Agreement shall control.
4. This Assignment may be executed in one or more counterparts (including by means of facsimile or PDF signature pages), all of which taken together will constitute one and the same instrument.

[Signature page follows]

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

ASSIGNOR:

24 HOUR FITNESS USA, INC.

By: 
Name: Frank Napolitano
Title: President

ASSIGNEE:

GENESIS HEALTH CLUBS OF MIDWEST LLC

By: Steven Enterprises, L.L.C., a Kansas limited liability company,
Sole Member

By: _____
Rodney L. Steven II, President

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

ASSIGNOR:

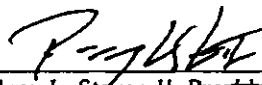
24 HOUR FITNESS USA, INC.

By: _____
Name: Frank Napolitano
Title: President

ASSIGNEE:

GENESIS HEALTH CLUBS OF MIDWEST LLC

~~By: Steven Enterprises, L.L.C., a Kansas limited liability company,
Sole Member~~

By: 
Rodney L. Steven II, President Member

Schedule A

Real Property Leases

**Club #331 Northpark Sport
2718 North 118th Circle, Omaha, NE**

1. 24 Hour Fitness Lease, dated October 7, 1998, between Dial-North Park 24 Hour, L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
2. Option to Extend Term Rider, dated September 18, 1998, between Dial-North Park 24 Hour, L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
3. Assignment of Leases and Rents, dated May 12, 1999, between Dial-North Park, 24 Hour, L.L.C., a Nebraska limited liability company ("Borrower"), and 24 Hour Fitness, Inc., a California corporation ("Lender").
4. Assignment, dated December 9, 1999, between Dial-North Park, 24 Hour, L.L.C., a Nebraska limited liability company ("Assignor") and AVG Partners, a California general partnership ("Assignee").
5. Amendment No. 1 to Lease, dated December 21, 1999, between AVG Partners, a California general partnership ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
6. Assignment, dated December 9, 1999, between Dial-North Park, 24-Hour, L.L.C., a Nebraska limited liability company ("Assignor"), and AVG Partners, a California general partnership ("Assignee").
7. Memorandum of Lease, dated June 6, 2000, between AVG Partners, a California general partnership ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant"), as recorded in the Register of Deeds of Douglas Count on July 31, 2000 as Instrument No. 10025 00 084-088.
8. Assignment of Leases and Assumption Agreement, dated February 23, 2005, between AVG Partners, a California general partnership ("Assignor"), and AVG Partners I, LLC, a Delaware limited liability company ("Assignee").
9. Subordination, Non-Disturbance and Attornment Agreement, dated December 18, 2014, between 24 Hour Fitness USA, Inc., a California corporation ("Lessee"), and Morgan Stanley Private Bank, National Association ("Bank") and recorded in the Register of Deeds, Douglas County on July 13, 2015 as Instrument No. 2015056926.
10. Subordination, Non-Disturbance, Attornment and Estoppel Agreement, dated February 2, 2001, between 24 Hour Fitness, Inc., a California corporation ("Lessee"), AVG Partners, a California general partnership ("Borrower"), and Wells Fargo Bank, National Association ("Lender") and recorded in the Register of Deeds, Douglas County on March 1, 2001 as Instrument No. 02870.

Schedule A (continued)

Real Property Leases

**Club #345 Tara Plaza Sport
845 Tara Plaza, Papillion, NE**

1. 24 Hour Fitness Center Lease, dated February 16, 2000, between Omaha Fitness, LP, a Nebraska limited partnership ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
2. Option to Extend Term Rider, dated February 2000, between Omaha Fitness, L.P., a Nebraska limited partnership ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
3. Amendment No. 1 to 24 Hour Fitness Center Lease, dated November 30, 2001 between Omaha Fitness, L.P., a Nebraska limited partnership ("Landlord"), Titus United Nebraska, LLC, and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
4. Second Amendment to Lease Agreement, dated August 27, 2013, between Dorothea Strough Preus, Trustee of the testamentary Trusts under the Will of Marjorie Hunt Strough as established by the Judgment Settling First and Final Account and Report of Executor, For Final Distribution and For Distribution to Testamentary Trust entered March 6, 1987, in the Superior Court of California in and for the County of Alameda in the matter of the Estate of Marjorie Hunt Strough, et al, deceased, Probate Case No. P-209758, as amended by the Order Appointing Successor Trustee under Probate Code Section 15660 and Modification of Trust Terms to Appoint Successor Trustees under Probate Code Section 15403, entered in the same matter by the same Court on July 29, 2013, for the Dorothea Trust established thereunder as to an undivided 40% interest; and for the Trusts established thereunder for the benefit of Yvonne-Michele Pomagalski Copeland, Marjorie Preus Jaques and Alexandra Bower Strough as to an undivided 20% interest each (collectively "Landlord"), and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
5. Memorandum of Lease, dated August 27th, 2013, between Dorothea Strough Preus, Trustee of the testamentary Trusts under the Will of Marjorie Hunt Strough as established by the Judgment Settling First and Final Account and Report of Executor, For Final Distribution and For Distribution to Testamentary Trust entered March 6, 1987, in the Superior Court of California in and for the County of Alameda in the matter of the Estate of Marjorie Hunt Strough, et al, deceased, Probate Case No. P-209758, as amended by the Order Appointing Successor Trustee under Probate Code Section 15660 and Modification of Trust Terms to Appoint Successor Trustees under Probate Code Section 15403, entered in the same matter by the same Court on July 29, 2013, for the Dorothea Trust established thereunder as to an undivided 40% interest; and for the Trusts established thereunder for the benefit of Yvonne-Michele Pomagalski Copeland, Marjorie Preus Jaques and Alexandra Bower Strough as to an undivided 20% interest each (collectively "Landlord"), and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and recorded in the Register of Deeds, Sarpy County, on October 16, 2013 as Instrument No. 2013-32318.
6. Letter Agreement Extending Refresh Deadline, dated January 21, 2015, between Dorothea Strough Preus, Trustee of the testamentary Trusts under the Will of Marjorie Hunt Strough as established by the Judgment Settling First and Final Account and Report of Executor, For Final Distribution and For Distribution to Testamentary Trust entered March 6, 1987, in the Superior Court of California in and for the County of Alameda in the matter of the Estate of Marjorie Hunt

