

Fill in this information to identify the case:

Debtor 1 Gold's Texas Holdings Group, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas

Case number 20-31337

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BMC GROUP

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>Brazoria Smith Lease, LLC</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? <u>Snell & Wilmer L.L.P. Attn: Michael B. Reynolds</u> Name <u>600 Anton Blvd., Suite 1400</u> Number Street <u>Costa Mesa CA 92626</u> City State ZIP Code Contact phone <u>(714) 427-7027</u> Contact email <u>mreynolds@swlaw.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) <u>Brazoria Smith Lease, LLC Attn: Richard Nagler</u> Name <u>124 14th Street</u> Number Street <u>Manhattan Beach CA 90266</u> City State ZIP Code Contact phone <u>(310) 951-8777</u> Contact email <u>rnagler@gmail.com</u>
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? \$ 674,875.49 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. \$ 360,974.02

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)?

☒ No

☐ Yes. Check one:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> 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).	\$ _____
<input type="checkbox"/> 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).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

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

Part 3: Sign Below

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

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

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

Check the appropriate box:

- ☒ I am the creditor.
- ☐ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

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

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

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

Executed on date 9 01 2020
MM / DD / YYYY


Signature

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

Name	Richard Nagler		
	First name	Middle name	Last name
Title	Manager		
Company	Brazoria Smith Lease, LLC		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	124 14th Street		
	Number	Street	
	Manhattan Beach		CA 90266
	City	State	ZIP Code
Contact phone	(310) 951-8777		Email rnagler@gmail.com

United States Bankruptcy Court for the Northern District of Texas (Dallas Division)

In re: GGI Holdings, LLC

Lead Case No. 20-31318 (jointly administered)

In re: Gold's Texas Holdings Group, Inc. Case No. 20-31337

Amount of Claim

Unpaid 2016 Taxes and Insurance Costs plus Interest	\$29,587.73
Unpaid 2017 Taxes and Insurance Costs plus Interest	\$51,554.35
Unpaid 2018 Taxes, Insurance Costs and City Levies plus Interest	\$61,277.57
Unpaid 2019 Taxes, Insurance Costs, City Levies and Fees plus Interest	\$53,400.40
Attorneys' Fees and Costs in connection with State Court Action and collection of Delinquent Additional Rent (through the Petition Date)	\$126,503.23
Unpaid April and May 2020 Rent	\$38,650.74
Rent that would have come due but for rejection of the Lease (rent and CAM charges from 06/01/2020 to 05/31/2021)	\$235,984.80
Additional rent that would have come due but for rejection of the Lease (estimated 2020 taxes, insurance and fees, and estimated and prorated 2021 taxes, insurance and fees)	\$77,916.67
TOTAL	\$674,875.49

Claim Summary

Brazoria Smith Lease, LLC ("Brazoria"), as successor-in-interest of 214 E Travis Street, LLC ("Travis LLC"), and Gold's Texas Holdings Group, Inc. ("Debtor" or "Gold's") were, prior to the Debtor's rejection, parties to that certain Lease Agreement,¹ for a portion of the premises located at 214 East Travis Street, San Antonio, Texas 78205 (the "Premises" or the "Property"). As set forth more fully herein, Brazoria's claim consists of unpaid CAM charges and the legal expense it has incurred in attempting to collect those unpaid amounts in the State Court Action, unpaid rent, and the damages caused to Brazoria as a result of Debtor's rejection of the Lease.

A. The Lease and Its Amendment

On or about May 15, 2005, Travis LLC's predecessor-in-interest, 214 Travis, Ltd. ("Travis Ltd.") entered into a lease agreement with Racquetball and Fitness Clubs, Inc. ("Prior Tenant") for the Premises (the "Lease Agreement"). A true and correct copy of the Lease Agreement is attached hereto as **Exhibit A**.

On or about March 1, 2012, Debtor entered into an Assignment and Assumption of Lease (the "Assignment") with the Prior Tenant, assuming all rights, duties, and obligations of the tenant under the Lease Agreement. A true and correct copy of the Assignment is attached hereto as **Exhibit B**.

On or about July 31, 2016, Debtor, as tenant, entered into an Amendment of Lease Agreement (the "Amendment" and together with the Lease Agreement, the "Lease") with Travis Ltd., amending

¹ All capitalized terms are defined herein.

certain provisions of the Lease Agreement, including, among others, provisions governing base rent, CAM charges, the expiration of the Lease, certain HVAC maintenance costs, and early termination rights under the Lease. A true and correct copy of the Amendment is attached hereto as **Exhibit C**.

Pursuant to sections 1 and 4 of the Amendment, the Lease Agreement remained in full force and effect except as to those provisions and items addressed in the Amendment.

B. CAM Charges, Taxes, and Insurance Costs under the Lease Agreement and Amendment

Under section 6.8 of the Lease Agreement, Debtor agreed to pay landlord's common area maintenance charges ("CAM Charges") as additional rent.

Under sections 9.1 and 9.2 of the Lease Agreement, Debtor agreed to pay to landlord "additional rental equal to all ad valorem taxes, charges, impositions and liens for public improvements, and assessments allocable to the Premises that Landlord pays for any portion of the term of this Lease (collectively "Taxes")," including those Taxes separately assessed against the Premises.

Under sections 10.3 and 10.4 of the Lease Agreement, Debtor agreed to pay to landlord "additional rental equal to all insurance costs allocable to the Premises . . . that Landlord pays for the term of this Lease (collectively, "Insurance Costs")," which encompasses "the entire cost of any insurance policy that covers only the Premises."

The final paragraph of section 6.8 of the Lease Agreement consolidated Debtor's payment of CAM Charges, Taxes, and Insurance Costs, as follows:

For calendar years 2005 and 2006, the annualized sum of CAM Charges and "Taxes" (as defined in Section 9.1 below) and "Insurance Costs" (as defined in Section 10.3 below) shall be \$2.50 per square foot of Floor Area. Commencing with calendar year 2005 and each calendar year thereafter during the Lease Term, such amount shall increase by three percent (3%) of the amount paid in the prior calendar year.

Section 3.d. of the Amendment then provides that "Section 6.8 of the Lease Agreement is hereby deleted in its entirety. A new Section 6.8 of the Lease Agreement is hereby inserted to read as follows:"

6.8. Common Area Charges as Additional Rent

Tenant shall pay Landlord, as additional rental, Tenant's share of all costs and expenses incurred by Landlord in the operation and maintenance of the Common Areas during the term of this Lease (hereinafter, the "CAM Charges"). . . . Effective as of the Effective Date, Tenant's share of the CAM Charges shall remain fixed at the present 2016 rate of \$5,724.25 per month, and shall be payable by Tenant on the same date as, and in addition to, the Minimum Rent, however, within thirty (30) days of January 1, 2017, and continuing regularly thereafter on an annual basis, Landlord shall provide Tenant an accounting of all CAM Charges actually incurred by Landlord for the preceding calendar year and adjusted to reflect Tenant's actual

share of the CAM Charges for the preceding calendar year (the “Annual CAM Accounting”). . . .

Section 6.8, as amended in the Amendment, does *not* include the final paragraph of the original section 6.8, which consolidated Debtor’s payment of CAM Charges, Taxes, and Insurance Costs based on a formula of \$2.50 per square foot of floor area, with 3% annual increases thereon.

Thus, under the Lease, Debtor owes CAM Charges pursuant to section 6.8 in the Amendment, and Taxes and Insurance Costs based on sections 9.1, 9.2, 10.3 and 10.4 of the Lease Agreement.

C. Brazoria Acquires the Property Subject to the Lease and in Reliance on Debtor’s Tenant Estoppel Certificate and Travis LLC’s Representations

After the Lease Agreement was amended, Brazoria acquired all rights, title, and interest in the Property from Travis LLC, as noted in the Assignment Agreement between Brazoria (as landlord) and Travis LLC (as former landlord) on or about November 3, 2017 (the “Brazoria Smith Assignment”). A true and correct copy of the Brazoria Smith Assignment is attached hereto as **Exhibit D**.

Also on or about November 3, 2017, Brazoria and Travis LLC entered into an Assignment of Lease (the “Brazoria Smith Lease Assignment”), assigning to Brazoria all of Travis LLC’s rights, title, and interest as landlord under the Lease. A true and correct copy of the Brazoria Smith Lease Assignment is attached hereto as **Exhibit E**.

In section 2 of the Brazoria Smith Lease Assignment, Travis LLC represented and warranted to Brazoria “that there is no other lease of the Property by [Travis LLC] except the Lease described above”

In section 4 of the Brazoria Smith Lease Assignment, Travis LLC granted, transferred, conveyed, assigned, and set over to Brazoria its entire right, title, and interest to any legal claims or causes of action arising from or out of the Lease.

In section 6 of the Brazoria Smith Lease Assignment, Travis LLC agreed to “indemnify, defend, and hold [Brazoria] harmless from any loss, attorney’s fees, expenses, or claims arising out [*sic*] or related to [Travis LLC’s] failure to perform any of the obligations of the Landlord under the Lease before [November 3, 2017].”

On or about September 28, 2017, Debtor delivered to Brazoria a Tenant Estoppel Certificate (the “Estoppel Certificate”). A true and correct copy of the Estoppel Certificate is attached hereto as **Exhibit F**.

Paragraph 1 of the Estoppel Certificate provides:

1. Tenant [i.e., Debtor] is currently in possession of the Premises, and the Lease is presently in full force and effect, and has not been changed, altered, amended or modified except as follows:
 - A. Assignment and Assumption of Lease 01/01/2005
 - B. First Amendment to Lease 10/07/2005
 - C. Landlord’s Consent and Estoppel Certificate

D. Asset Purchase Agreement 02/08/2012
E. Amendment to Lease 07/31/2016

Moreover, in paragraph 9 of the Estoppel Certificate, Debtor represented that:

This Tenant Estoppel Certificate may be relied upon by Brazoria Smith Lease, LLC, and any of its Lenders or Purchasers, as to the accuracy of the information contained herein, as of the date hereof.

Prior to Brazoria purchasing the Property, Travis LLC also represented to Brazoria that there were outstanding amounts due and owing from Debtor for past due Taxes and Insurance Costs under the Amendment.

Brazoria purchased the Property based in part on its reliance on Debtor's representations in the Estoppel Certificate and Travis LLC's representations regarding the amounts owed under the Amendment and Travis LLC's guarantee of indemnity under the Brazoria Smith Lease Assignment.

D. Debtor's Default Under the Lease

Under the Lease, an event of default includes, among other things, Debtor's "fail[ure] to pay any rental or other sum of money within five (5) business days after the date such payment is due hereunder."

Debtor defaulted under the Lease by failing to pay the amounts due thereunder. Specifically, Debtor defaulted under the Lease by failing to pay Taxes and Insurance Costs from the date of the Amendment through at least the end of calendar year 2019.

On or about August 29, 2017, and before the sale of the Property to Brazoria closed, Travis LLC—the entity that sold the Property to Brazoria—notified Debtor that certain amounts for Taxes and Insurance Costs under the Lease were outstanding (the "Seller's Notice"). A true and correct copy of the Seller's Notice is attached hereto as **Exhibit G**.

Thereafter, on or about February 5, 2018, Brazoria notified Debtor of the continuing default under the Lease (the "Notice of Default"). A true and correct copy of the Notice of Default (with the attachments omitted) is attached as **Exhibit H**.

Despite the default under the Lease and the Notice of Default, Debtor failed to pay the outstanding amounts owed for Taxes and Insurance Charges due under the Lease.

E. The State Court Action and Brazoria's Claim for Delinquent Additional Rent

On or about July 13, 2018, Brazoria filed its Original Petition for breach of contract against Debtor, commencing the case titled *Brazoria Smith Lease, LLC v. Gold's Texas Holdings Group, Inc., et al.*, in the District Court of Bexar County Texas, 131st Judicial District Cause No. 2018-CI-12865 (the "State Court Action"). Debtor counterclaimed against Brazoria for reformation of the contract and brought Travis LLC into the State Court Action alleging fraud. Brazoria and Travis LLC also have pending crossclaims against each other for indemnity based on competing indemnity provisions.

In the State Court Action, Brazoria seeks the unpaid Taxes and Insurance Costs and additional fees and levies (collectively the “Delinquent Additional Rent”) owed by Debtor under the Lease, plus accrued and accruing interest and attorneys’ fees, all of which are owed pursuant to the Lease.

Specifically, section 14.2.8 of the Lease provides:

Any Minimum Rent or additional rent or other amounts required to be paid by Tenant hereunder which shall not be paid when due shall bear interest at the Lease Interest Rate. ‘Lease Interest Rate’ . . . means three percent (3%) above the prime rate of interest from time to time charged, announced or published by NationsBank. . . .

In addition, section 14.4 of the Lease provides:

In the event that either party shall institute any legal action or proceeding against the other relating to the provisions of the Lease, or any default hereunder, the unsuccessful party in such action or proceeding agrees to pay to the prevailing party the reasonable attorneys’ fees and costs actually incurred by the prevailing party.

These amounts are summarized in the following charts:

2016 Delinquent Additional Rent

Taxes per section 9.1, 9.2 of Original Lease Agreement			Insurance per section 10.3, 10.4 of Original Lease Agreement		
			15156 sq ft /16156 sq ft=93.81%		
	2016 Taxes incurred		2016 Gold’s tax portion	2016 Insurance Costs Incurred	2016 Gold’s Insurance portion 93.81%
BASEMENT	\$25,854.68	50%	\$12,927.34		
1ST FLOOR	\$22,399.81	100%	\$22,399.81		
MEZZANINE	\$3,465.21	50%	\$1,732.61		
TOTAL	\$51,719.70		\$37,059.76	\$4,628.45	\$4,341.95
2016 Total Additional Rent owed (pro-rated from June 1, 2016, through December 31, 2016)					\$24,150.99

Accrued Interest on 2016 Delinquent Additional Rent					
2016 Delinquent Additional Rent	Prime Interest Rate in Effect	Lease Interest Rate	Per Diem	Days of Interest (1/1/2017-Petition Date)	Interest Due
\$24,150.99	3.75%	6.75%	\$4.46	1219	\$5,436.74

2017 Delinquent Additional Rent

Taxes per section 9.1, 9.2 of Original Lease Agreement			Insurance per section 10.3, 10.4 of Original Lease Agreement 15156 sq ft /16156 sq ft=93.81%		
	2017 Taxes incurred		2017 Gold's tax portion	2017 Insurance Costs Incurred	2017 Gold's Insurance portion 93.81%
BASEMENT	\$27,136.66	50%	\$13,568.33		
1ST FLOOR	\$23,510.43	100%	\$23,510.43		
MEZZANINE	\$3,637.00	50%	\$1,818.50		
TOTAL	\$54,284.09		\$38,897.26	\$5,290.00	\$4,276.94
2017 Total Additional Rent owed					\$43,859.81
Accrued Interest on 2017 Delinquent Additional Rent					
2017 Delinquent Additional Rent	Prime Interest Rate in Effect	Lease Interest Rate	Per Diem	Days of Interest (1/1/2018-Petition Date)	Interest Due
\$43,859.81	4.50%	7.50%	\$9.01	854	\$7,694.54

2018 Delinquent Additional Rent

Taxes per section 9.1, 9.2 of Original Lease Agreement			Insurance per section 10.3, 10.4 of Original Lease Agreement 15156 sq ft /16156 sq ft=93.81%		
	2018 Taxes incurred		2018 Gold's tax portion	2018 Insurance Costs Incurred	2018 Gold's Insurance portion 93.81%
BASEMENT	\$28,086.25	50%	\$14,043.13		
1ST FLOOR	\$24,333.17	100%	\$24,333.17		
MEZZANINE	\$3,764.31	50%	\$1,882.16		
TOTAL	\$56,183.73		\$40,258.45	\$12,594.00	\$11,814.43
City of San Antonio – Public Improvement District Levies for 2018					\$2,940.60
2018 Total Additional Rent owed					\$55,013.48
Accrued Interest on 2018 Delinquent Additional Rent					
2018 Delinquent Additional Rent	Prime Interest Rate in Effect	Lease Interest Rate	Per Diem	Days of Interest (1/1/2019-Petition Date)	Interest Due
\$55,013.48	5.50%	8.50%	\$12.81	489	\$6,264.09

2019 Delinquent Additional Rent

Taxes per section 9.1, 9.2 of Original Lease Agreement			Insurance per section 10.3, 10.4 of Original Lease Agreement		
	2019 Taxes incurred		15156 sq ft /16156 sq ft=93.81%		
			2019 Gold's tax portion	2019 Insurance Costs Incurred	2019 Gold's Insurance portion 93.81%
BASEMENT	\$28,059.40	50%	\$14,029.70		
1ST FLOOR	\$24,374.82	100%	\$24,374.82		
MEZZANINE	\$3,826.27	50%	\$1,913.14		
TOTAL	\$56,260.49		\$40,317.66	\$8,157.00	\$7,652.08
City of San Antonio – Public Improvement District Levies for 2019					\$2,977.50
Fee Paid to Southland Property to Reduce 2019 Property Taxes					\$1,082.96
2019 Total Additional Rent owed					\$52,030.20
Accrued Interest on 2019 Delinquent Additional Rent					
2019 Delinquent Additional Rent	Prime Interest Rate in Effect	Lease Interest Rate	Per Diem	Days of Interest (1/1/2020-Petition Date)	Interest Due
\$52,030.20	4.75%	7.75%	\$11.05	124	\$1,370.20

Thus, as of May 4, 2020 (the “Petition Date”), Debtor owed Brazoria the sum of no less than **\$322,323.28** on account of the Delinquent Additional Rent, accrued interest and attorneys’ fees, all of which are owed pursuant to the Lease, are the subject of the State Court Action and can be summarized as follows:

	Delinquent Additional Rent	Interest	Total
Unpaid 2016 Taxes and Insurance Costs	\$24,150.99	\$5,436.74	\$29,587.73
Unpaid 2017 Taxes and Insurance Costs	\$43,859.81	\$7,694.54	\$51,554.35
Unpaid 2018 Taxes, Insurance Costs and City Levies	\$55,013.48	\$6,264.09	\$61,277.57
Unpaid 2019 Taxes, Insurance Costs, City Levies and Fees	\$52,030.20	\$1,370.20	\$53,400.40
Attorneys’ Fees and Costs (through the Petition Date)	\$126,503.23	--	\$126,503.23
			\$322,323.28

F. Debtor’s Rejection of the Lease and Brazoria’s Claim for Damages under 11 U.S.C. § 365(g)

On May 30, 2020, Debtor, GGI Holdings, LLC and the other debtors in these jointly administered chapter 11 cases (collectively, “Debtors”), filed their Second Omnibus Motion for Entry of an Order Authorizing (I) Rejection of Certain Unexpired Non-Residential Real Property Leases and (II) Abandonment of Certain Personal Property Remaining on the Premises Covered by the Leases

Effective *Nunc Pro Tunc*, ECF No. 219 (the “Second Lease Rejection Motion”). Pursuant to the Second Lease Rejection Motion, Debtors sought authority to reject unexpired leases, including the Lease, *nunc pro tunc* to the later of (a) the date on which the Second Lease Rejection Motion was filed, or (b) the date on which the Debtors surrender the Premises to Brazoria by delivery of the keys or key codes or providing notice in writing that Brazoria may take possession of the Premises and change the locks.