Strough, et al, deceased, Probate Case No. P-209758, as amended by the Order Appointing Successor Trustee under Probate Code Section 15660 and Modification of Trust Terms to Appoint Successor Trustees under Probate Code Section 15403, entered in the same matter by the same Court on July 29, 2013, for the Dorothea Trust established thereunder as to an undivided 40% interest; and for the Trusts established thereunder for the benefit of Yvonne-Michele Pomagalski Copeland, Marjorie Preus Jaques and Alexandra Bower Strough as to an undivided 20% interest each (collectively "Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").

7. Subordination, Nondisturbance and Attornment Agreement, dated May 2, 2002, between MM&S Investments Corporation, a Minnesota corporation ("Lender"), Omaha Fitness, L.P., a Nebraska limited partnership ("Landlord"), and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
8. Specific Assignment, Subordination, Non-Disturbance and Attornment Agreement between 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), Donald Val Strough, Trustee and Dorothea Strough Preus, Trustee ("Borrower"), and First Republic Bank ("Lender") *[undated] [incomplete document, missing Borrower and Lender signatures]*.
9. Subordination, Non-Disturbance and Attornment Agreement, dated August 28, 2013, between First Republic Bank, a California corporation ("Mortgagee"), and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").

Schedule A (continued)

Real Property Leases

**Club #348 144th and F Sport
4007 S. 145th Plaza, Omaha, NE**

1. 24 Hour Fitness Center Lease, dated November 23, 1999, between Dial-24 Hour II L.L.C., a Nebraska limited liability company ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant").
2. Option to Extend Term Rider between Dial-24 Hour II L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant"), *[undated]*.
3. Letter Agreement re Payment of Tenant Improvement Allowance, dated October 19, 2000, between Dial-24 Hour II, L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
4. Indemnity Agreement, dated November 6, 2000, between Dial-24 Hour II L.L.C., a Nebraska limited liability company ("Indemnitor"), and 24 Hour Fitness Inc., a California corporation.
5. Assignment, dated November 8, 2000, between Dial-24 Hour II, L.L.C., a Nebraska limited liability company ("Assignor") and AVG Partners, a California general partnership ("Assignee").
6. Addendum to Lease, dated November 19, 2000, between Dial-24 Hour II L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
7. Assignment of Leases and Assumption Agreement, dated February 23, 2005, between AVG Partners, a California general partnership ("Assignor") and AVG Partners I, LLC, a Delaware limited liability company ("Assignee").
8. Subordination, Non-Disturbance and Attornment Agreement, dated December 18, 2014, between 24 Hour Fitness USA, Inc., a California corporation ("Lessee"), and Morgan Stanley Private Bank, National Association ("Bank") and recorded in the Register of Deeds, Douglas County, on July 13, 2015 as Instrument No. 2015056925.
9. Subordination, Non-Disturbance, Attornment Agreement, dated February 2005, between Morgan Stanley Mortgage Capital Inc., a New York corporation ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), and AVG Partners I, LLC, a Delaware limited liability company ("Landlord") *[incomplete document, missing Lender and Landlord signatures]*.
10. Subordination, Non-Disturbance, Attornment and Estoppel Agreement, dated February 2, 2001, between 24 Hour Fitness, Inc., a California corporation ("Lessee"), AVG Partners, a California general partnership ("Borrower"), and Wells Fargo Bank, National Association ("Bank") and recorded in the Register of Deeds, Douglas County, on March 1, 2001 as Instrument No. 02868.

Schedule A (continued)

Real Property Leases

**Club #686 Cass Sport
7777 Cass Street, Omaha, NE**

1. 24 Hour Fitness Lease, dated January 30, 2006, between CFM Fitness Omaha, L.L.C., a Nebraska limited liability company ("Landlord"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
2. Guaranty, dated January 30, 2006, by 24 Hour Fitness United States, Inc., a Delaware corporation ("Guarantor").
3. Memorandum of Lease, dated January 30, 2006, between CFM Fitness Omaha, L.L.C., a Nebraska limited liability company ("Landlord"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and recorded in the Register of Deeds, Douglas County, on February 27, 2006 as Instrument No. 2006021775.
4. First Amendment to Lease, dated February 28, 2007, between CFM Fitness Omaha, L.L.C., a Nebraska limited liability company ("Landlord") 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
5. Subordination, Non-Disturbance and Attornment Agreement, dated January 30, 2006, between Union Bank & Trust Company, a Nebraska banking corporation ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), and CFM Fitness Omaha, L.L.C., a Nebraska limited liability company ("Landlord") and recorded in the Register of Deeds, Douglas County, on February 27, 2006 as Instrument No. 2006021776.

Schedule A (continued)

Real Property Leases

**Club #361 Overland Park Super Sport
12075 Metcalf Avenue, Overland Park, KS**

1. 24 Hour Fitness Lease, dated April 25, 2000, between Dial-Metcalf Development, L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant").
2. Option to Extend Term Rider, dated 2000, between Dial-Metcalf Development, L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant") *[undated]*.
3. Memorandum of Lease, dated April 25, 2000, between Dial-Metcalf Development, L.L.C., a Nebraska limited liability company ("Landlord"), and 24 Hour Fitness, Inc., a California corporation ("Tenant") and recorded in the Register of Deeds, Johnson County, on June 14, 2000 as Instrument No. 3128548.
4. Assignment, dated 2000, between Dial-Metcalf Development, L.L.C., a Nebraska limited liability company ("Assignor"), and AVG-Overland Park, L.L.C., a California limited liability company ("Assignee"), *[undated] [incomplete document, missing Assignor signature]*.
5. Amendment No. 1 to 24 Hour Fitness Lease, dated July 1, 2001, between AVG Partners, a California general partnership ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
6. Assignment of Lease and Assumption Agreement, dated February 23, 2005, between AVG Overland Park, LLC, a California limited liability company ("Assignor") and AVG Partners I, LLC, a Delaware limited liability company ("Assignee").
7. Amendment to Lease, dated November 5, 2015, between AVG Partners I, LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
8. Amendment to Memorandum of Lease, dated November 5, 2015, between AVG Partners I, LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and recorded in the Register of Deeds, Johnson County, on November 9, 2015 as Instrument No. 20151109-0002332.
9. Subordination, Non-Disturbance, Attornment Agreement, dated February 23, 2005, between Morgan Stanley Mortgage Capital Inc., a New York corporation ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and AVG Partners I, LLC, a Delaware limited liability company ("Landlord") and recorded in the Register of Deeds, Johnson County, on March 9, 2005 as Instrument No. 20050309-0003319.
10. Subordination, Non-Disturbance and Attornment Agreement, dated December 18, 2014, between 24 Hour Fitness USA, Inc., a California corporation ("Lessee") and Morgan Stanley Private Bank, National Association ("Bank") and recorded in the Register of Deeds, Johnson County, on May 8, 2015 as Instrument No. 201508-0002778.

Schedule A (continued)

Real Property Leases

Club #378 Metcalf Active

7420 Metcalf Avenue, Overland Park, KS

1. 24 Hour Fitness Lease, dated August 2004, between AVG-Overland Park, LLC, a California limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
2. Amendment No. 1 to Lease, dated February 16, 2005, between AVG-Overland Park, LLC, a California limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
3. Amendment No. 2 to Lease, dated November 11, 2005, between AVG Partners II, LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
4. Assignment and Assumption of Leases, dated September 30, 2015, between AVG Partners II, LLC, a Delaware limited liability company ("Assignor") and Valley Mack, DE LLC, a Delaware limited liability company ("Assignee").
5. Subordination, Non-Disturbance, Attornment Agreement, dated 2005, between Wells Fargo Bank, National Association ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), and AVG Partners II, LLC, a Delaware limited liability company ("Landlord") *[undated]*.

Schedule A (continued)

Real Property Leases

Club #432 Shawnee Sport

11311 Shawnee Mission Parkway, Shawnee, KS

1. 24 Hour Fitness Lease, dated January 31, 2003, between AVG Partners, a California general partnership ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
2. Assignment, dated February 13, 2003, between AVG Partners, a California general partnership ("Assignor") and AVG-Overland Park, L.L.C., a California limited liability company ("Assignee").
3. Memorandum of Lease, dated February 17, 2003, between AVG-Overland Park, L.L.C., a California limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and recorded in the Register of Deeds, Johnson County, on February 24, 2003 as Instrument No. 3573311.
4. Lease Addendum between AVG Partners, a California general partnership ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") *[undated]*.
5. Amendment No. 1 to Lease, dated February 16, 2005, between 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and AVG Partners, a California general partnership ("Landlord").
6. Assignment of Leases and Assumption Agreement, dated February 23, 2005, between AVG Overland Park, LLC, a California limited liability company ("Assignor") and AVG Partners I, LLC, a Delaware limited liability company ("Assignee").
7. Subordination, Non-Disturbance, and Attornment Agreement, dated February 2005, between Morgan Stanley Mortgage Capital Inc. ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), and AVG Partners I, LLC, a Delaware limited liability company ("Landlord") *[incomplete document, missing Lender and Landlord signatures]*.
8. Subordination, Non-Disturbance, and Attornment Agreement, dated December 18, 2014, between 24 Hour Fitness USA, Inc., a California corporation ("Lessee") and Morgan Stanley Private Bank, National Association ("Bank") and recorded in the Register of Deeds, Johnson County, on April 9, 2015 as Instrument No. 20150409-0002886.
9. Subordination, Non-Disturbance, and Attornment Agreement, dated February 20, 2003, between AVG-Overland Park, L.L.C., a California limited liability company ("Landlord"), Gold Bank ("Lender") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and recorded in the Register of Deeds, Johnson County, on February 24, 2003 as Instrument No. 3573310.