On May 31, 2020 (the “Rejection Date”), the Debtors delivered to Brazoria their notice of rejection of the Lease and surrender of the Premises (the “Rejection Notice”). In the Rejection Notice, the Debtors provided notice to Brazoria of their surrender of the Premises along with the keys to the Premises. A true and correct copy of the Rejection Notice is attached hereto as **Exhibit I**.

On June 25, 2020, the Court entered its order granting the Second Lease Rejection Motion and authorizing the rejection of, among others, the Lease, *nunc pro tunc* to May 31, 2020.

Accordingly, Brazoria’s claim for rejection of the Lease pursuant to 11 U.S.C. section 365(g) is no less than **\$352,551.85**, consisting of unpaid pre-petition rent, rent that would have come due but for the rejection of the Lease, as well as additional rent that will come due on account of taxes and insurance, all set forth in the following charts.

Unpaid Rent

Month and Year	Minimum Rent	CAM Charges	Total
April 2020	\$13,601.12	\$5,724.25	\$19,325.37
May 2020	\$13,601.12	\$5,724.25	\$19,325.37 ²
			\$38,650.74

Rent That Would Have Come Due But For Rejection Of The Lease

Month and Year	Minimum Rent	CAM Charges	Total
June 2020	\$13,941.12	\$5,724.25	\$19,665.37
July 2020	\$13,941.12	\$5,724.25	\$19,665.37
August 2020	\$13,941.12	\$5,724.25	\$19,665.37
September 2020	\$13,941.12	\$5,724.25	\$19,665.37
October 2020	\$13,941.12	\$5,724.25	\$19,665.37
November 2020	\$13,941.12	\$5,724.25	\$19,665.37
December 2020	\$13,941.12	\$5,724.25	\$19,665.37
January 2021	\$13,941.12	\$5,724.25	\$19,665.37
February 2021	\$13,941.12	\$5,724.25	\$19,665.37
March 2021	\$13,941.12	\$5,724.25	\$19,665.37
April 2021	\$13,941.12	\$5,724.25	\$19,665.37
May 2021	\$13,941.12	\$5,724.25	\$19,665.37
			\$235,984.44

² A portion of this amount likely constitutes an administrative expense. Brazoria reserves the right to request allowance and payment of a portion of this amount as an administrative expense. 11 U.S.C. § 503(b).

Additional Rent That Would Have Come Due But For Rejection Of The Lease

Year	Estimated Annual Additional Rent (Taxes, Insurance and Fees)	Gold's Portion	Total
2020	\$55,000	\$55,000	\$55,000
2021	\$55,000	\$22,916.67 (prorated from 1/1/2021 through 5/31/2021)	\$22,916.67
			\$77,916.67

EXHIBIT A

COPY

LEASE

between

214 Travis, Ltd.

Landlord

and

Racquetball and Fitness Clubs, Inc.

Tenant

EXHIBIT

A

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LEASE

THIS LEASE (this "Lease") is made effective as of May 15, 2005, between the Landlord and Tenant named below to evidence the following:

BASIC LEASE INFORMATION

A. Landlord: 214 Travis, Ltd.

B. Mailing Address of Landlord:

C/O JR Realty Corp., General Partner

15770 Dallas Parkway, Suite 700

Dallas, Texas 75248

Attention: Bruce West, Sr.

Phone: (972) 788-5184

C. Tenant: Racquetball and Fitness Clubs, Inc., a Texas corporation

D. Mailing Address of Tenant:

15759 San Pedro

San Antonio, Texas 78232

Attention: Matthew Stevens

Phone:(310) 727-9311

E. Address of Premises:

214 East Travis Street, First Floor, Mezzanine and Basement

San Antonio, Texas 78209

Attention: _____

Phone: _____

F. Guarantor: Racquetball & Fitness, Inc. _____

G. Scheduled Commencement Date: May 15, 2005.

H. Expiration Date: December 31, 2016.

I. Permitted Use:

Health and fitness club with related facilities, food and beverage

sales, and such activities as are incidental thereto. _____

J. Minimum Rent (Payable Monthly; See Paragraph 1.1):

May 15, 2005 – August 31, 2006 \$0.00

September 1, 2006 – December 31, 2007 \$7,254.28

January 1, 2008 – December 31, 2010 \$12,090.45

January 1, 2011 – December 31, 2016 \$12,694.99

January 1, 2017 – December 31, 2022 \$13,964.49 (1st option term)

January 1, 2023 – December 31, 2028 \$15,360.93 (2nd option term)

January 1, 2029 – December 31, 2034 \$16,897.02 (3rd option term)

K. Initial CAM Charges (payable monthly commencing on September 16, 2005; See Paragraph 6.9): \$2,288.02 per month (\$27,456.25 per year)

L. Initial Taxes (Payable Monthly; See Paragraph 9.2): included in CAM charges

M. Initial Insurance Costs (Payable Monthly; See Paragraph 10.4): included in CAM Charges

N. Cash Security Deposit: None (See Paragraph 16)

O. Intentionally Omitted

P. Approximate Floor Area of the Premises: 15,156 square feet (6,809 square feet on the first floor, 939 square feet on the mezzanine level, and 7,408 square feet on the basement level). The actual square footage of the mezzanine level space is 1,939; however Landlord and Tenant have agreed that for all purposes in this Lease the mezzanine level of the Premises shall be deemed to include 939 square feet.

Q. Floor Level(s) of the Premises: 1st, mezzanine, basement

R. Miscellaneous:

References in the Lease to the "Basic Lease Information" are references to the information set out above. If a conflict exists between the Basic Lease Information and the provisions in the Lease, the provisions in the Lease will control.

ADDENDA

The following addenda are attached to and made part of this Lease for all purposes:

- Exhibit A - Site Plan of Project
- Exhibit A-1 - Legal Description of the Project
- Exhibit B - Work Letter Agreement
- Exhibit C - Certificate of Acceptance
- Exhibit D - Extension of Term
- Exhibit E - Sign Criteria
- Exhibit F - Guaranty
- Exhibit G - Hazardous Waste Indemnification Agreement
- Exhibit H - Short Form Lease

LEASE OF THE PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the First Floor, Mezzanine and Basement levels of the building known as 214 East Travis Street (the "Premises") in the Project for the term, at the rental, and upon all the conditions and agreements set forth herein. The Premises contain approximately the number of square feet of floor area that is specified in the Basic Lease Information and are located on the floor level(s) specified in the Basic Lease Information and shall not be subject to remeasurement by either party. "Floor Area" as used in this Lease means, the number of square feet of floor space measured from the exterior face of exterior walls and the center line of party walls.

DISCLAIMER OF WARRANTY

Except as otherwise set forth in this Lease and/or to the extent modified by Landlord's express assumption of construction obligations, if any, in an exhibit attached to this Lease, the Premises are being leased "AS IS", with Tenant accepting all defects, if any; and Landlord makes no warranty of any kind, express or implied, with respect to the Premises. This paragraph is subject to any contrary requirements under applicable law; however, in this regard Tenant acknowledges that it has been given the opportunity to inspect the Premises and have qualified experts inspect the Premises prior to the execution of the Lease.

DELIVERY OF THE PREMISES

Landlord shall deliver the Premises to Tenant promptly following the date hereof, as further set forth in Exhibit B attached hereto.

TERM

The term of this Lease shall commence on May 15, 2005 (as extended pursuant to the terms of Exhibit B) (the "Commencement Date"); and the term of this Lease shall expire on the expiration date specified in the Basic Lease Information (the "Expiration Date"). Such term is hereafter referred to as the "Primary Term" of this Lease. The Primary Term plus extensions thereof (if any) are sometimes referred to hereinafter as the "Lease Term" or the "Term of this Lease". After the Commencement Date has been determined and Tenant has accepted possession of the Premises, Tenant shall sign and deliver a certificate upon request of Landlord in the form attached hereto as Exhibit C. Tenant shall have the option of extending the Term of this Lease for three (3) additional terms of sixty (60) months each in accordance with the provisions of Exhibit D attached hereto.

SUPPLEMENTAL TERMS, COVENANTS AND CONDITIONS

Landlord leases the Premises to Tenant and Tenant accepts and agrees to use and possess the Premises on the following Supplemental Terms, Covenants and Conditions:

1. RENTAL

1.1 MINIMUM RENT

Tenant shall pay Landlord for each month in the Lease Term a guaranteed minimum monthly rental for the Premises ("Minimum Rent") as specified in the Basic Lease Information. Such Minimum Rent will be due in advance beginning on the Commencement Date and continuing on the first day of each calendar month thereafter. It will be prorated on a daily basis for the first month if the Commencement Date is not on the first day of a calendar month and for the last month if the Expiration Date is not on the last day of a calendar month. Minimum Rent shall be payable without demand, deduction or offset at the address for Landlord set forth in the Basic Lease Information, or at such other place as Landlord may from time to time designate, in writing.

1.2 ADDITIONAL RENTAL

Any amount to be paid by Tenant to Landlord hereunder in addition to Minimum Rent is additional rental (whether or not so designated in the following provisions) payable upon demand or as otherwise provided herein. Minimum Rent and additional rental are sometimes hereinafter collectively referred to as "Rent."

1.3 RENT ABATEMENT

All rent hereunder shall be abated if Tenant cannot operate its business in the Premises for a period of forty-eight (48) hours or more because (i) Tenant and its customers do not have access to the Premises for any reason, or (ii) utilities are not provided to the Premises, unless due to Tenant's fault; or (iii) of Landlord's failure to provide any service required to be provided by Landlord hereunder.

2. CONDUCT OF BUSINESS BY TENANT

2.1 USE OF PREMISES AND TRADE NAME

Tenant shall use and occupy the Premises solely for the permitted use and under the trade name specified in the Basic Lease Information (which may be changed by Tenant from time to time, provided that the new trade name is reasonably appropriate for a first class building) and for no other purposes whatsoever without the prior written consent of Landlord, which shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant shall have the right, without the requirement of obtaining Landlord's consent, to alter its use from time to time to conduct such activities and sell such goods and services as are generally sold or conducted at Tenant's other health & fitness club locations.

Tenant shall at all times maintain an adequate staff for the operation of its business. Tenant shall not permit the placement or stacking of equipment or materials against the walls of the building so that pressure or live load will be exerted against the walls. Tenant shall not place a "uniform live load" or a concentrated load upon any second floor of the Premises exceeding the design capacity of such floor.

2.2 PROHIBITED USES

2.2.1 Tenant shall not use or permit the Premises to be used as a nightclub or for any other use that Landlord finds offensive or disruptive to other tenants in the Project or that would tend to injure the reputation of the Project. This exclusion includes, but is not limited to: "head shops"; x-rated theaters; establishments for the sale of pornographic materials; nude modeling studios or establishments with nude or semi-nude waiters, waitresses or entertainers; adult bookstores; adult video sales and rentals; and any similar establishment. No auction, fire sale, "going out of business" sale or bankruptcy sale may be conducted from the Premises.

2.2.2 Tenant shall not cause or permit to be used any advertising materials or methods in or around the Project that are objectionable, including, without limiting the generality of the foregoing, mechanical or moving display devices, unusually bright or flashing lights and similar devices, the effect on which may be seen or heard outside the Premises; provided that Tenant shall from time to time have the right to conduct marketing/sales/promotional events in the portion of the Project adjacent to the Premises (e.g., live radio station broadcast events) upon delivery of prior notice to Landlord. **SMOKING IS PROHIBITED IN THE PROJECT.**

2.2.3 Tenant shall not permit the Premises to be used for any operation that is extra hazardous on account of fire or otherwise or for any operation that will increase insurance premiums on the fire insurance carried by Landlord or that may render void or voidable the insurance carried by Landlord; nor shall Tenant sell or permit to be kept, use or sold in or about the Premises any article which may be prohibited by standard fire insurance policies.

2.2.4 Landlord shall not lease space in the Project to an entity that will use its premises (i) as a health and fitness club, (ii) to sell fitness-related merchandise and health foods, (iii) for fitness and dance classes, (iv) for spa, health and beauty-related services, or (v) as a children's day care center or play facility, unless in each case Landlord obtains Tenant's prior written consent (which Tenant may withhold in its sole discretion).

2.3 COMPLIANCE WITH LAWS AND REGULATIONS

2.3.1 Tenant shall use and maintain the Premises in compliance with all laws, ordinances, building codes, rules and regulations, present or future, of all governmental authorities ("Applicable Laws").

2.3.2 If the Permitted Use specified in the Basic Lease Information contemplates the operation of a restaurant or other food service operation by Tenant in the Premises, or if otherwise required by Landlord or any governmental agency having jurisdiction, Tenant shall at its sole cost and expense install grease traps and/or grease interceptors that as necessary or that any governmental entity having jurisdiction shall deem necessary to handle liquid waste, including grease, oil or any material whatsoever which could damage, obstruct or overload any drainage, sewer or other systems. All grease and oil traps and/or interceptors shall be constructed in accordance with the requirements of Landlord and any governmental entity having jurisdiction and Tenant shall at its sole cost and expense maintain and make all necessary or required repairs and replacements thereto. If Tenant fails to make any such repairs or replacements as shall be required by any governmental entity having jurisdiction, then after delivery of written notice to Tenant and a reasonable cure period, Landlord may make such repairs and replacements and maintain such traps and/or interceptors at Tenant's expense without liability to Tenant for any loss or damage resulting therefrom. The cost incurred by Landlord in connection with such repairs, maintenance and replacement shall be paid by Tenant to Landlord upon demand as additional rental.

2.4 CLEANLINESS, WASTE AND DELIVERIES

Tenant shall maintain the Premises, and adjoining sidewalks and alleys, in a neat and clean condition; shall store all garbage within the Premises or in the trash dumpster as provided in Paragraph 6.7; and shall arrange for the regular pickup of garbage unless Landlord elects to arrange and charge Tenant for such pickup as provided in Paragraph 6.7 below. All loading and unloading of goods shall be made at the rear entrance of the Premises if a loading area is accessible there. Under no circumstances shall loading and unloading unreasonably impede ingress or egress to any portion of the Project, or any other tenant's space.

2.5 ADVERTISING

Use by Tenant in advertising, letterheads or otherwise of the name of the Project or any distinctive trade name or trade mark used by Landlord shall be subject to such restrictions and regulations as Landlord may prescribe from time to time.