Schedule A (continued)

Real Property Leases

Club #693 Olathe Active

13370 South Blackfoot Drive, Olathe, KS

1. 24 Hour Fitness Lease, dated September 29, 2006, between CFM-Olathe Fitness, L.L.C., a Nebraska limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
2. Guaranty, dated September 19, 2006, by 24 Hour Fitness United States, Inc., a Delaware corporation ("Guarantor").
3. Memorandum of Lease, dated 2006, between CFM-Olathe Fitness, L.L.C., a Nebraska limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") *[undated]*.
4. Assignment and Assumption Agreement, dated August 24, 2007, between CFM-Olathe Fitness, L.L.C., a Nebraska limited liability company ("Assignor") and Cole 24 Olathe KS, LLC, a Delaware limited liability company ("Assignee").
5. Subordination, Non-Disturbance, and Attornment Agreement between Union Bank & Trust Company, a Nebraska banking corporation ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), and CFM-Olathe Fitness, L.L.C., a Nebraska limited liability company ("Landlord") *[undated]*.
6. Subordination, Non-Disturbance, and Attornment Agreement, dated October 24, 2006, between Union Bank & Trust Company, a Nebraska banking corporation ("Grantor") and CFM-Olathe Fitness, L.L.C., a Nebraska limited liability company ("Grantee") and recorded in the Register of Deeds, Johnson County on October 27, 2006 as Instrument No. 20061027-0009120.

Schedule A (continued)

Real Property Leases

**Club #338 Chesterfield Sport
14885 W. Clayton Road, Chesterfield, MO**

[Sublease]

1. Sublease Agreement, dated March 18, 1996, between Schnuck Markets, Inc., a Missouri corporation ("Landlord") and Family Company of America, L.C., a Missouri limited liability company ("Tenant").
2. Assignment of Sublease, dated June 1, 1999, between Kathy A. Surrat-States, in her capacity as the duly appointed and acting Chapter 7 Trustee for The Family Company of America, L.C. ("Assignor") and 24 Hour Fitness, Inc., a California corporation ("Assignee").
3. Amendment to Chesterfield Sublease between Schnuck Markets, Inc., a Missouri corporation ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant"). [undated]
4. Property Improvement Agreement, dated September 27, 2012, between Four Store Partners, L.L.C., a Missouri limited liability company, Schnuck Markets, Inc., a Missouri corporation, and 24 Hour Fitness USA, Inc., a California corporation

[Master Lease]

1. Restated and Amended Lease Agreement, dated December 5, 1996, between SM Properties 2000, L.L.C., a Missouri limited liability company ("Landlord") and Schnuck Markets, Inc., a Missouri corporation ("Tenant").
2. Memorandum of Restated and Amended Lease Agreement, dated December 5, 1996, between SM Properties 2000, L.L.C., a Missouri limited liability company ("Landlord") and Schnuck Markets, Inc., a Missouri corporation ("Tenant"), and recorded by the Recorder of Deeds, St. Louis County, on December 5, 1996 as Instrument No. 1996120500648.
3. Assignment of Lease, dated December 5, 1996, between SM Properties 2000, L.L.C., a Missouri limited liability company ("Assignor") and Four Store Partners, L.L.C., a Missouri limited liability company ("Assignee"), and recorded by the Recorder of Deeds, St. Louis County, on December 5, 1996, as Instrument No. 1996120500650.
4. Non-Disturbance Agreement, dated September 27, 2012, between Four Store Partners, L.L.C., a Missouri limited liability company ("Prime Landlord"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), and Schnuck Markets, Inc., a Missouri corporation ("Landlord") and recorded by the Recorder of Deeds, St. Louis County, on October 19, 2012 as Instrument No. 2012101900645.

Schedule A (continued)

Real Property Leases

Club #339 Arnold Sport

Crossroads Shopping Center, 215 Arnold Park Drive, Arnold, MO

[Sublease]

1. Sublease, dated March 18, 1996, between Schnuck Markets, Inc., a Missouri corporation ("Tenant") and Family Company of America, L.C., a Missouri limited liability company ("Subtenant").
2. Memorandum of Sublease, dated March 18, 1996, between Schnuck Markets, Inc., a Missouri corporation ("Tenant") and Family Company of America, L.C., a Missouri limited liability company ("Subtenant").
3. Assignment of Sublease, dated June 1, 1999, between Kathy A. Surratt-States, in her capacity as the duly appointed and acting Chapter 7 Trustee for The Family Company of America, L.C., a Missouri limited liability company ("Assignor") and 24 Hour Fitness, Inc., a California corporation ("Assignee").
4. Notice re Exercise of Option, dated May 28, 2003, by 24 Hour Fitness, Inc., a California corporation
5. Notice re Exercise of Option, dated May 28, 2008, by 24 Hour Fitness, Inc., a California corporation
6. Notice re Exercise of Option, dated March 4, 2013, by 24 Hour Fitness, Inc., a California corporation

[Master Lease]

1. Lease Agreement, dated November 12, 1976, between W.B. Wiggins, Sr. ("Landlord") and The Kroger Co., an Ohio corporation ("Tenant").
2. First Amended Lease, dated August 15, 1977, between W.B. Wiggins, Sr. ("Landlord") and The Kroger Co., an Ohio corporation ("Tenant").
3. Lease Modification Agreement #1, dated August 15, 1977, between W.B. Wiggins, Sr. ("Landlord") and The Kroger Co., an Ohio corporation ("Tenant").
4. Assignment of Landlord's Interest in Tenant Lease, dated August 30, 1977, between W.B. Wiggins, Sr. ("Assignor") and Jeffco Associates, a Missouri general partnership ("Assignee").
5. Second Amended Lease, dated August 21, 1978, between Jeffco Associates, a Missouri general partnership ("Landlord") and The Kroger Co., an Ohio corporation ("Tenant") and recorded in the Record of Deeds, Jefferson County, on August 29, 1978 in Book 614, Page 454 [*Instrument No. not found*].
6. Lease Modification Agreement #3, dated March 15, 1984, between Jeffco Associates, a Missouri general partnership ("Landlord") and The Kroger Co., an Ohio corporation ("Tenant").

7. Assignment of Leases, dated July 1, 1984, between Jeffco Associates, a Missouri general partnership ("Assignor") and Arnold Plaza, Inc., a Delaware corporation ("Assignee") and recorded in the Record of Deeds, Jefferson County in the Record of Deeds, Jefferson County, on July 17, 1984 in Book 752, page 666.
8. Lease Assignment and Assumption Agreement, dated November 28, 1986, between The Kroger Co., an Ohio corporation ("Assignor"), National Supermarkets, Inc., a Michigan corporation ("Assignee") and National Tea Co. ("Guarantor").
9. Assignment of Operating Leases and Rents, dated November 22, 1993, between Arnold Plaza, Inc., a Delaware corporation ("Assignor") and Red River Plaza Associates, L.P., a Delaware limited partnership ("Assignee") and recorded in the Record of Deeds, Jefferson County, on February 2, 1994, in Book 610, Page 598.
10. Assignment and Assumption of Leases, dated June 12, 1995, between National Supermarkets, Inc., a Michigan corporation ("Assignor") and Schnuck Markets, Inc., a Missouri corporation ("Assignee") and recorded in Book 673, Page 1475 *[other recording info. not found]*.
11. Notice re Automatic Renewal, dated June 8, 1998, by Schnuck Markets, Inc., a Missouri corporation.
12. Notice re Automatic Renewal, dated June 6, 2003, by Schnuck Markets, Inc., a Missouri corporation.
13. Fourth Amendment to Lease and Settlement Agreement, dated August 7, 2008, between Arnold Crossroads, LLC, a Missouri limited liability company ("Landlord"), Schnuck Markets, Inc., a Missouri corporation ("Tenant"), and 24 Hour Fitness USA, Inc., a California corporation ("Subtenant").

Schedule A (continued)

Real Property Leases

Club #358 Independence Sport

3850 East Crackerneck Road, Independence, MO

1. 24 Hour Fitness Lease, dated March 2000, between Dial-24 Hour K.C.I., L.L.C., a Nebraska limited liability company ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant").
2. Option to Extend Term Rider, dated 2000, between Dial-24 Hour K.C.I., L.L.C., a Nebraska limited liability company ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant"). *[undated]*
3. Memorandum of Lease, dated March 28, 2002, between Dial-24 Hour K.C.I., L.L.C., a Nebraska limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and recorded in Jackson County Department of Records on April 9, 2002 as Instrument No. 2002I 0028645.
4. Assignment of Leases and Assumption Agreement, dated February 23, 2005, between AVG Overland Park, LLC, a California limited liability company ("Assignor") and AVG Partners I, LLC, a Delaware limited liability company ("Assignee").
5. Subordination, Non-Disturbance, Attornment Agreement, dated February 2005, between Morgan Stanley Mortgage Capital Inc., a New York corporation ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), and AVG Partners I, LLC, a Delaware limited liability company ("Landlord"). *[incomplete document, missing Landlord and Lender signatures]*
6. Subordination, Non-Disturbance and Attornment Agreement, dated December 18, 2014, between 24 Hour Fitness USA, Inc., a California corporation ("Lessee") and Morgan Stanley Private Bank, National Association ("Bank") and recorded by the Recorder of Deeds, Jackson County, on May 11, 2015 as Instrument No. 2015E0039449.