3. CONSTRUCTION

3.1 INITIAL CONSTRUCTION

Tenant will construct its desired leasehold improvements in the Premises in accordance with plans and specifications to be prepared by the Tenant or Tenant's architects and approved by Landlord as provided in Exhibit B. Tenant shall obtain any required certificate of occupancy covering the Premises and shall forward a copy thereof to Landlord as soon as it is received.

3.2 MECHANICS LIENS

Tenant shall not permit any mechanic's lien or liens to be placed upon the Premises or the Project caused by or resulting from any work performed or materials furnished or resulting from obligations incurred by or at the request of Tenant and nothing contained in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises, the Project or any part thereof; nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's or other liens against the interest of Landlord in the Premises or the Project. In the case of the filing of any mechanic's lien because of work performed or materials furnished at the request of Tenant against any interest of Landlord or Tenant in the Premises or the Project, Tenant shall cause the same to be discharged of record within thirty (30) days after the filing of same. If Tenant shall fail to discharge such mechanic's lien within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien in such other manner as may be permitted by law. Any amount paid by Landlord to discharge such mechanic's lien, or for the satisfaction of any other lien placed against the Premises during the Lease Term that is not caused or claimed to be caused by Landlord, and all reasonable legal and other expenses of Landlord, including reasonable attorney's fees, in defending any such action or procuring the discharge of such liens, with all necessary disbursements in connection therewith, shall be paid as additional rental by Tenant to Landlord on demand with interest from demand until payment at the Lease Interest Rate (as defined in Subparagraph 14.2.8 below).

4. MAINTENANCE AND REPAIRS

4.1 OBLIGATION FOR REPAIRS

4.1.1 From and after Tenant's acceptance of possession of the Premises, Landlord shall have no obligation to make any repairs, improvements or alterations whatsoever, except those required under any express covenant or warranty that may be explained in Exhibit B and except that Landlord shall maintain the roof, the exterior walls and the foundation of the Project, skylights, and windows in the Premises, all Project common areas and common facilities and systems in good repair during the Lease Term. Tenant shall not be obligated hereunder to make any structural alterations or modifications to the Premises where such structural alterations or modifications are required of the Project in general and not directed specifically to the type of business being conducted by Tenant at the Premises. To the extent Tenant is not obligated to make such structural alterations or modifications, Landlord shall promptly make them at Landlord's sole cost and expense. Tenant shall be solely responsible for compliance with the Americans With Disabilities Act of 1990 ("ADA") within the Premises and Landlord shall be solely responsible for compliance with ADA with respect to the exterior of the Premises and in the Common Areas of the Project. Landlord shall also be responsible for the repair of any latent defects in the Premises existing as of the Commencement Date. Notwithstanding the foregoing, Landlord shall not be required to repair any damage caused by the negligence or willful misconduct of Tenant, its agents, employees or invitees, or any damage to the Premises caused by burglary, robbery, or vandalism or resulting from any alterations (including roof penetrations) made to the Premises by Tenant whether with or without Landlord's consent. Except for tenant improvements installed by Tenant, Landlord agrees that during the entire term of this Lease it shall promptly and at its own expense service, keep, maintain in good repair and replace as necessary the building systems not exclusively serving the Premises, including, but not limited to, the following (regardless of whether situated within walls or under floor covering or above the ceiling); all plumbing (including the fire prevention sprinkler system, if any), piping, electrical and lighting facilities. Tenant shall be responsible for maintenance of all systems exclusively serving the Premises and for all periodic interior painting of the Premises, and shall keep the Premises in good, clean and tenantable condition; and Tenant shall at its sole cost and expense keep the Premises free of insects, rodents, vermin and other pests. Additionally, Tenant shall pay to Landlord upon demand, and without contribution from any other tenant or Landlord, all costs and expenses for (i) the repair and replacement of any utility lines and related facilities (including sewer lines, drains, drainage systems, storm sewer systems, sanitary sewer systems and plumbing equipment, fixtures and appliances) which are necessary because of the obstruction of the flow, clogging, backing up or other malfunction or disrepair of said lines and related appurtenances resulting from any act or negligent omission of Tenant or any other party using or occupying the Premises, and (ii) any repairs to the roof required because of penetrations made by or on behalf of Tenant, whether or not such penetrations were made with Landlord's consent. Under no circumstances will Tenant make any roof penetrations, except with Landlord's prior consent and using a roofing contractor approved by Landlord in its reasonable discretion. Such agreements of Tenant are subject to the waivers set out in Paragraph 10.7 below.

4.1.2 If Landlord fails to make repairs required by the terms of this Lease, Tenant shall have the right, upon giving Landlord written notice of its election to do so and a reasonable opportunity to cure, to make such repairs or perform such maintenance on behalf of Landlord. In such event, the reasonable, actual cost of such work shall be paid by Landlord promptly upon receipt of bills therefor.

4.2 LANDLORD'S RIGHT TO REPAIR

If Tenant fails to perform its obligations under this Article 4, Landlord may at its option, after three (3) days' written notice to Tenant (except in circumstances which Landlord deems to be an emergency, in which case no notice shall be required), enter upon the Premises and put the same in good order, condition and repair and the reasonable, actual cost thereof shall become due and payable by Tenant to Landlord upon demand as additional rent.

5. ALTERATIONS BY TENANT

Tenant shall not make any alterations or additions to the Premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld, provided that Landlord's consent shall not be required for (i) the removal or addition of equipment in the Premises, or (ii) a remodel of the Premises that is consistent with Tenant's other locations, or (iii) alterations to Tenant's signage that are approved by the applicable governmental authorities. If Landlord gives its consent to alterations or additions to the Premises by Tenant, Tenant shall procure, at Tenant's expense, all necessary permits before undertaking such work. All such alterations and additions shall be done in accordance with Applicable Laws, including applicable building codes and regulations.

6. COMMON AREAS

6.1 DEFINITION OF COMMON AREAS

All areas provided by Landlord from time to time in the Project for the common use of Landlord and tenants and their respective employees and invitees shall be deemed "Common Areas".

6.2 USE OF COMMON AREAS

Tenant and its employees and invitees shall be entitled to use the Common Areas, in common with Landlord and with other persons authorized by Landlord from time to time to use such areas, subject to such rules and regulations relating to such use as Landlord may from time to time establish and subject to all Applicable Laws, provided that (a) such rules and regulations are uniformly applied to, and are uniformly enforced against, all tenants and other occupants of the Project; and (b) such rules and regulations are not inconsistent with this Lease and do not impair the rights to Tenant granted hereunder. Landlord agrees that (i) it shall make no changes to the Project or to the Common Areas which will materially adversely obstruct or materially adversely affect access to and from the Premises, (ii) it shall make no changes to the Project or to the Common Areas which would materially adversely affect the visibility of Tenant's identification signage, entrance and display windows, and (iii) it shall not materially adversely affect ingress and egress to the Project from the adjacent public street.

Tenant may maintain an operable door ("Side Accessway") between Tenant's Premises and the ground floor corridor leading to the elevators, but Landlord acknowledges that: (a) entry hardware shall only be provided on Tenant's side of the Side Accessway; and (b) neither Landlord nor its agents, tenants or building occupants shall have access to the Premises through the Side Accessway.

Landlord agrees that (i) Tenant's HVAC equipment may be located in the interior of the Premises; and (ii) Tenant shall be permitted to create an opening in the masonry wall of the Project in order to install entry/exhaust air registers and utilize such opening for ventilation purposes.

6.3 MAINTENANCE BY LANDLORD

Landlord shall manage, clean and maintain the Common Areas throughout the Lease Term as it deems necessary, provided that Landlord shall manage, operate and maintain the Common Areas in a manner consistent with first class projects in the vicinity of the Project. Landlord may temporarily close any Common Area for repairs or alterations, or for any other reasonably necessary purpose.

6.4 CONTROL BY LANDLORD

Landlord shall at all times during the term of this Lease be entitled to control the Common Areas, and may restrain any use or occupancy thereof as authorized by this Lease and by the rules and regulations for the use of such areas. Tenant shall keep said areas free and clear of any obstructions created by Tenant or resulting from Tenant's operation in the Premises. If unauthorized persons are using any of said areas because of the presence of Tenant in the Project, Tenant shall restrain such unauthorized use by appropriate legal proceedings. Nothing herein shall affect the right of Landlord to prohibit the use of any of said areas by unauthorized persons.

6.5 PARKING

Landlord shall have no obligation to provide parking for Tenant's customers, visitors or employees to park in the Project. Tenant intends to obtain security parking rights from another property owner in the vicinity of the Project. If Tenant is unable to obtain sufficient parking for its customers, visitors or employees, on terms satisfactory to Tenant within thirty (30) days following the date of mutual execution of this Lease, Tenant shall have the right to terminate this Lease.

6.6 IMPOSITION OF REGULATIONS

If Landlord is required at any time by governmental authority to reduce the energy consumption of the Project, to impose a parking or similar regulatory charge, to modify or restrict the hours of operation of Tenant's business, to limit access to the Project or to take other limiting actions, such actions shall be binding on Tenant and this Lease shall be subject thereto.

6.7 TRASH DISPOSAL

In the event that Landlord finds it necessary or desirable to furnish a form of trash disposal for the common use of more than one (1) tenant, including Tenant, the cost of said trash disposal shall be allocated on the basis determined by Landlord to those using it, and Tenant will pay its share. If Landlord does not provide trash disposal for use by Tenant and other tenants, it shall be Tenant's responsibility to provide, at Tenant's expense, a trash dumpster or some other method of trash disposal meeting the approval of the applicable municipality in which the Premises are located. Such dumpster or other receptacle shall be located and shall be screened or enclosed as directed by the Landlord.

6.8 COMMON AREA CHARGES AS ADDITIONAL RENT

Tenant shall pay Landlord, as additional rental, Tenant's share of all costs and expenses incurred by Landlord in the operation and maintenance of the Common Areas during the term of this Lease. Such costs and expenses ("CAM Charges") shall include, without limiting the generality of the foregoing, the cost of building systems maintenance and repairs, landscaping, resurfacing, striping, bumpers, directional signs and other markers, lighting and other utilities, cleaning, sewage and garbage disposal (if Tenant shares trash facilities with other Project occupants), installation and removal of community projects, exterminating, depreciation of equipment used in and about the Project, fire protection, security (if and to the extent Landlord provides security), and similar items. CAM Charges will also include all management fees and expenses and all costs of maintenance and repairs concerning the Project (to the extent not covered by insurance), whether or not allocable to the Common Areas, but will not include leasing commissions and any costs incurred by Landlord to make space in the Project ready for another particular tenant. Tenant's share of CAM Charges incurred in any calendar year or partial calendar year during the term of this Lease will be determined by multiplying the total CAM Charges incurred in the applicable calendar year or partial calendar year times a fraction, the numerator of which is the floor area of the Premises and the denominator of which is of the total, rentable, floor area of the building in the Project during the applicable calendar year or partial calendar year.

Notwithstanding anything to the contrary herein CAM Charges shall not include (1) the cost of providing any service directly to and paid directly by Tenant; (2) the cost of any items for which the Landlord is reimbursed by any other tenant or occupant of the Project, insurance proceeds, warranties, condemnation awards, or otherwise to the extent so reimbursed; (3) any real estate brokerage commissions or other costs incurred in procuring tenants, or any fee in lieu of commission; (4) depreciation and amortization of principal and interest on mortgages or ground lease payments (if any); (5) cost of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied except to the extent that such capital costs (A) reduce other CAM Charges payable hereunder, or (B) are required under any governmental law or regulation enacted after the Commencement Date (provided that any permitted capital expenditure shall be amortized with interest over their useful life); (6) costs incurred by Landlord due to any violation by Landlord of the terms and conditions of the Lease or any law, code, regulation, ordinance or the like; (7) Landlord's general corporate overhead or general administrative expenses; (8) any compensation paid to clerks, tenants or other persons in commercial concessions operated by Landlord; (9) costs incurred in connection with upgrade of the Building performed by Landlord to comply with disability, life, seismic, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including without limitations, the ADA, including penalties or damage incurred due to such non-compliance; (10) the cost of any goods or services (including any management fees) in excess of the fair market value of such goods or services; (11) costs incurred to remove, remedy, contain, or treat any Hazardous Materials in, on or about the Project; and (12) reserves. All costs included in CAM Charges shall be the actual cost of such service or material to Landlord, without profit or mark-up of any kind.

For calendar years 2005 and 2006, the annualized sum of CAM Charges and "Taxes" (as defined in Section 9.1 below) and "Insurance Costs" (as defined in Section 10.3 below) shall be \$2.50 per square foot of Floor Area. Commencing with calendar year 2005 and each calendar year thereafter during the Lease Term, such amount shall increase by three percent (3%) of the amount paid in the prior calendar year.

6.9 PAYMENT OF COMMON AREA CHARGES

Tenant will commence paying CAM charges on September 16, 2005. Tenant's share of CAM Charges for each month estimated to be the amount specified as Initial CAM Charges in the Basic Lease Information, which amount is payable monthly by Tenant to Landlord on the same dates as and in addition to the Minimum Rent that is due during such calendar year. Following the calendar year in which the Commencement Date occurs, Tenant shall pay to Landlord, at the same time as and in addition to each installment of the Minimum Rent, Landlord's estimate of Tenant's share of CAM Charges for the then current calendar month, or, if

Tenant has not been notified of such estimate, then Tenant shall pay the most recent available estimate by Landlord of Tenant's share of CAM Charges for a full calendar month. Landlord shall determine Tenant's share of the actual CAM Charges incurred for every calendar year or partial calendar year during the Lease Term within one hundred twenty (120) days (or such additional time as may be required) after the close of such year, and Landlord will deliver a statement to Tenant setting out the calculation. Within thirty (30) days from Tenant's receipt from Landlord of such statement, Tenant shall pay Landlord the excess, if any, of Tenant's share of the actual CAM Charges shown therein over the estimated amount theretofore paid by Tenant for such period. If, however, Tenant's share of the actual CAM Charges for the applicable calendar year or partial calendar year is less than the estimated amount theretofore paid by Tenant, the excess share of CAM Charges paid by Tenant shall (i) be credited against the next maturing installments of additional rental due from Tenant (but not against Minimum Rent), and (ii) to the extent not offset against amounts then due or to be due in the future from Tenant under this Lease, be refunded by Landlord to Tenant.

6.10 TENANT AUDIT RIGHT

At any time within one hundred (180) days of receipt of any statement from Landlord for additional rent, Tenant shall be entitled to an independent audit of Landlord's books and records, to be conducted either by Tenant or an accountant to be designated by Tenant. Such audit shall be limited to items necessary to a determination of the applicable additional rent and shall be conducted during normal business hours at the Landlord's business office in the Project. If it shall be determined as a result of such audit that there has been an error in the calculation of additional rent, the parties shall make the appropriate payments with interest at the Lease Interest Rate from the date such payment should have been made. In addition, if a Landlord's statement for any item of additional rent shall be found to have understated such item by more than five percent (5%), Landlord shall pay to Tenant all reasonable costs and expenses incurred by Tenant in determining and collecting the understatement or underpayment. Any information gained from such statements or inspection shall be confidential and shall not be disclosed, except to carry out the purposes hereof; provided, however, that Tenant shall be permitted to divulge the contents of any such statements in connection with any financing arrangements or assignments of Tenant's interest in this Lease or in connection with any administrative or judicial proceeding in which Tenant is involved or where Tenant may be required to divulge such information.

7. SIGNS

Tenant shall have the right to install signs on the exterior of the Premises provided that: (a) Tenant's signage is consistent with Exhibit E hereto; (b) any illumination of Tenant's signs must not unreasonably interfere with the use by residential tenants of their premises; and (c) Tenant must obtain approval from any applicable government authorities. Tenant shall have the right from time to time to replace its signage and/or change the trade name on such signage, subject to the terms of Section 2.1 hereof.

8. UTILITIES

Tenant shall pay all utility charges incurred by it in the use of the Premises whether supplied by Landlord or directly to Tenant by a utility company. If any such charges are not paid when due, Landlord may pay the same and any amount so paid by Landlord shall thereupon become due to Landlord from Tenant. Regardless of whether Landlord supplies Tenant with any utility services, Landlord shall not be responsible for problems with respect to the quality, quantity or interruption of such services beyond its control, and failure or interruption of services shall not entitle Tenant to terminate this Lease.