Schedule A (continued)

Real Property Leases

**Club #359 St. Charles Sport
1095 Regency Parkway, St. Charles, MO**

1. 24 Hour Fitness Lease, dated October 16, 2000, between TC Fitness, Inc., a Delaware corporation ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant").
2. Guaranty of Lease, dated October 13, 2000, by Fitness Holdings, Inc., a Delaware corporation.
3. Letter Agreement re Development, dated October 20, 2000, between TC Fitness, Inc., a Delaware corporation ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant").
4. Assignment and Assumption of Lease, dated December 28, 2000, between TC Fitness, Inc., a Delaware corporation ("Assignor") and Aerobic (MO) LLC, a Delaware limited liability company ("Assignee") and recorded by the Recorder of Deeds, St. Charles County on February 21, 2001, as Instrument No. 12300.
5. First Amendment to Lease Agreement, dated December 29, 2000, between TC Fitness, Inc., a Delaware corporation ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant").
6. Second Amendment to Lease Agreement, dated February 2001, between Aerobic (MO) LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness, Inc., a California corporation ("Tenant").
7. Subordination, Non-Disturbance and Attornment Agreement, dated 2002, between Aerobic (MO) LLC, a Delaware limited liability company ("Landlord"), Greenwich Capital Financial Products, Inc., a Delaware corporation ("Lender") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant"). *[undated] [incomplete document, missing Landlord and Lender signatures]*

Schedule A (continued)

Real Property Leases

Club #364 Gladstone Active

301 N.E. Englewood Road, Kansas City, MO

1. 24 Hour Fitness Lease, dated August 26, 2004, between 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and J.A. Peterson Enterprises, Inc., a Missouri corporation ("Landlord").
2. Memorandum of Lease, dated August 26, 2004, between 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and J.A. Peterson Enterprises, Inc., a Missouri corporation ("Landlord") and recorded by the Recorder of Deeds, Clay County on October 7, 2004 as Instrument No. S98386.
3. Assignment and Assumption of Leases, dated June 17, 2014, between Creekwood Commons, LLC, a Missouri limited liability company ("Assignor") and Big Creekwood Commons, LLC, a Delaware limited liability company ("Assignee").
4. Assignment and Assumption of Leases, dated June 17, 2014, between CB Creekwood LLC, a Missouri limited liability company ("Assignor") and Big Creekwood Commons, LLC, a Delaware limited liability company ("Assignee").
5. Subordination, Nondisturbance and Attornment Agreement, dated September 29, 2004, between 24 Hour Fitness USA, Inc., a California corporation ("Tenant"), J.A. Peterson Enterprises, Inc., a Missouri corporation ("Borrower") and Commerce Bank, N.A., a national banking association ("Lender") and recorded by the Recorder of Deeds, Clay County, on October 7, 2004 as Instrument No. S98387.

Schedule A (continued)

Real Property Leases

**Club #430 Ward Parkway Sport
8600 Ward Pkwy #7, Kansas City, MO**

1. Shopping Center Lease, dated December 13, 2001, between Ward Realty LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
2. Guaranty, dated December 13, 2001, by 24 Hour Fitness United States, Inc., a Delaware corporation
3. Completion Guaranty, dated December 13, 2001, by 24 Hour Fitness United States, Inc., a Delaware corporation
4. Memorandum of Lease, dated December 13, 2001, between Ward Realty LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant").
5. Letter Agreement re Term Dates and Fixed Rent, dated May 9, 2003, between Ward Realty LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and 24 Hour Fitness United States, Inc., a Delaware corporation ("Guarantor").
6. Letter Agreement re TIA payment and abated Fixed Minimum Rent, dated June 2, 2003, between Ward Realty LLC, a Delaware limited liability company ("Landlord") and 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and 24 Hour Fitness United States, Inc., a Delaware corporation ("Guarantor").
7. Tenant Acknowledgment re Chiropractic Clinic, dated September 4, 2009, between 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and Highland MC, LLC ("Landlord").
8. Subordination, Nondisturbance and Attornment Agreement, dated December 13, 2001, between Guaranty Bank, a federal savings bank ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and Ward Realty LLC, a Delaware limited liability company ("Landlord").
9. Lease Subordination, Attornment and Non-Disturbance Agreement, dated July 28, 2003, between 24 Hour Fitness USA, Inc., a California corporation ("Lessee") and Massachusetts Mutual Life Insurance Company ("Lender").
10. Subordination Agreement; Acknowledgment of Lease Assignment, Estoppel, Attornment and Non-Disturbance Agreement, dated 2008, between Coventry II DDR Ward Parkway LLC, a Delaware limited liability company ("Owner"), 24 Hour Fitness USA, Inc., a California corporation ("Lessee") and Wells Fargo Bank, National Association ("Lender").

Schedule A (continued)

Real Property Leases

**Club #683 Kirkwood Active
10320 Manchester Road, Kirkwood, MO**

[Sublease]

1. Sublease, dated January 26, 2006, between Kirkwood Missouri Fitness, LP, a Missouri limited partnership ("Sublandlord") and 24 Hour Fitness USA, Inc., a California corporation ("Subtenant").
2. Memorandum of Sublease, dated January 26, 2006, between Kirkwood Missouri Fitness, LP, a Missouri limited partnership ("Sublandlord") and 24 Hour Fitness USA, Inc., a California corporation ("Subtenant") and recorded by the Recorder of Deeds, St. Louis County, on April 17, 2006 as Instrument No. 2006041700690.

[Master Lease]

1. 24 Hour Fitness Lease, dated January 26, 2006, between Brown & Sons Foodliner, Inc., a Missouri corporation ("Landlord") and Kirkwood Missouri Fitness, L.P., a Missouri limited partnership ("Tenant").
2. Guaranty, dated January 13, 2006, by 24 Hour Fitness USA, Inc., a California corporation ("Guarantor").
3. Memorandum of Lease, dated January 26, 2006, between between Brown & Sons Foodliner, Inc., a Missouri corporation ("Landlord") and Kirkwood Missouri Fitness, L.P., a Missouri limited partnership ("Tenant") and recorded by the Recorder of Deeds, St. Louis County, on April 17, 2006 as Instrument No. 2006041700689.
4. Subordination, Non-Disturbance and Attornment Agreement, dated January 26, 2006, between Kirkwood Missouri Fitness, L.P., a Missouri limited partnership ("Tenant") and St. John's Bank & Trust Company ("Mortgagee") and recorded by the Recorder of Deeds, St. Louis County, on April 17, 2006 as Instrument No. 2006041700691.

Schedule A (continued)

Real Property Leases

**Club # 698 Lee's Summit Sport
900 NE Deerbrook Street, Lee's Summit, MO**

1. 24 Hour Fitness Lease, dated December 29, 2006, between 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and CFM-291 Fitness, L.L.C., a Nebraska limited liability company ("Landlord").
2. Guaranty by 24 Hour Fitness United States, Inc., a Delaware corporation ("Guarantor")
[undated].
3. Memorandum of Lease, dated December 29, 2006, between 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and CFM-291 Fitness, L.L.C., a Nebraska limited liability company ("Landlord") and recorded in the Recorder's Office of Jackson County on February 13, 2007 as Instrument No. 2007E0020530.
4. Subordination, Non-Disturbance and Attornment Agreement, dated December 29, 2006, between Union Bank & Trust Company, a Nebraska banking corporation ("Lender"), 24 Hour Fitness USA, Inc., a California corporation ("Tenant") and CFM-291 Fitness, L.L.C., a Nebraska limited liability company ("Landlord") and recorded in the Recorder's Office of Jackson County on February 13, 2007 as Instrument No. 2007E0020532.h

Schedule A (continued)

Real Property Leases

**Club # 253 Omaha Sport
14651 Sprague Street, Omaha, NE**

[Sublease]

1. Sublease, dated November 20, 2015, between Fitness & Sports Clubs, LLC, a Delaware limited liability company ("Sublandlord") and 24 Hour Fitness USA, Inc., a California corporation ("Subtenant").

[Master Lease]

1. Build to Suit Lease Agreement, dated August 26, 2008, between BBGK Omaha, LLC, a Kentucky limited liability company ("Landlord") and Northwest Omaha Fitness, LLC, a Kentucky limited liability company ("Tenant").
2. Assignment, Assumption, Amendment and Consent Agreement, dated October 26, 2012, between Northwest Omaha Fitness, LLC, a Kentucky limited liability company ("Assignor"), Fitness & Sports Clubs, LLC, a Delaware limited liability company ("Assignee") and BBGK Omaha, LLC, a Kentucky limited liability company ("Landlord").
3. Guaranty Agreement, dated November 26, 2012, between Fitness International, LLC, a California limited liability company ("Guarantor") and Urban Properties I, LLC, a Kentucky limited liability company, as successor in interest to BBGK Omaha, LLC, a Kentucky limited liability company ("Landlord").
4. Assignment of Lease and Acceptance of Assignment and Assumption of Lease, dated January 29, 2014, between Urban Properties I, LLC, a Kentucky limited liability company ("Assignor") and Realty Income Properties 25, LLC, a Delaware limited liability company ("Assignee").
5. Subordination, Nondisturbance and Attornment Agreement, dated September 30, 2008, between Northwest Omaha Fitness, LLC, a Kentucky limited liability company ("Tenant"), BBGK Omaha, LLC, a Kentucky limited liability company ("Landlord/Borrower"), and Great Western Bank, a South Dakota banking corporation ("Lender") and recorded in Register of Deeds, Douglas County, on October 7, 2008 as Instrument No. 2008097892.

Schedule A (continued)

Real Property Leases

**Club # 252 Moore Sport
647 SW 19th Street, Moore, OK**

[Sublease]

1. Sublease, dated November 20, 2015, between Fitness International, LLC, a California limited liability company ("Sublandlord") and 24 Hour Fitness USA, Inc., a California corporation ("Subtenant").