9. REAL ESTATE TAXES

9.1 TAX COSTS AS ADDITIONAL RENTAL

Tenant shall pay Landlord additional rental equal to all ad valorem taxes, charges, impositions and liens for public improvements, and assessments allocable to the Premises that Landlord pays for any portion of the term of this Lease (collectively "Taxes"). As used herein, "Taxes" shall include, to the extent allocable to any calendar year or partial calendar year during the Lease Term, all ad valorem taxes, charges, impositions and other assessments described in the preceding sentence that are separately assessed against the Premises. "Taxes" shall also include, to the extent allocable to any calendar year or partial calendar year during the Lease Term, Tenant's share of any such items that are assessed against the Project or against other property of which the Premises are only a portion. For the first floor of the Premises, Tenant's share of Taxes for each calendar year or partial calendar year will be based on the floor area of the first floor of the Premises (i.e., 6,809). For the mezzanine and basement levels of the Premises, Tenant's share of Taxes for each calendar year or partial calendar year will be based on fifty percent (50%) of the floor area of the mezzanine and basement levels of the Premises (i.e., 4,173.5). Tax refunds shall be credited against Taxes and refunded to Tenant regardless of

when received, based on the year to which the refund is applicable. Taxes shall be computed as though Landlord has elected to pay the same in the maximum number of installments permitted by law without additional costs, penalties or interest being assessed by reason of such installments.

9.2 PAYMENT OF TAXES

The Taxes for each month during the calendar year in which the Commencement Date occurs are estimated to be the amount specified as Initial Taxes in the Basic Lease Information, which amount is payable monthly by Tenant to Landlord on the same dates as and in addition to the Minimum Rent that is due during such calendar year, subject to the limitation contained in the last paragraph of Section 6.8 above. Following the calendar year in which the Commencement Date occurs, Tenant shall pay to Landlord, at the same time as and in addition to each installment of the Minimum Rent, Landlord's estimate of the Taxes for the then current calendar month, or, if Tenant has not been notified of such estimate, then Tenant shall pay the most recent available estimate by Landlord of the Taxes for a full calendar month. Landlord shall calculate the actual Taxes incurred for every calendar year or partial calendar year during the Lease Term within one hundred twenty (120) days (or such additional time as may be required) after the close of such year, and Landlord will deliver a statement to Tenant setting out the calculation. Within ten (10) days from Tenant's receipt from Landlord of such statement, Tenant shall pay Landlord the excess, if any, of the actual Taxes shown therein over the estimated amount theretofore paid by Tenant for such period. If, however, the actual Taxes for the applicable calendar year or partial calendar year are less than the estimated amount theretofore paid by Tenant, the excess Taxes paid by Tenant shall (i) be credited against the next maturing installments of additional rental due from Tenant (but not against Minimum Rent), and (ii) to the extent not offset against amounts then due or to be due in the future from Tenant under this Lease, be refunded by Landlord to Tenant.

9.3 SUBSTITUTE TAXES

If during the term of this Lease any taxes or other charges shall be levied or assessed against the Premises or charged to Landlord either as a rent tax or in lieu of or as a substitute for all or part of any present or contemplated ad valorem taxes on the Premises or the Project, then for the purposes of this Lease such levies and assessments shall be treated the same as ad valorem taxes on the Premises or the Project, as the case may be.

9.4 TAXES ON TENANT'S PROPERTY

Tenant shall be liable for and promptly pay all taxes levied against personal property and trade fixtures on the Premises during the term of this Lease. If the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures on the Premises and Landlord elects to pay the taxes based on such increase, then Tenant shall pay to Landlord upon demand the part of such taxes that Landlord determines to be attributable to such personal property and trade fixtures.

10. INSURANCE AND INDEMNITY

10.1 LIABILITY INSURANCE - PREMISES

From and after the Commencement Date Tenant shall keep in force commercial general liability insurance (including blanket contractual liability coverage) with limits of liability of not less than \$1,000,000.00 per occurrence (and no offset for occurrences on property other than the Premises) insuring both Landlord and the Tenant against all claims, demands or actions arising out of or in connection with Tenant's use or occupancy of the Premises including the Common Areas, or by the condition of the Premises. Such insurance may be carried under a blanket policy covering the Premises and any other stores operated by Tenant. In the event Tenant is to construct the improvements or any part of the improvements on the Premises prior to the Commencement Date, Tenant shall provide such insurance from and after the date it commences such construction. All insurance required to be carried by Tenant shall be issued by an insurance company satisfactory to Landlord which are licensed to do business in the state in which the Project is located with a general policyholders rating of not less than B+ and a financial rating of not less than Class VIII, as rated in the most current edition of Best's Key Rating Guide and such insurance shall be written upon forms and with endorsements satisfactory to Landlord. Such policy or a certificate of insurer evidencing the insurance with proof of payment of premiums and an endorsement which prohibits cancellation, termination or modification without thirty (30) days prior written notice to Landlord shall be deposited with Landlord on or prior to the earlier of the Commencement Date or the date Tenant commences construction of improvements on the Premises. Certificates of renewal thereof shall be deposited with Landlord thirty (30) days prior to the expiration of such policy or renewal thereof.

10.2 OTHER INSURANCE

10.2.1 Landlord shall keep in force, or shall cause the Project homeowners' association ("HOA") to keep in force, a full replacement cost insurance policy insuring against fire and standard extended coverage perils on buildings and improvements in the Project, but not on the trade fixtures and other equipment and property of Tenant situated on the Premises and commercial general liability insurance with a limit of liability of not less than \$1,000,000.00 per occurrence.

10.2.2 Any Insurance carried by Landlord or Tenant against loss or damage to the building and other property situated on the Premises shall be carried for the benefit of Landlord to the extent of loss or damage to the building or improvements.

10.2.3 If and to the extent required by law, Tenant shall maintain at all times during the term of the Lease, at its cost and expense, Workers' Compensation or similar insurance in form and amounts required by law.

10.3 INSURANCE COSTS AS ADDITIONAL RENT

Tenant shall pay Landlord additional rental equal to all insurance costs allocable to the Premises (as determined by Landlord pursuant to this Paragraph) that Landlord pays for the term of this Lease (collectively, "Insurance Costs"). As used herein, "Insurance Costs" shall include, to the extent allocable to any calendar year or partial calendar year during the Lease Term, the entire cost of any insurance policy that covers only the Premises. "Insurance Costs" shall also include, to the extent allocable to any calendar year or partial calendar year during the Lease Term, Tenant's share of the cost of any insurance policy or policies covering the Project or any other property of which the Premises are only a part. Tenant's share of such cost for each calendar year or partial calendar year during the Lease Term will be determined by multiplying the total amount thereof times a fraction, the numerator of which is the floor area of the Premises and the denominator of which is the total, rentable, floor area of the building on the insured property during the applicable calendar year.

10.4 PAYMENT OF INSURANCE COSTS

Insurance Costs for each month during the calendar year in which the Commencement Date occurs are estimated to be the amount specified as Initial Insurance Costs in the Basic Lease Information, which amount is payable by Tenant to Landlord on the same dates as and in addition to the Minimum Rent that is due during such calendar year, subject to the limitation contained in the last paragraph of Section 6.8 above. Following the calendar year in which the Commencement Date occurs, Tenant shall pay to Landlord, at the same time as and in addition to each installment of the Minimum Rent, Landlord's estimate of the Insurance Costs for the then current calendar month, or, if Tenant has not been notified of such estimate, then Tenant shall pay the most recent available estimate by Landlord of Insurance Costs for a full calendar month. Landlord shall calculate the actual Insurance Costs incurred for every calendar year or partial calendar year during the Lease Term within one hundred twenty (120) days (or such additional time as may be required) after the close of such year, and Landlord will deliver a statement to Tenant setting out the calculation. Within ten (10) days from Tenant's receipt of such statement from Landlord, Tenant shall pay Landlord the excess, if any, of the actual Insurance Costs set out therein over the estimated Insurance Costs theretofore paid by Tenant for such period. If, however, the actual Insurance Costs for the applicable calendar year or partial calendar year are less than the estimated amount theretofore paid by Tenant, the excess Insurance Costs paid by Tenant shall (i) be credited against the next maturing installments of additional rental due from Tenant (but not against Minimum Rent), and (ii) to the extent not offset against amounts then due or to be due in the future from Tenant under this Lease, be refunded by Landlord to Tenant.

10.5 INSURANCE CONCERNING TENANT'S USE OF THE PREMISES

If the use by Tenant of the Premises causes an increase in the insurance costs for any portion of the Project other than the Premises, Tenant shall pay the increase allocable to that other portion on demand. If Tenant makes any additions or alterations to the Premises or changes its operations therein or vacates the Premises and thereby causes an increase in the insurance premium on policies maintained by Landlord, Tenant shall pay to Landlord the amount of such increase on demand.

10.6 INSURANCE COVERING TENANT'S PROPERTY

Tenant shall, at its cost, maintain insurance covering its personal property, equipment and trade fixtures, including insurance providing protection against fire and extended coverage, perils, sprinkler damage, vandalism and malicious mischief. Such insurance

will be in the amount of the full replacement value of the insured property, and Tenant shall furnish Landlord with a certificate evidencing such insurance from the applicable insurer upon request.

10.7 WAIVER OF CLAIMS

The parties desire to avoid liability to each other's insurers. Thus, Landlord and Tenant each for itself and for any person or entity claiming through it (including any insurance company claiming by way of subrogation), hereby waives any and every claim which arises or may arise in its favor against the other party hereto and other party's officers, directors, and employees (and Tenant waives any such claim against the other tenants and occupants of the Project and their officers, directors and employees) for any and all loss of or damage to property, to the extent (but only to the extent) that the waiving party who suffers such loss or damage is actually compensated by insurance or would be compensated by the insurance policies contemplated in this Article 10 if such policies were maintained as required hereby. Each party agrees to have such insurance policies properly endorsed so as to make them valid notwithstanding this waiver, if such endorsement is required to prevent a loss of insurance.

10.8 INDEMNITY

TENANT AGREES TO INDEMNIFY AND SAVE LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DAMAGES, LIENS, LIABILITIES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY AND/OR DAMAGE TO PROPERTY OCCURRING ON THE PREMISES OR THE PROJECT OR TO THE EXTENT ARISING FROM OR OUT OF TENANT'S OCCUPANCY OR USE OF THE PREMISES OR ANY PORTION THEREOF OR ANY PORTION OF THE PROJECT; AND TENANT SHALL PROMPTLY PAY OR OTHERWISE DISCHARGE ANY AND ALL SUCH CLAIMS, ACTIONS, DAMAGES, LIENS, LIABILITIES AND EXPENSES EXCEPT TO THE EXTENT OF LANDLORD'S NEGLIGENCE OR INTENTIONAL MISCONDUCT.

LANDLORD AGREES TO INDEMNIFY AND SAVE TENANT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DAMAGES, LIENS, LIABILITIES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, TO THE EXTENT ARISING FROM OR OUT OF (I) ANY NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ITS AGENTS, EMPLOYEES, SERVANTS OR CONTRACTORS, OR (III) ANY BREACH OF THIS LEASE BY LANDLORD; AND LANDLORD SHALL PROMPTLY PAY OR OTHERWISE DISCHARGE ANY AND ALL SUCH CLAIMS, ACTIONS, DAMAGES, LIENS, LIABILITIES AND EXPENSES EXCEPT TO THE EXTENT OF TENANT'S NEGLIGENCE OR INTENTIONAL MISCONDUCT.

10.9 EXCULPATION OF LANDLORD

EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACT OF LANDLORD, LANDLORD SHALL NOT BE LIABLE FOR (I) INJURY OR DAMAGE WHICH MAY BE SUSTAINED BY TENANT, ITS AGENTS, OFFICERS, DIRECTORS, EMPLOYEES OR INVITEES, OR TO THEIR GOODS, WARES, MERCHANDISE OR PROPERTY, CAUSED BY OR RESULTING FROM THE STATE OF REPAIR OF THE PREMISES OR THE PROJECT; (II) INJURY OR DAMAGE FROM FIRE, STEAM, ELECTRICITY, GAS, WATER OR RAIN WHICH MAY LEAK OR FLOW FROM OR INTO ANY PART OF THE PREMISES; OR (III) THE BREAKAGE, LEAKAGE, OBSTRUCTION OR OTHER DEFECTS OF THE PIPES, SPRINKLERS, WIRES, APPLIANCES, PLUMBING, AIR CONDITIONING OR LIGHTING FIXTURES OF THE PREMISES OR THE PROJECT. LANDLORD SHALL NOT BE LIABLE FOR DAMAGE ARISING FROM ANY ACT OR NEGLECT OF ANY OTHER TENANT OF THE PROJECT. LANDLORD SHALL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED BY TENANT BY REASON OF CONSTRUCTION, REPAIR OR RECONSTRUCTION, OR WIDENING OF ANY PRIVATE, PUBLIC OR QUASI-PUBLIC UTILITY LINES, STREETS, WALKWAYS OR THOROUGHFARES; NOR SHALL THE RENT OR OTHER CHARGES UNDER THIS LEASE BE ABATED DURING ANY PERIOD THAT INGRESS, EGRESS OR TRAFFIC MAY BE CURTAILED, BLOCKED OR HAMPERED BY REASON OF SUCH ACTIVITIES.

11. CASUALTY AND RESTORATION

11.1 ACTIONS REQUIRED FOLLOWING CASUALTY

If the building or other improvements on the Premises should be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice thereof to Landlord. If the Premises are damaged by fire or other insured casualty, then Landlord shall repair (or cause the HOA to repair) such damage at its expense. However, if the Premises are damaged by fire or other casualty and such damage is not ninety (90%) covered by Landlord's insurance, then Landlord may, at its option, terminate this Lease by giving written notice to Tenant within ninety (90) days after Landlord is notified of the fire or other casualty. If this option is available but not exercised by Landlord, then Landlord shall proceed with reasonable diligence to collect any insurance proceeds not claimed by the holder of a deed of trust, mortgage or security interest on the Premises and to apply any or all of such proceeds as may be required to repair such damages.

11.2 EXCEPTION TO LANDLORD'S OBLIGATION TO RESTORE

Notwithstanding the preceding Paragraph 11.1, Landlord shall not be required to repair or rebuild after any fire or other casualty that occurs during the last year of the Primary Term or during the last year of any renewal or extension of the Primary Term; provided, however, that if Tenant shall, within fifteen (15) days after such occurrence, exercise any option to extend the term of this Lease that may be available to Tenant and if because of the exercise of such option the term of this Lease shall be scheduled to last at least three (3) years from the date of such occurrence, then Landlord's obligation to repair or rebuild shall not be affected by this Paragraph 11.2.

11.3 TENANT TERMINATION RIGHT

Landlord shall, within thirty (30) days after any loss, damage or destruction to the Premises, deliver to Tenant an estimate prepared by a reputable, independent contractor selected by Landlord, setting forth such contractor's estimate as to the reasonable time required to repair such casualty. Tenant shall have the right to terminate this Lease if (i) the estimated time to repair the damage exceeds six (6) months from the date of the casualty, (ii) Landlord fails to repair the casualty within six (6) months from the date of the casualty, (iii) the Leases for thirty percent (30%) or more of the tenants at the Project are terminated for any reason, or (iv) more than thirty percent (30%) of the parking spaces immediately adjacent to the Premises are no longer available.

11.4 CONTINUATION OF OPERATIONS

During the period of any repairs to or restoration of the Premises, Tenant shall continue the operation of its business to the extent reasonably practicable. In the event that Landlord has an obligation to repair or rebuild pursuant to this Article 11, then during the period from the occurrence of the casualty until Landlord's repairs are completed, the Minimum Rent shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the remainder of the period of reconstruction and restoration.

11.5 EXTENT OF LANDLORD'S OBLIGATIONS

Landlord's obligation to repair or rebuild pursuant to this Article 11 shall be limited to the restoration of the Building and Building Systems to the extent permitted by Applicable Laws, and to the replacement of any interior work in the Premises which may have originally been installed at Landlord's cost; and Tenant shall be obligated to complete the repairs or rebuilding of its tenant improvements. Upon completion of such restoration and replacement, Tenant shall promptly refixture and restock the Premises.

12. EMINENT DOMAIN

12.1 SUBSTANTIAL TAKING

If during the term of this Lease, all or a substantial part of the Premises should be taken for any public or quasi-public use by eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and all rentals shall be abated during the unexpired portion of this Lease, effective as of the date when said taking or sale shall occur. "Substantial

part", as used herein, means that the remainder of the Premises cannot be reconstructed or restored to make it reasonably tenantable and suitable for the uses for which the Premises are leased as defined in the Basic Lease Information.

12.2 LESS THAN SUBSTANTIAL TAKING

If less than a substantial part of the Premises shall be taken for any public or quasi-public use by eminent domain, or should be sold to the condemning authority under the threat of condemnation, this Lease shall not terminate and Landlord shall, at its sole expense, restore and reconstruct the building and other Improvements situated on the remaining part of the Premises so as to make the remaining part reasonably tenantable and suitable for the uses set out in the Basic Lease Information; provided, however, that Paragraphs 11.2, 11.4 and 11.5 above shall apply as if the part taken or sold were destroyed by a fire or other casualty. If Landlord does restore or reconstruct the Premises pursuant to this paragraph, but thereafter the square footage of the Premises available for Tenant's use is less than that available before the taking or sale, then the Minimum Rent payable hereunder during the unexpired term of this Lease and other economic provisions of this Lease shall be reduced in proportion to the reduction of square feet of floor area of the Premises.

12.3 AWARD OF DAMAGES

All damages awarded for any taking of all or any part of the Project by eminent domain, and all proceeds of a sale in lieu of such a taking, shall belong to and be the property of Landlord. However, Landlord shall not be entitled to any separate award made to Tenant for loss or damage to Tenant's leasehold, goodwill, tenant improvements, personal property or for moving costs. Nor will Landlord be entitled to any award for damages for cessation or interruption of Tenant's business to the extent that such cessation or interruption damages.

13. ASSIGNMENT AND SUBLETTING

13.1 REQUIREMENT OF LANDLORD'S CONSENT

Tenant may not, either voluntarily or by operation of law, without the prior written consent of Landlord (which shall not be unreasonably withheld, conditioned or delayed), assign this Lease, sublet the whole or any part of the Premises, sell, encumber, pledge or otherwise transfer all or any part of Tenant's leasehold estate hereunder, or permit the Premises to be possessed by anyone other than Tenant or Tenant's employees. Landlord's decision to consent to any subletting or assignment by Tenant shall be within Landlord's reasonable discretion and Landlord may refuse to give such consent based upon, but not limited to, factors pertaining to:

13.1.1 the acceptability and/or compatibility of any proposed subtenant or assignee with other tenants of the Project; and

13.1.2 the financial statement, credit and ability of any proposed subtenant or assignee to meet the obligations, terms and conditions of this Lease.

Notwithstanding any permitted assignment or subletting, except as set forth below, Tenant and any guarantor of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of Tenant's other obligations under the terms, provisions and covenants of this Lease. As a condition precedent to any subletting or assignment by Tenant hereunder, Tenant agrees to furnish Landlord with a copy of the proposed assignment or sublease, together with a description of the business to be conducted at the Premises by such proposed assignee or subtenant, current financial statements of such proposed assignee or subtenant, and such other information as Landlord may request, all at least thirty (30) days prior to the date on which the proposed assignment or sublease is to be executed. Tenant further agrees to furnish Landlord with an executed copy of such assignment or sublease immediately after such instrument is executed. Any permitted assignment or subletting shall be subject to all the terms and conditions of this Lease including the provisions of the Basic Lease Information and Article 2 relating to the use of the Premises. Even if Landlord shall consent to a sublease or any assignment of this Lease, no further subleases or assignments may be made without the prior written consent of Landlord.

13.2 COMPANY TRANSFERS

Notwithstanding anything contained herein to the contrary, Tenant may assign or sublease this Lease (in either event, "Transfer"), in whole or in part, without continuing liability, upon prior written notice to Landlord but without the requirement of obtaining Landlord's consent, to (i) any corporation or other entity into which or with which Tenant has merged or consolidated, (ii) any parent, subsidiary,

successor, or affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant), (iii) any entity which acquires all or substantially all of the assets, membership interests or issued and outstanding shares of stock of Tenant, or (iv) any corporation, partnership or limited liability company, the majority interest of which shall be owned by Tenant or a parent, subsidiary, successor, or affiliate of Tenant (each, a "Company Transfer"), provided that any such Transferee shall agree in writing to assume and perform all of the terms and conditions of this Lease, on Tenant's part to be performed, on and after the effective date such Transfer. Tenant shall not be liable for any further obligations under this Lease following the effective date of a Company Transfer.

13.3 COSTS AND REVENUES ASSOCIATED WITH ASSIGNMENT

In the event that Landlord shall be asked to consent to a sublease or assignment hereunder, Tenant shall reimburse Landlord for all attorney's fees (not to exceed \$1,250.00) incurred by Landlord in connection therewith.

13.4 PERMITTED SUBLEASES

Notwithstanding anything in this Lease to the contrary, Tenant shall have the right, without Landlord's consent, to permit concessionaires to operate within the Premises subject to all of the terms of this Lease, provided (i) the concessionaire does not display signage visible from the exterior of the Premises indicating its operational control of the area or its ownership of the business being operated in the Premises, provided, however, Tenant shall have the right to place signage within the Premises featuring the services of such concessionaire; (ii) such concessionaire shall operate in accordance with the use permitted hereunder; and (iii) the aggregate amount of space occupied by concessionaires shall not exceed 10% of the Floor Area of the Premises.

14. DEFAULTS AND REMEDIES

14.1 DEFAULT BY TENANT

The occurrence of any one of the following events shall be an event of default by Tenant under this Lease:

14.1.1 Tenant shall fail to pay any rental or other sum of money within five (5) business days after the date such payment is due hereunder.

14.1.2 Tenant shall fail to perform or observe any term, condition, covenant or agreement of this Lease (other than a failure to timely pay rent or other charges) and Tenant shall not cure such failure within thirty (30) days after notice thereof is given by Landlord, but if such failure is of a nature that it cannot be cured within such thirty (30) day period, Tenant shall not have committed an event of default if Tenant commences the curing of the failure within such thirty (30) day period and thereafter diligently pursues the curing of same and completes such cure within sixty (60) days.

14.2 REMEDIES OF LANDLORD

14.2.1 Upon the occurrence of any event of default by Tenant, Landlord shall have the option, without any notice to Tenant (except as expressly provided below) and with or without judicial process, to pursue any one or more of the following remedies:

14.2.1.1 Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord.

14.2.1.2 Landlord may enter upon and take custodial possession of the Premises, lock out or remove Tenant and any other person occupying the Premises and alter the locks and other security devices at the Premises, all without Landlord being deemed guilty of trespass or becoming liable for any resulting loss or damage and without causing a termination or forfeiture of this Lease or of the Tenant's obligation to pay rent. Landlord shall not, in the event of a lockout by changing the locks, be required to furnish new keys to Tenant.

14.2.1.3 Landlord may enter the Premises and take possession of and remove any and all trade fixtures and personal property situated in the Premises, without liability for trespass or conversion. If Landlord takes possession of and removes personal property from the Premises, then prior to any disposition of the property by sale or until Tenant reclaims the property if no

foreclosure by public or private sale is contemplated, Landlord may store it in a public warehouse or elsewhere at the cost of and for the account of Tenant without the resort to legal process and without becoming liable for any resulting loss or damage.

14.2.1.4 Landlord may perform on behalf of Tenant any obligation of Tenant under this Lease which Tenant has failed to perform and the cost of the performance will be deemed additional rental and will be payable by Tenant to Landlord upon demand.

Landlord's pursuit of any remedy specified in this Lease will not constitute an election to pursue that remedy only, nor preclude Landlord from pursuing any other remedy available at law or in equity, nor constitute a forfeiture or waiver of any rent or other amount due to Landlord as described below.

14.2.2 In the event Landlord enters and takes possession of the Premises without electing to cause a termination of this Lease, Landlord will have the right to relet the Premises for Tenant, in the name of Tenant or Landlord or otherwise, on such terms as Landlord reasonably deems advisable. Landlord will not be obligated to relet for less than the then market value of the Premises. Without causing a termination or forfeiture of this Lease after an event of default by Tenant, Landlord may: (i) relet the Premises for a term or terms to expire at the same time as, earlier than, or subsequent to, the expiration of the Lease Term; (ii) remodel or change the use and character of the Premises; (iii) grant rent concessions in reletting the Premises, if necessary in Landlord's reasonable judgment, without reducing Tenant's obligation for rentals specified in this Lease; and (iv) relet all or any portion of the Premises as a part of a larger area. Subject to the next Subparagraph 14.2.3, Landlord may retain the excess, if any, of the rent earned from reletting the Premises over the rentals specified in this Lease.

14.2.3 After any failure by Tenant to pay rent, Landlord may, whether or not it has chosen to re-enter and take possession of the Premises, but only if it has not then notified Tenant of its election to terminate this Lease, collect from and require Tenant to pay an amount (a "Rental Deposit") equal to the then present value of all Minimum Rent specified herein for the balance of the Lease Term. However, if Landlord has relet the Premises or relets thereafter without first terminating this Lease, Landlord will apply any future rentals from reletting (but not rental representing reimbursement for CAM Charges, Taxes or Insurance Costs or rental allocable to any area outside the Premises or rental allocable to the period following the Lease Term) in the following manner: first, to reduce any amounts then due from Tenant, including but not limited to attorneys' fees, brokerage commissions and other expenses Landlord may have incurred in connection with the collection of any rent, recovery of possession, and redecorating, altering, dividing, consolidating with adjoining premises, or otherwise preparing the Premises for reletting; and, second, to the repayment of any Rental Deposit collected from Tenant. The balance, if any, of the future rentals from reletting shall be retained by Landlord as compensation for reletting the Premises. Tenant will not be entitled to any repayment of the Rental Deposit except as provided herein, but Tenant will be relieved of its obligation to make future payments of any Minimum Rent with respect to which it has paid a Rental Deposit to Landlord. Landlord will notify Tenant if Landlord elects to collect a Rental Deposit after an event of default by Tenant, whereupon the Rental Deposit will be immediately due and payable and may be collected by Landlord by a suit to enforce payment.

14.2.4 No re-entry or reletting of the Premises or any filing or service of an unlawful detainer action or similar action will be construed as an election by Landlord to terminate or accept a forfeiture of this Lease or to accept a surrender of the Premises after an event of default by Tenant, unless a written notice of such intention is given by Landlord to Tenant; but notwithstanding any such action without such notice, Landlord may at any time thereafter elect to terminate this Lease by notifying Tenant. In the event, however, Landlord terminates this Lease after collecting a Rental Deposit as provided in the preceding Subparagraph 14.2.3, Landlord will reimburse Tenant for the excess (if any) of (i) that portion of the Rental Deposit collected and attributable to the Minimum Rent for the period following such termination, over (ii) the amount that, notwithstanding the termination, Landlord would have been entitled to recover from Tenant with respect to such period if Landlord had not collected the Rental Deposit.

14.2.5 Upon the termination of this Lease, Landlord will be entitled to recover all unpaid rentals that have accrued through the date of termination plus the costs of performing any of Tenant's obligations (other than the payment of rent) that should have been but were not satisfied as of the date of such termination. In addition, if the termination follows a material event of default (as described below in this subparagraph), Landlord will be entitled to recover, not as rent or a penalty but as compensation for Landlord's loss of the benefit of its bargain with Tenant, the difference between (i) an amount equal to the present value of the rental and other sums that this Lease provides Tenant will pay for the remainder of the Lease Term and for the balance of any then effective extension of the Lease Term, and (ii) the present value of the future rentals (net of leasing commissions and other costs of reletting) for such period that will be or with reasonable efforts could be collected by Landlord by reletting the Premises. As used herein, a material event of default shall mean (i) any failure to pay rent described in Subparagraph 14.1.1 above; (ii) any failure to maintain insurance

required by this Lease; or (iii) any other events of default, individually or in the aggregate, which Landlord reasonably determines to be material.

14.2.6 After a material event of default by Tenant, Landlord may recover from Tenant from time to time and Tenant shall pay to Landlord upon demand, whether or not Landlord has relet the Premises or terminated this Lease, (i) such expenses as Landlord may incur in recovering possession of the Premises, terminating this Lease, placing the Premises in good order and condition and altering or repairing the same for reletting; (ii) all other costs and expenses (including brokerage commissions and legal fees) paid or incurred by Landlord in exercising any remedy or as a result of the event of default by Tenant; and (iii) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease.

14.2.7 In the event that any future amount owing to Landlord or offsetting an amount owing to Landlord is to be discounted to present value under this Lease, the present value shall be determined by discounting at the rate of six percent (6%) per annum.

14.2.8 Any Minimum Rent or additional rental or other amounts required to be paid by Tenant hereunder which shall not be paid when due shall bear interest at the Lease Interest Rate. "Lease Interest Rate" as used herein means three percent (3%) above the prime rate of interest from time to time charged, announced or published by NationsBank, but in no event shall such interest rate exceed the highest rate permitted by the laws of the state where the Premises are located. Any payment of the five percent (5%) charge described in the next subparagraph shall be credited against interest otherwise accruing under this Subparagraph 14.2.8.

14.2.9 Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if an event of default by Tenant shall arise because any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) business days from the date such amount shall be due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge does not represent interest, but rather represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. The failure of Tenant to pay such late charge as herein stated shall be an event of default hereunder. If any payment is made by check which is returned for insufficient funds, Tenant shall immediately make the required payment to Landlord in good funds; moreover, Tenant shall also pay Landlord an additional fee of \$40.00 to compensate Landlord for its expense and effort in connection with the dishonored check. Any check for payment of Rent that is returned for any reason must be replaced by a cashier's check or money order drawn on a bank reasonably suitable to Landlord. After the second returned check during the Term, all future Rent payments shall be made by cashier's check or money order.

14.2.10 This Paragraph 14.2 shall be enforceable to the extent not prohibited by applicable law, and the unenforceability of any provision in this Paragraph shall not render any other provision unenforceable. To the extent permitted by law, Tenant and Landlord agree that paragraphs (a), (b), (c), (e), (f) and (g) of Section 93.002 of the Texas Property Code shall not apply to this Lease. However, as provided in Section 93.002(d) of the Texas Property Code, Tenant will be presumed to have abandoned the Premises if goods, equipment, or other property, in an amount substantial enough to indicate a probable intent to abandon the Premises, is being or has been removed from the Premises and the removal is not within the normal course of Tenant's business.

14.3 DEFAULT BY LANDLORD

If Landlord should be in default in the performance of any of its obligations under this Lease, Landlord shall have thirty (30) days to cure such default after receipt of written notice from Tenant specifying such default; or if such default is of a nature to require more than thirty (30) days to remedy, Landlord shall have the time reasonably necessary to cure it provided that Landlord diligently pursues such cure to completion. In the event that Tenant has any right to terminate this Lease because of a default by Landlord, Tenant agrees to serve any notice of claimed default or breach by Landlord under this Lease upon the lender holding a first mortgage or deed of trust against the Premises, and allow such lender the same period following such notice to cure the claimed default or breach as is allowed Landlord. However, this Paragraph 14.3 will not be interpreted as creating or broadening any right of Tenant to terminate this Lease because of a default by Landlord. Tenant waives any statutory lien it may have against rents due under this Lease or against Landlord's property in Tenant's possession.

14.4 ATTORNEYS' FEES

In the event that either party shall institute any legal action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, the unsuccessful party in such action or proceeding agrees to pay to the prevailing party the reasonable attorneys' fees and costs actually incurred by the prevailing party.

14.5 WAIVERS

No waiver by Landlord of any provision of this Lease will be deemed a waiver of any other provision or of any subsequent breach by Tenant. Landlord's consent to or approval of any act will not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. Landlord's acceptance of rent will not constitute a waiver of any preceding breach by Tenant of this Lease, regardless of Landlord's knowledge of the preceding breach at the time Landlord accepts the rent. Any payment by Tenant or receipt by Landlord of a lesser amount than the Minimum Rent and additional rental stipulated in this Lease will be deemed to be on account of the earliest stipulated rental. Notwithstanding any endorsement or statement on any check or any letter accompanying any check or payment of Minimum Rent or additional rental, Landlord may accept such check or payment without prejudice to Landlord's right to hold the Tenant in default and recover the balance of any Minimum Rent or additional rental due and pursue any other remedy provided in this Lease. Landlord's failure to take any action in regard to Tenant's default, regardless of how long, will not constitute a waiver of such default. Any waiver of Tenant's default must be in writing and signed by Landlord to be effective. Any written waiver by Landlord will constitute a waiver only in the specific circumstances described in the waiver.

15. NO LANDLORD LIEN

Tenant's personal property, furniture and equipment (collectively, "Tenant's Property") shall remain the personal property of Tenant and will not be considered to be a fixture or part of the Premises. Landlord hereby waives any and all liens, claims, demands or rights, including rights of levy, execution sale and distraint for unpaid rent, or any other right, interest or lien which Landlord has or may hereafter acquire in any of Tenant's Property. Landlord agrees that Tenant may encumber Tenant's Property without the consent of Landlord and Landlord agrees to execute any commercially reasonable lien waiver documentation evidencing that Tenant's Property is the personal property of Tenant and that Landlord has no lien with respect to the same. Tenant agrees that any of Tenant's Property that remains on the Premises after the termination of the Lease will be deemed abandoned. Any fixtures must remain on the Premises after the termination of the Lease.

16. GUARANTY

As additional security for the faithful performance by Tenant of all of the terms and conditions upon Tenant's part to be performed, Guarantor shall deliver to Landlord, upon execution of this Lease by Tenant, a Guaranty in the form attached hereto as Exhibit F.

17. QUIET ENJOYMENT AND SUBORDINATION

17.1 COVENANT OF QUIET ENJOYMENT

Tenant, upon payment of the rents herein reserved and performance of the terms, conditions, covenants and agreements herein contained, may peaceably and quietly have, hold and enjoy the Premises during the full term of this Lease, including any extension thereof; without hindrance or interruption by Landlord or any other person or entity lawfully claiming an interest in the Premises by, through, or under Landlord, subject, however, to the terms and conditions hereof and subject and subordinate to any mortgage, ground lease, deed of trust or other liens, restrictions, encumbrances, easements and zoning now or at any time hereafter affecting the Premises.