[Master Lease]

1. Retail Lease, dated December 23, 2014, between AVG Club 7 LLC, a Delaware limited liability company ("Landlord") and Fitness International, LLC, a California limited liability company ("Tenant").
2. Memorandum of Lease, dated December 23, 2014, between AVG Club 7 LLC, a Delaware limited liability company ("Landlord") and Fitness International, LLC, a California limited liability company ("Tenant") and recorded in the Recorder's Office of Cleveland County on December 29, 2014 as Instrument No. 201446853.
3. Subordination, Non-Disturbance and Attornment Agreement, dated March 13, 2015, between Fitness International, LLC, a California limited liability company ("Lessee"), AVG Club 7 LLC, a Delaware limited liability company ("Borrower" or "Lessee") and MUFG Union Bank, N.A. ("Bank").

Schedule A (continued)

Real Property Leases

**Club # 251 Edmond Sport
2121 W Danforth Road Edmond, OK**

[Sublease]

1. Sublease, dated November 20, 2015, between Fitness International, LLC, a California limited liability company ("Sublandlord") and 24 Hour Fitness USA, Inc., a California corporation ("Subtenant").

[Master Lease]

1. Memorandum of Lease, dated January 25, 2013, between Red Land LAF LLC, an Oklahoma limited liability company ("Landlord") and Fitness International, LLC, a California limited liability company ("Tenant") and recorded in the Recorder's Office of Oklahoma County on May 17, 2013 as Instrument No. 20130517010687210.
2. Retail Lease, dated January 31, 2013, between Red Land LAF LLC, an Oklahoma limited liability company ("Landlord") and Fitness International, LLC, a California limited liability company ("Tenant").
2. Memorandum of Lease, dated January 31, 2013, between Red Land LAF LLC, an Oklahoma limited liability company ("Landlord") and Fitness International, LLC, a California limited liability company ("Tenant") and recorded in the Recorder's Office of Oklahoma County on February 11, 2013 as Instrument No. 20130211010198500.
3. Partial Release of Memorandum of Lease, dated April 5, 2013, between Danforth and Santa Fe Partners, LLC, an Oklahoma limited liability company, KLY Investment Properties, LLC, a California limited liability company and Kohl's Department Stores, Inc., a Delaware corporation and recorded in the Recorder's Office of Oklahoma County on April 8, 2013 as Instrument No. 20130408010473050.

Attachment 10 - Attachment 4 -Assignment of Sublease to Gold's St. Louis LLC.pdf

Description - Assignment and Assumption of Lease dated June 15, 2016, between Genesis and Gold's St. Louis LLC

ASSIGNMENT AND ASSUMPTION OF LEASE

ASSIGNMENT AND ASSUMPTION OF LEASE, dated as of June 15, 2016, by and among Genesis Health Clubs of Midwest LLC, a Kansas limited liability company ("**Assignor**"), and Gold's St. Louis LLC, a Delaware limited liability company ("**Assignee**").

WITNESSETH:

WHEREAS, Assignor, Gold's Oklahoma LLC, a Delaware limited liability company, and Assignee are parties to that certain Asset Exchange Agreement, dated June 14, 2016 (the "**Exchange Agreement**"), pursuant to which Assignor has agreed to sell, assign and transfer certain personal property and contracts to Assignee, including all of Assignor's right, title and interest in that certain Sublease dated January 26th, 2006 between Kirkwood Missouri Fitness, LP, a Missouri limited partnership, as sublandlord, and Assignor, as subtenant and successor in interest to 24 Hour Fitness USA, Inc., a California corporation, and all of the 24 Hour Realty Lease Documents for the Kirkwood Sport property described in Genesis Disclosure Schedule 5(j) of the Exchange Agreement, which are hereby incorporated by reference herein (collectively the "**Lease**").

NOW, THEREFORE, in consideration of the Cash Consideration and Gold's Club Assets (as defined in the Exchange Agreement) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally and equitably bound, do hereby agree as follows:

1. Assignment and Assumption of Lease.

(a) Assignor hereby assigns, transfers and conveys to Assignee, free and clear of all liens, security interests, prior assignments and other encumbrances (other than any applicable landlord's lien), all of Assignor's right, title and interest, as the subtenant in and to the Lease to have and to hold the same unto Assignee, its successors and assigns, forever, from and after the date hereof, subject to the terms, covenants, conditions and provisions of the Lease.

(b) Assignee hereby accepts the foregoing assignment and assumes and agrees to perform all of the obligations of Assignor under the Lease, accruing on or after the date hereof.

2. Miscellaneous.

(a) This Assignment and Assumption of Lease may be executed in one or more counterparts, each of which shall constitute a part of the same instrument.


(b) This Assignment and Assumption of Lease is made without any covenant, warranty or representation by Assignor except as otherwise provided in this Assignment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Assignment and Assumption of Lease has been executed on the date and year first above written.

ASSIGNOR:

GENESIS HEALTH CLUBS OF MIDWEST LLC.
a Kansas limited liability company

By: 
Rodney L. Steven II, Member

ASSIGNEE:

Gold's St. Louis LLC, a Delaware limited liability
company

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Assignment and Assumption of Lease has been executed on the date and year first above written.

ASSIGNOR:

GENESIS HEALTH CLUBS OF MIDWEST LLC,
a Kansas limited liability company

By: _____
Rodney L. Steven M. Member

ASSIGNEE:

Gold's St. Louis LLC, a Delaware limited liability
company

By: _____
Name: Michael G. Smith
Title: Vice President