17.2 SUBORDINATION

Provided that Tenant receives a non-disturbance agreement in commercially reasonable form from such ground lessor or lender (as applicable), this Lease shall be subject and subordinate to any mortgage, deed of trust or ground lease which now or may in the future affect the Premises or any interest of Landlord in the Project, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof. Tenant agrees to execute, acknowledge, and deliver promptly any certificate or instrument requested by Landlord that evidences the subordination. Tenant agrees that if the Premises are sold at foreclosure under any such

mortgage or deed of trust or are transferred in lieu of foreclosure, or if the lessor repossesses the Premises under any such ground lease, provided that Tenant receives a non-disturbance agreement in commercially reasonable form from such ground lessor or lender (as applicable), Tenant will (a) attorn to the purchaser, transferee or lessor (as the case may be, the "Applicable Successor") upon request; and (b) recognize such Applicable Successor as the Landlord under this Lease if the Applicable Successor elects to keep this Lease in effect.

This Lease and all rights of Tenant are further subject and subordinate to all other existing title matters that affect the Premises or the Project, including all utility easements and agreements.

18. RIGHTS RESERVED BY LANDLORD

Landlord reserves the following rights, exercisable without notice and without liability to Tenant and without causing an eviction (constructive or actual) or giving rise to any claim for setoff or abatement of rent:

18.1.1 to change the Project's name or street address;

18.1.2 to install signs on the exterior of the building above the level of the fourth (4th) floor;

18.1.3 upon delivery of at least 48 hours prior written notice, to enter upon the Premises at reasonable hours to inspect, clean or make repairs or alterations (without implying any obligation to do so) and to show the Premises to prospective lenders or purchasers or, during the last six (6) months of the Term, prospective tenants and, if the Premises are vacated, to prepare them for reoccupancy;

18.1.4 to decorate and to make repairs, alterations, additions or improvements (whether structural or otherwise) to and about the Project and, to change the arrangement and location of parking areas, entrances, driveways and other Common Areas, all without abatement of rent or impairing Tenant's obligations subject to the terms of Section 6 of this Lease.

18.1.6 subject to the terms of Paragraph 2.2.4 of this Lease, to grant to anyone the exclusive right to conduct any business or render any service in or to the Project, provided such exclusive right does not exclude Tenant from the use expressly permitted in this Lease; and

18.1.5 to take any measures (without implying any obligation to do so) Landlord deems advisable for the security of the Project and its occupants.

19. SURRENDER OF PREMISES AND HOLDING OVER

Upon the expiration of the terms hereof Tenant shall deliver all keys to the Premises to Landlord and shall surrender the Premises to Landlord in as good order and condition as at the commencement of the Lease Term except for ordinary wear and tear and damage by fire and other standard extended coverage perils. In the event Tenant continues to occupy the Premises after the expiration of the Lease Term, such occupancy shall be considered a tenancy from month-to-month at a monthly rental equal to 150% of the amount of Minimum Rent and additional rental due for the calendar month of the Lease Term immediately prior to such holding over and such tenancy shall be upon and subject to all of the other terms, provisions, covenants and agreements set forth herein, except that Tenant shall have no right to renew this lease or to extend or continue possession hereunder nor have any other option that may be hereby granted to Tenant. Upon the expiration or termination of this Lease, Tenant may remove, at its expense, any trade fixtures and unattached personal property previously placed in the Premises by Tenant; but any damage to the Premises caused by such removal shall be repaired by Tenant at the time of the removal. All other installations (including air conditioning equipment, duct work, electric and water connections and electric lighting fixtures) and all repairs, improvements, replacements and alterations to the Premises made by Tenant shall, upon being installed, become the property of Landlord. If, after the occurrence of an event of default, or upon the expiration or termination of this Lease, Tenant moves out or is dispossessed and fails to remove any trade fixtures, signs or other personal property placed on the Premises by Tenant prior to such moving out or dispossession, then and in any such events the said fixtures, signs and property shall at Landlord's option be deemed abandoned by Tenant and become the property of Landlord, Landlord shall not be liable for trespass, conversion or negligence by reason of its acts or the acts of anyone claiming under it or by reason of the negligence of any other person with respect to the acquisition and/or disposition of such property, whether or not deemed to be abandoned by Tenant.

20. DELAYS BEYOND LANDLORD'S OR TENANT'S CONTROL

Whenever a period of time is provided in this Lease or in any exhibit hereto for Landlord or Tenant to do or perform any act or thing, Landlord or Tenant, as the case may be, shall not be liable or responsible for any delay due to acts of God, strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of Tenant or other tenants, or due to war or any other reason beyond such party's reasonable control (in any case, "Force Majeure"). In the event of any such delay, time for performance shall be extended for a period equivalent to the period of such delay.

21. SHORT FORM LEASE, ESTOPPEL CERTIFICATE AND FINANCIAL STATEMENTS

21.1 SHORT FORM LEASE

Tenant and Landlord will, on request of Landlord or Tenant, execute a short form of this Lease in form permitting its recording in the form attached hereto as Exhibit H.

21.2 ESTOPPEL CERTIFICATE

Tenant shall, from time to time, within ten (10) days after receipt of written request by Landlord, deliver a statement in writing certifying:

21.2.1 that this Lease is unmodified and in full force and effect (or if modified that this Lease as so modified is in full force and effect);

21.2.2 the Commencement Date of the Lease Term, the term of this Lease and the monthly Minimum Rent and additional rental, and the amount of any advance rental payments made or security deposits in the possession of Landlord;

21.2.3 that Landlord is not in default under any provision of this Lease (or if in default, the nature thereof in detail) and a statement as to any outstanding obligations on the part of Landlord or Tenant;

21.2.4 that, if requested by Landlord or Landlord's mortgagee or assignee, Tenant will not pay rent for more than one (1) month in advance; and

21.2.5 that no modification (except as described in such statement) or termination of this Lease executed or effected by Tenant shall be binding upon any mortgagee holding a mortgage or deed of trust covering the Project granted by Landlord without notice to and approval of such mortgagee.

Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance hereunder, and (iii) that not more than one month's rent has been paid in advance.

Landlord shall, within ten (10) days following request from Tenant, execute an estoppel certificate specifying that (i) the Lease is in full force and effect and unmodified except as set forth in the estoppel, (ii) the date through which Rent has been paid, (iii) whether Landlord or Tenant is in default of the Lease, and (iv) other information reasonably requested by Tenant.

21.3 FINANCIAL STATEMENTS

In connection with Landlord's sale or refinancing of the Project only, Tenant will also furnish Landlord from time to time, within ten (10) days after receipt of a written request, current financial statements of Tenant and of any guarantor of Tenant's obligations hereunder, which are certified by Tenant or by an independent certified public accountant to have been prepared in accordance with generally accepted accounting principles or on some other basis acceptable to Landlord. Any such financial statements and sales reports provided by Tenant may be relied upon by any prospective purchaser or mortgagee of the Land or any interest therein. Landlord and its lender shall execute a commercially reasonable confidentiality agreement with respect to Tenant's financial statements.

22. LANDLORD'S LIABILITY

Tenant agrees that any judgment for damages rendered in favor of Tenant for any such breach by Landlord shall be satisfied only by levy of execution upon Landlord's interest in the Project and that Tenant will not levy execution upon any other property or assets of Landlord to satisfy such judgment.

23. MISCELLANEOUS

23.1 GOVERNING LAW

THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. VENUE FOR ANY ACTION UNDER THIS LEASE SHALL BE THE COUNTY IN WHICH RENTALS ARE DUE PURSUANT TO THIS LEASE.

23.2 NOTICES

Any notice or document required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered, whether actually received or not, upon first attempted delivery when postmarked by the U.S. Postal Service prepaid, registered or certified mail, return receipt requested, or sent by courier or Express Mail where evidence of delivery is retained, addressed to the parties at the respective mailing addresses set out in the Basic Lease Information, or at such other address as they have at least ten (10) days theretofore specified by written notice delivered in accordance herein.

23.3 SUCCESSORS AND ASSIGNS

The conditions, covenants and agreements contained in this Lease shall be binding upon and, subject to the restrictions herein concerning assignment and subletting, inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

23.4 JOINT AND SEVERAL LIABILITY

If Tenant is more than one (1) person or entity, all such persons or entities shall be jointly and severally liable hereunder for the obligations of Tenant.

23.5 TIME IS OF THE ESSENCE

Subject to Article 20 above, time is of the essence with respect to the performance of every provision of this Lease in which time of performance is specified.

23.6 SEVERABILITY

A determination that any term or provision of this Lease, or the application thereof to any person or circumstance, is invalid or unenforceable, will not affect the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable. Each term and provision of this Lease will be valid and enforced to the fullest extent permitted by law.

23.7 BROKERAGE FEES

Tenant warrants and represents that Landlord will not be responsible for - and Tenant shall indemnify, defend and hold Landlord harmless against - any brokerage or leasing commission or finder's fee claimed by any party in connection with this Lease.

23.8 PARAGRAPH HEADINGS

The paragraph headings contained in this Lease are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several provisions.

23.9 NO MERGER

There shall be no merger of this Lease or of Tenant's leasehold estate with the fee estate in the Premises by reason of the fact that the same person may acquire or hold, directly or indirectly, both all or any interest in this Lease or the leasehold estate and all or any interest in the fee estate.

23.10 CONSTRUCTION OF LEASE PROVISIONS

Tenant acknowledges that it has read and negotiated this Lease in its entirety and is familiar with and understands all its terms and provisions. Accordingly, Tenant agrees that if a dispute arises, this Lease will not be construed in favor of either party, nor shall the authorship of this Lease be a factor in any such construction.

23.11 REPRESENTATIONS, WARRANTIES AND COVENANTS OF TENANT AND LANDLORD

Tenant represents, warrants and covenants that it is now in a solvent condition; that no bankruptcy or insolvency proceedings are pending or contemplated by or against Tenant or any guarantor of Tenant's obligations under this Lease; that all reports, statements and other data furnished by Tenant to Landlord in connection with this Lease are true and correct in all material respects; that the execution and delivery of this Lease by Tenant does not contravene, result in a breach of, or constitute a default under any contract or agreement to which Tenant is a party or by which Tenant may be bound and does not violate or contravene any law, order, decree, rule or regulation to which Tenant is subject; and that there are no judicial or administrative actions, suits, or proceedings pending or threatened against or affecting Tenant or any guarantor of Tenant's obligations under this Lease. If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant is duly organized and existing, is qualified to do business in the state in which the Premises are located, has full right and authority to enter in this Lease, that the persons signing on behalf of Tenant are authorized to do so by appropriate corporate or partnership action and that the terms, conditions and covenants in this Lease are enforceable against Tenant. If Tenant is a corporation, Tenant will deliver certified resolutions to Landlord, upon request, evidencing that the execution and delivery of this Lease has been duly authorized and properly executed, and will deliver such other evidence of existence, authority and good standing as Landlord shall require. Landlord represents, warrants and covenants that it is now in a solvent condition; that no bankruptcy or insolvency proceedings are pending or contemplated by or against Landlord; that all reports, statements and other data furnished by Landlord to Landlord in connection with this Lease are true and correct in all material respects; that the execution and delivery of this Lease by Landlord does not contravene, result in a breach of, or constitute a default under any contract or agreement to which Landlord is a party or by which Landlord may be bound and does not violate or contravene any law, order, decree, rule or regulation to which Landlord is subject; and that there are no judicial or administrative actions, suits, or proceedings pending or threatened against or affecting Landlord.

23.12 CONFIDENTIALITY

Tenant shall not, without Landlord's prior written consent, disclose any of the terms of this Lease or of any future modification of this Lease or of any waiver by Landlord of Tenant's obligations under this Lease to any other tenant or prospective tenant or other third party, provided that this provision shall not preclude disclosures to Tenant's attorneys or accountants as reasonably required to permit Tenant to enforce this Lease or to prepare tax returns or other reports required by law.

23.13 SUBMISSION OF LEASE

THE SUBMISSION OF THIS LEASE FOR EXAMINATION DOES NOT CONSTITUTE AN OFFER TO LEASE, AND THIS LEASE BECOMES EFFECTIVE ONLY UPON EXECUTION HEREOF BY TENANT AND BY A REPRESENTATIVE OF LANDLORD AUTHORIZED TO EXECUTE THE LEASE.

23.14 ENTIRE AGREEMENT; AMENDMENTS

This Lease and the Addenda which are part of this Lease supersede any prior agreements between the parties concerning the Premises, and no oral statements, representations or prior written matter relating to the subject matter hereof; but not contained in this Lease, shall have any force or effect. Nothing herein contained shall be construed to create any partnership or joint venture between the parties, it being intended that the only relationship between the parties created by this Lease is a landlord/tenant relationship. This Lease shall not be amended or added to in any way except by written instruments executed by both parties or their respective successors in interest.

25.17 SATELLITE DISH; ROOFTOP ANTENNA

Tenant shall have the right to erect or install an antenna or satellite dish, at its sole cost and expense, on the roof of the Premises, provided Tenant complies with Landlord's reasonable rules and regulations. Tenant shall obtain Landlord's written consent for Tenant's plans (which shall not be unreasonably withheld) prior to installing any such antenna or satellite dish.

30.19 LEASEHOLD MORTGAGE

Tenant shall have the right to encumber Tenant's leasehold interest in the Premises with a mortgage or deed of trust lien (the "Leasehold Mortgage") that shall encumber only Tenant's leasehold interest in the Premises and not Landlord's interest in this Lease or the Premises. It is specifically understood and agreed that no mortgaging of Tenant's interest herein by Tenant or any actions taken pursuant to the terms of any Leasehold Mortgage shall ever eliminate or reduce Tenant's obligation to pay the rental due hereunder and otherwise fully perform under this Lease. Tenant agrees to duly and timely perform all of its obligations under any such Leasehold Mortgage. Tenant agrees to furnish to Landlord copies of all of its loan documents entered into in connection with the Leasehold Mortgage, and copies of all notices given by the lender under any Leasehold Mortgage (the "Leasehold Mortgage") to Tenant pursuant to the Leasehold Mortgage at the time such notices are given to Tenant. Landlord agrees to execute and deliver to the Leasehold Mortgagee any and all documents that the Leasehold Mortgagee may reasonably request concerning any Leasehold Mortgage and Tenant's mortgaging of the leasehold estate created under this Lease, provided, however, that the terms and conditions of all such documents shall be reasonably satisfactory to Landlord and its legal counsel, and further provided that Landlord shall never be required to subordinate Landlord's interest in this Lease or the Premises to the Leasehold Mortgage of the proposed Leasehold Mortgagee. If Tenant enters into a Leasehold Mortgage, Landlord shall enter into a commercially reasonable agreement with Tenant and the Leasehold Mortgagee pursuant to which Landlord will agree to give the Leasehold Mortgagee reasonable notice of default under this Lease and an opportunity to cure such default, and which shall include such other commercially reasonable mortgagee protection provisions as such Leasehold Mortgagee shall request.

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the day and year first written above.

LANDLORD:

214 TRAVIS, LTD.,
By: JR Realty Corp.,
Its General Partner
By: _____
Name: _____
Title: _____

TENANT:

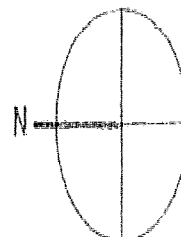
RACQUETBALL & FITNESS CLUBS, INC.,
By: _____
Name: Matthew Stevens
Title: President

Exhibit "C-1," Pg. 3 of 8

214 E. TRAVIS

CONDOMINIUM

Unit	Square Feet	Ownership %
100	6643	16.2060%
LCE	2053	0.0000 %



LEVEL: 1st Floor

SCALE: 1" = 20'

Note: Limited Common Elements for Trash Chute and Stairs are for resident clients only.

SITE PLAN OF GROUND FLOOR OF PROJECT

EXHIBIT "A"

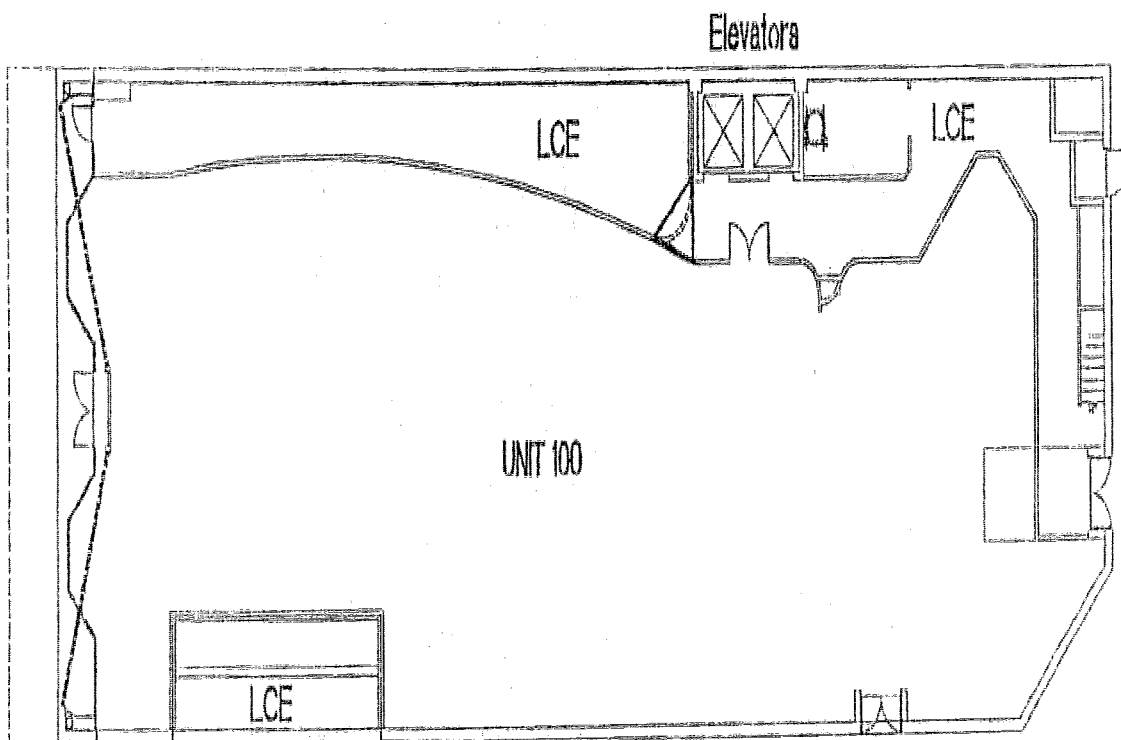


EXHIBIT "A-1"
LEGAL DESCRIPTION

PAGE 1 OF 2

STATE OF TEXAS
COUNTY OF BEXAR

BEING a called 0.210 acre tract of land, located in the remainder of Lot 8, Block 17, New City Block No. 407, City of San Antonio, Bexar County, Texas, and being more particularly described as follow:

BEGINNING at P.K. nail found on the south right-of-way line of East Travis Street at the northwest corner of said called 0.210 acre tract of land, from which the southeast intersection of East Travis Street with St. Mary's Street bears North $89^{\circ}43'18''$ West, a distance of 169.26 feet;

THENCE, South $89^{\circ}43'18''$ East, along the south right-of-way line of E. Travis Street, a distance of 56.42 feet to a concrete nail found corner;

THENCE, South $00^{\circ}06'43''$ West, a distance of 162.47 feet to a P.K. nail found for corner, in the north right-of-way line of an alley conveyed to the City of San Antonio by Special Warranty Deed recorded in Volume 474, Page 317, Deed Record, Bexar County, Texas, for southeast corner of the called 0.210 acre tract;

THENCE, South $89^{\circ}45'50''$ West, along the said north alley right-of-way line, a distance of 50.48 feet to a concrete nail found for corner;

THENCE, North $44^{\circ}53'18''$ West, along the said north alley right-of-way line, a distance of 8.40 feet to a concrete nail found for corner, in the west line of Lot 8;

THENCE, North $00^{\circ}06'43''$ East, along the west line of Lot 8, a distance of 157.00 feet to the Point of Beginning and containing 0.210 acre of land more or less, (9163 Square Feet) to a Point of Beginning and containing 2477 square feet within this unit;

VIII 9478 PB 0061

EXHIBIT "B"

WORK LETTER AGREEMENT

Landlord: 214 Travis, Ltd.

Tenant: Racquetball and Fitness Clubs, Inc.

Lease: That certain lease agreement dated May 15, 2005 (the "Lease") between Landlord and Tenant, covering approximately 15,156 rentable square feet in the Project located on the first, mezzanine and basement levels.

Project: 214 East Travis Street

Landlord's Representative (for coordination of construction):

NAME JR Realty Corp. General Partner, Attention Bruce West, Sr.

ADDRESS 15770 Dallas Parkway, Suite 700, Dallas, Texas 75248

PHONE (972) 788-5184

FAX (972) 788-9556

Tenant's Representative (for coordination of construction):

NAME Matthew Stevens

ADDRESS 15759 San Pedro, San Antonio, Texas 78232

PHONE (210) 490-1980

Allowance: A total amount not to exceed \$300,000.

This Agreement is intended to supplement, not supersede, the Lease described above with respect to leasehold improvements to be constructed by Tenant. Any capitalized term not defined above or in the following provisions is intended to have the meaning assigned to it in the body of the Lease. Landlord and Tenant agree as follows:

1. PLANS AND SPECIFICATIONS

- (a) Tenant's space planner, at no cost to Landlord, shall prepare and deliver to Landlord a space plan for the Premises, showing the proposed location of all partitions and doors and the layout of the Premises. The selection of Tenant's space planner shall be subject to the approval of Landlord, which shall not be unreasonably withheld.
- (b) Within seven (7) business days after receipt of the space plan, Landlord will approve or disapprove it in writing, and if disapproved, Landlord will provide Tenant with reasons for disapproval. Tenant will within three (3) business days after the receipt of Landlord's written disapproval cause the space plan to be revised (to satisfy Landlord's objections) and resubmitted for Landlord's review. The foregoing process shall be repeated until Landlord has approved the space plan (such space plan, when approved by Landlord and Tenant, is referred to as the "Space Plan" below).
- (c) After receipt of Landlord's written approval of the Space Plan, Tenant's space planner or an engineer selected by Tenant with Landlord's approval will prepare detailed construction plans and specifications (any such detailed construction plans approved by Landlord, together with the Space Plans, are collectively referred to as the Construction Plans") for the leasehold improvements to be constructed in the Premises (such improvements are

referred to as the "Tenant's Improvements.") Such detailed construction plans may include drawings for partitions, doors, reflected ceiling, telephone outlets, electrical switches and outlets. Within seven (7) business days after any more detailed construction plans are delivered to Landlord, Landlord shall approve or disapprove the same in writing, and if disapproved, Landlord shall provide Tenant reasons for disapproval. Tenant will cause the more detailed construction plans to be revised (to satisfy Landlord's objections) and resubmitted for Landlord's review within three (3) business days after the receipt of Landlord's written disapproval. The foregoing process shall continue until the more detailed construction plans are approved by Landlord. The Construction Plans must comply with all applicable government codes and ordinances.

- (d) All Construction Plans must be approved by Landlord in writing prior to the commencement of construction of Tenant's Improvements. Any approval or consent of Landlord hereunder with respect to any portion or component of the Space Plan or the Construction Plans shall be granted unless the same contain a "Design Defect" (i.e., would impair the building structure, building systems, or would violate applicable laws or building codes).

2. CONSTRUCTION

- (a) Tenant will construct the Tenant's Improvements in a good and workmanlike manner in accordance with the Construction Plans, using a contractor or contractors approved in writing by Landlord (which approval shall not be unreasonably withheld) before the commencement of construction (such contractor or contractors are collectively referred to below as "Tenant's Contractors", whether one or more). Such construction and the cost of preparing the Construction Plans will be at Tenant's expense, but Landlord shall provide Tenant with an Allowance in the amount specified on page one of this Agreement. The Allowance shall be used only for (i) payment of the sums to be paid to Tenant's Contractors for construction of Tenant's Improvements ("Actual Costs"), (ii) fees of Tenant's space planner, project manager and engineers, (iii) the cost of permits, and (iv) the cost of signage (collectively referred to as the "Construction Costs" below).
- (b) Upon the execution of the Lease, Landlord shall deposit the Allowance in an escrow account mutually agreed by Landlord and Tenant. Fifty percent (50%) of the Allowance (i.e. \$150,000) shall be disbursed on a monthly basis as construction proceeds, provided that the following conditions shall have been satisfied: (1) Landlord shall have received executed lien waivers for all work completed as of the date of payment; and (2) all work for which payment has been requested shall have been completed in a good and workmanlike manner. The remaining fifty percent (50%) of the Allowance shall be paid to Tenant upon completion of the Tenant's Improvements and issuance of a Certificate of Occupancy therefor.
- (c) If the Construction Costs exceeds the Allowance, Tenant must pay all such excess costs.
- (d) If any portion of the Allowance remains unexpended after the payment of the Construction Costs, then the unexpended portion of the Allowance may be used by Tenant as a credit against Rent next due hereunder.
- (e) No contractors and/or subcontractors shall be engaged by Tenant for the Tenant's Improvements without Landlord's prior written approval, which shall not be unreasonably withheld. In the event Landlord approves the performance of any work on the Premises by contractors or subcontractors hired by Tenant, such contractors and subcontractors shall coordinate their efforts to insure timely completion of all work, and shall comply with all standards and regulations established by Landlord. Tenant hereby agrees to indemnify, and cause any of its independent contractors which it engages directly to indemnify, the Landlord and Landlord's agent and hold Landlord and Landlord's agent harmless from all claims for personal injury and property damage that may arise from said contractors' negligence or willful misconduct. Landlord is not responsible for the function and maintenance of Tenant's Improvements which are not installed by Landlord.
- (f) All work performed by or on behalf of Tenant shall be performed in a good and workmanlike manner and will conform to the requirements of applicable building, plumbing and electrical codes and the requirements of any authority having jurisdiction over or with respect to such work.

3. COMMENCEMENT OF THE LEASE TERM

Notwithstanding any provision to the contrary in the Lease or this Agreement, subject to extension on a day-for-day basis for delays caused by force majeure or "Landlord Delay" (as defined below), the Commencement Date of the Term (as defined in the body of the Lease) will occur as specified in the "Term" Section of the beginning of the Lease. "Landlord Delay" shall mean (i) Landlord providing Tenant with incomplete or inaccurate base building plans and specifications (ii) Landlord's late completion of the work to be performed by Landlord pursuant to Section 6 below, (iii) Landlord providing Tenant with late consent where Landlord's consent is required, and (iv) any other acts or omissions of Landlord or its agents, contractors or employees which delay Tenant's construction of the Improvements in the Premises and/or Tenant's opening for business from the Premises.

4. INSURANCE

(a) Prior to the commencement of construction, Tenant, its contractors or other agents must secure and maintain insurance with such insurance carriers as are approved by Landlord and in form, type and amount acceptable to Landlord, including but not limited to Comprehensive General Liability Insurance, including products and completed operations and contractual liability insurance naming Landlord, Landlord's agent as additional insured, and Workmen's Compensation Insurance in statutory form and amount covering the operation of contractor and subcontractors. Certificates evidencing such insurance coverages, in such form as required by Landlord, must be delivered to Landlord before the commencement of construction of Tenant's Improvements.

5. MECHANIC'S LIENS

Tenant shall not permit any mechanic's lien or liens to be placed upon the Premises or the Project caused by or resulting from any work performed or materials furnished or resulting from obligations incurred by or at the request of Tenant and nothing contained in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises, the Project or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's or other liens against the interest of Landlord in the Premises or the Project.

6. LANDLORD WORK; DELIVERY CONDITION

Landlord shall deliver the Premises to Tenant in the condition required hereunder no later than thirty (30) days after the date hereof (the "Delivery Date") in shell condition with all of the existing improvements in the Premises demolished and the "Base Building" (as defined below) in good working condition and in compliance with applicable laws and building codes. For each day after May 15, 2005 the actual Delivery Date occurs (i) the Commencement Date shall occur an equal number of days after May 15, 2005; and (ii) the Minimum Rent due under the Lease shall commence two (2) days after September 1, 2006. The "Base Building" shall mean the following:

- sewer- line to be sufficiently sized for a fitness facility
- water- supply to be sufficiently sized for fitness facility
- gas- specifications to be provided
- electrical- power specifications to be provided
- fire/life safety system- specifications to be provided
- trash/refuse – to be determined
- telephone service to MPOE of the Building; Tenant to have sufficient panel space to connect meters, valves, panels, transformers, breakers, connections, capacity
- Premises to be structurally sound and leak-free
- Premises to be free of hazardous materials
- demolition /removal of various items as shown on Schedule 1 to this Work Letter
- demolition/removal of generator and associated piping
- demolition/removal of man doors connecting residential occupant corridor and Tenant's entry
- demolition/removal of existing basement concrete stair/slide
- demolition/removal of existing soffits above front entry
- relocation of electrical conduit on mezzanine level serving residential units to permit more headroom (only conduit nearest railing to be relocated – move to area open to space below)
- remaining conduit to be strapped tight to the ceiling for maximum headroom
- removal of mechanical equipment from basement

7. GENERAL

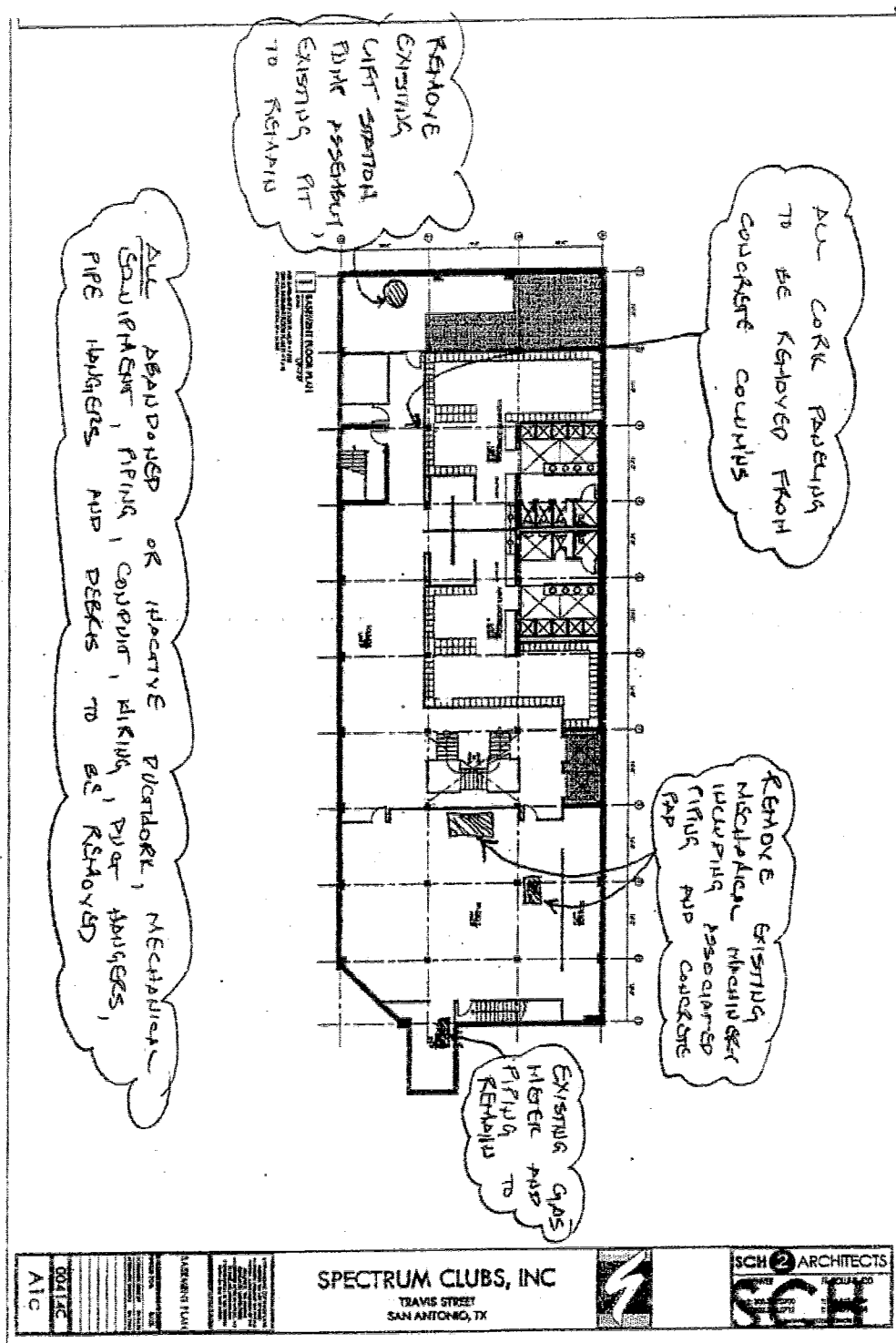
(a) There shall not be a supervision or management fee payable to Landlord in connection with Tenant's construction of the Tenant Improvements.

(b) Landlord, at Landlord's sole cost, shall be required to (i) remove or remediate any hazardous materials or substances (as defined by applicable laws) and (ii) perform any work necessary for the Premises to comply with any laws relating to hazardous substances or materials, to the extent necessary for Tenant to obtain any necessary governmental approvals for the construction of the Tenant Improvements or for Tenant to legally occupy the Premises. Any delays encountered by Tenant in the design or construction of the Tenant Improvements as a result thereof shall be considered a Landlord Delay.

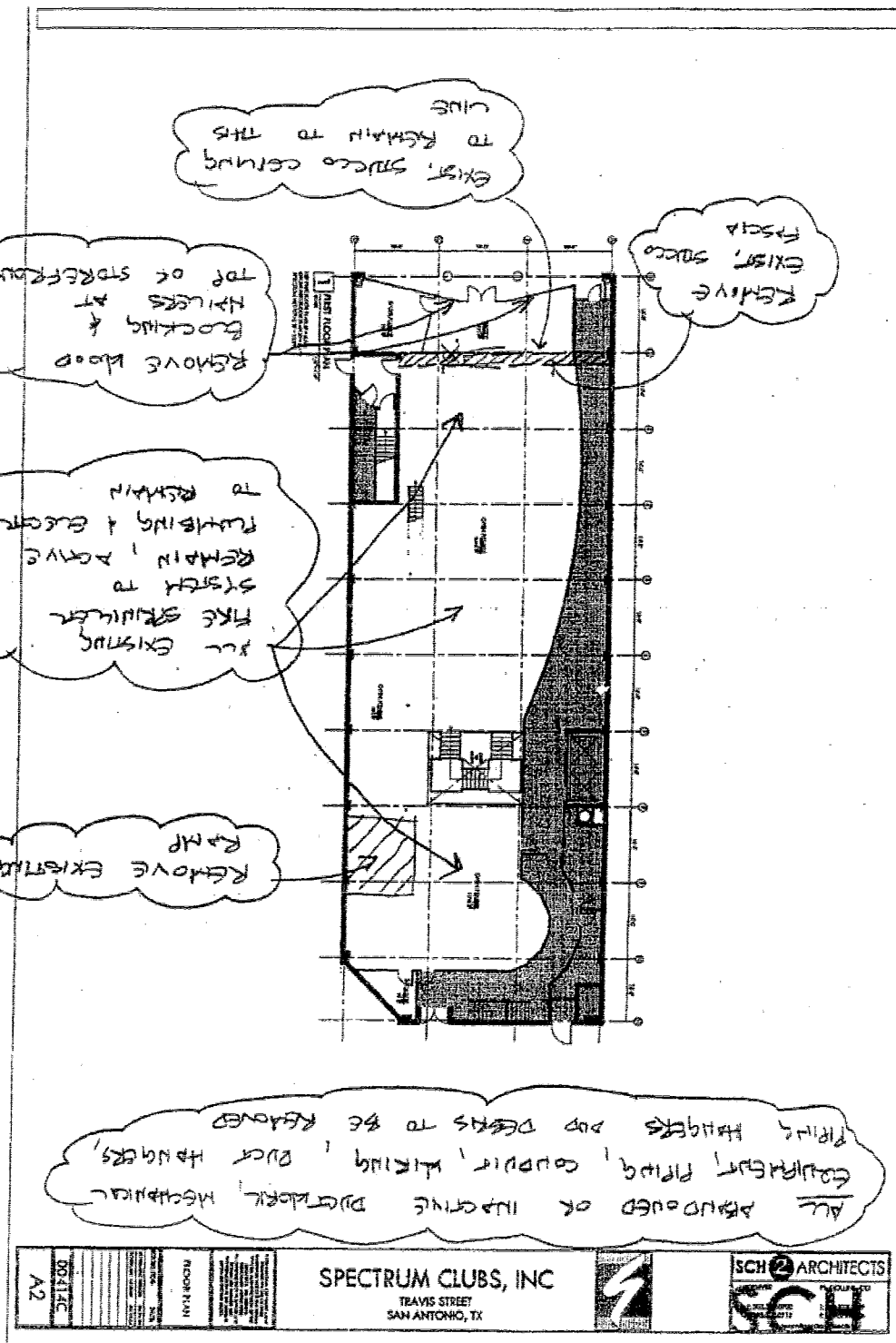
EXHIBIT "B"

SCHEDULE 1

-15-



-32-



-33-

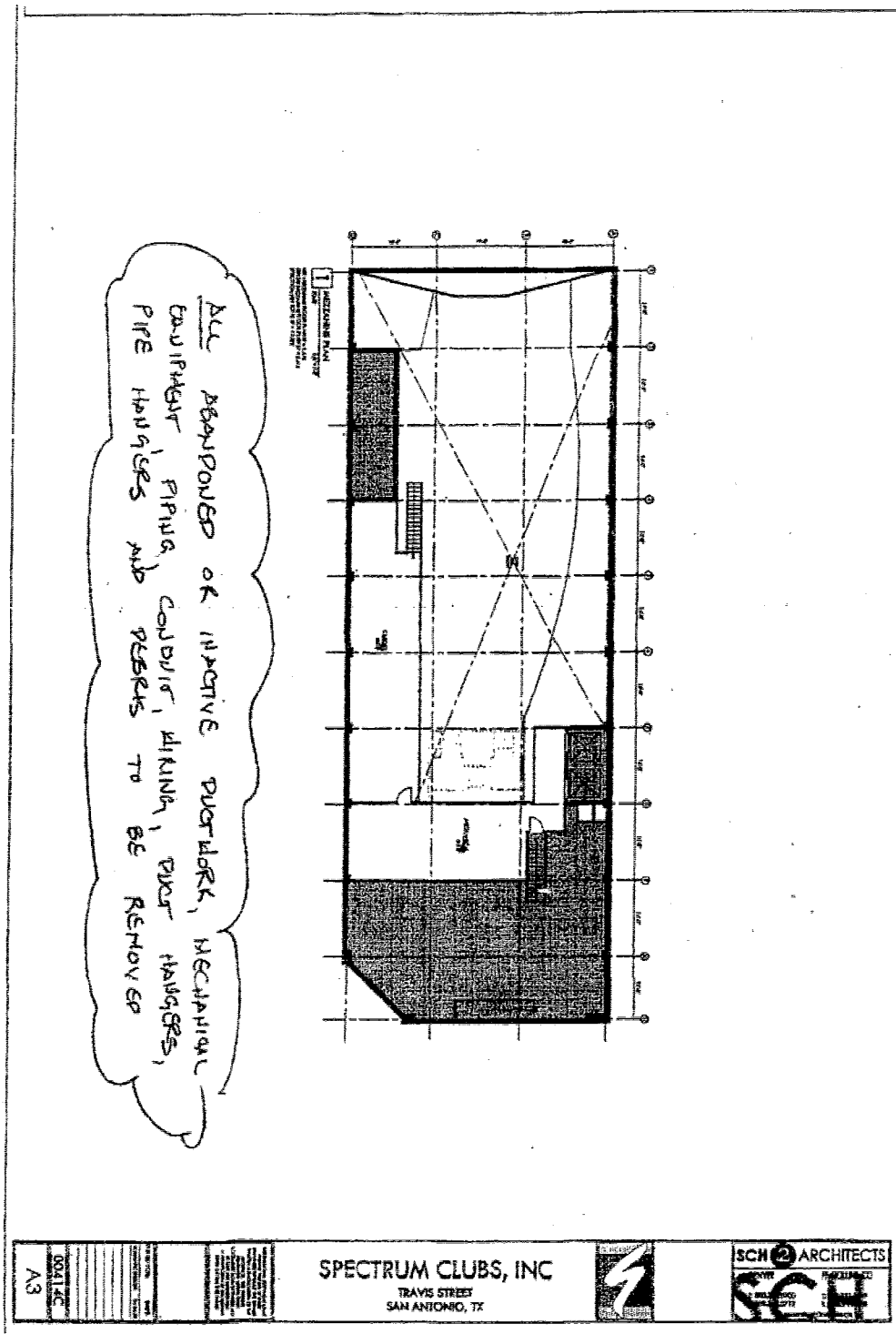


EXHIBIT "C"

CERTIFICATE OF ACCEPTANCE

Project: 214 East Travis Street, San Antonio, Texas

Landlord: 214 Travis, Ltd.

Tenant: Racquetball and Fitness Clubs, Inc.

This certificate is being executed to the Lease (the "Lease"), and the tenant named above ("Tenant").

Tenant certifies to and agrees with Landlord and Landlord's successors, assigns, prospective purchasers and prospective lenders that:

1. Landlord has fully completed any construction work and leasehold improvements required of Landlord under the terms of the Lease and/or any other agreement between Landlord and Tenant concerning the premises.
2. The Premises are tenantable, Landlord has no further obligation for construction, and Tenant acknowledges that, to the best of Tenant's knowledge, the Project and the Premises are satisfactory in all respects.
3. Tenant has taken possession of and has accepted the Premises, and the Minimum Rent and additional rent are presently accruing in accordance with the terms of the Lease.
4. The Lease Term will commence as of the ____ day of _____, 20____.
5. The Lease Term will expire the ____ day of _____ 20____, unless sooner terminated or extended pursuant to any provision of the Lease.
6. All capitalized terms not defined herein shall have the meaning assigned to them in the Lease.

Certified and Agreed this _____ day of _____, 20__.

TENANT: RACQUETBALL AND FITNESS CLUBS, INC.

By: _____
Name: Matthew Stevens
Title: President

EXHIBIT "D"

EXTENSION OF THE TERM

Tenant shall have the option of extending the Term for three (3) additional term(s) ("Renewal Term(s)") of sixty (60) month(s) each on the same terms and conditions as provided in this Lease; provided, however, that:

(1) Any exercise of the extension option hereby granted to Tenant shall be in writing delivered to Landlord not later than 9 months nor earlier than 12 months prior to the expiration of the originally scheduled Term or the then effective extension thereof;

(2) Tenant shall have no option to extend this Lease at any time when there exists an event of default by Tenant hereunder beyond the applicable notice and cure period and any notice given pursuant to subparagraph (1) above will be void if given at any such time; and

(3) Minimum Rent will be increased as of the commencement of each Renewal Term to the amount specified in Section "J" of the Basic Lease Information.

EXHIBIT "E"

SIGNS

Sign 1: West Side of Building – closest to Gunter Hotel – either painted on or actual sign (material to be determined) along the ridge of the building spelling out the name of Tenant's business. See Schedule "1"

Sign 2: East Side of Building – closest to Church – either painted on or actual sign (material to be determined) along the ridge of the building spelling out the name of Tenant's business. See Schedule "1"

Sign 3: Awning based signage on the front of the Premises to be determined once the front entrance is designed by Tenant.

EXHIBIT "E"

SCHEDULE 1

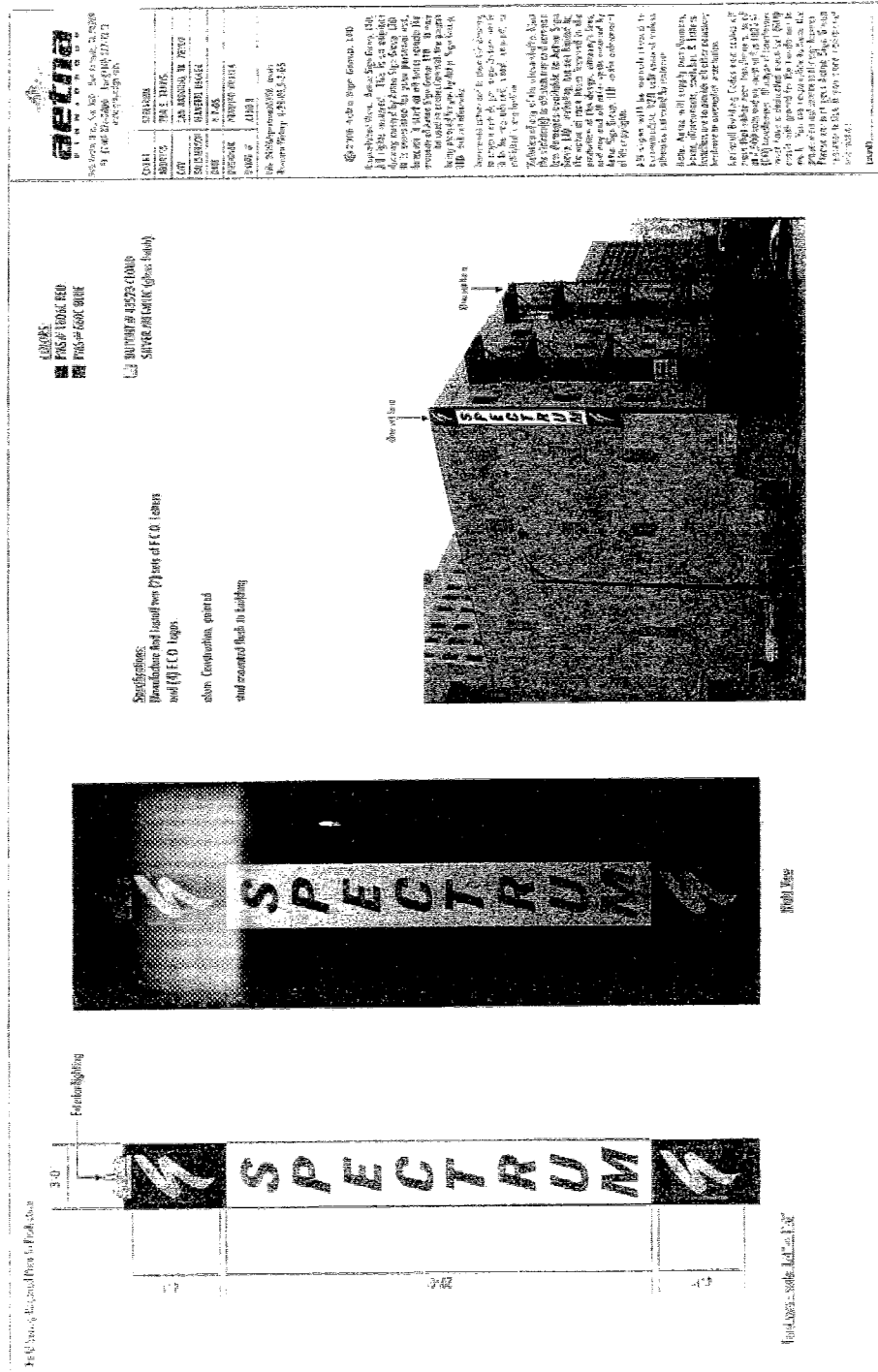


EXHIBIT "F"

GUARANTY

1. Guaranty. RACQUETBALL & FITNESS, INC., a Texas corporation ("Guarantor"), whose address is _____ and whose Social Security/tax identification number is _____, as a material inducement to and in consideration of 214 TRAVIS LTD., a Texas limited partnership, as Landlord, entering into that certain lease (the "Lease") dated as of even date herewith, with RACQUETBALL AND FITNESS CLUBS, INC., a Texas corporation, as Tenant, concerning retail space located at 214 East Travis Street, San Antonio, Texas 78209, hereby unconditionally, irrevocably and jointly and severally guarantees and promises to and for the benefit of Landlord that Tenant shall perform all of its covenants under the Lease, including but not limited to the payment of rent and all other sums now or hereafter becoming due or payable under the Lease.

2. Standard Provisions. A separate action may be brought or prosecuted against any Guarantor whether or not the action is brought or prosecuted against any other Guarantor or Tenant. If Tenant defaults under the Lease, Landlord may proceed immediately against Guarantor or Tenant, or both, or Landlord may enforce against Guarantor or Tenant, or both, any rights that it has under the Lease or against Guarantor pursuant to this Guaranty. If the Lease terminates, Landlord may enforce any remaining rights thereunder against Guarantor without giving previous notice to Tenant or Guarantor, and without making any demand on either of them. This Guaranty shall not be affected by Landlord's failure or delay to enforce any of its rights hereunder or under the Lease. Guarantor hereby waives notice of or the giving of its consent to any amendments which may hereafter be made to the terms of the Lease, and this Guaranty shall guarantee the performance of the Lease as amended, or as the same may be assigned from time to time. Guarantor waives the right to require Landlord to (i) proceed against Tenant; (ii) proceed against or exhaust any security that Landlord holds from Tenant, or (iii) pursue any remedy in Landlord's power. Until all of Tenant's obligations to Landlord have been discharged in full, Guarantor shall have no right of subrogation against Tenant. Guarantor waives its right to enforce any remedies that Landlord now has, or later may have, against Tenant. Guarantor waives any right to participate in any security now or later held by Landlord. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty, and waives all notices of existence, creation, or incurring of new or additional obligations from Tenant to Landlord. In addition, each Guarantor agrees that Landlord (not Tenant) shall have the right to designate the portion of Tenant's obligations under the Lease that is satisfied by a partial payment by Tenant. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors in interest and assigns. If Landlord is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Landlord all costs incurred, including, without limitation, Landlord's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed, or in enforcing this Guaranty against the undersigned, individually and jointly. This Guaranty will continue unchanged by any bankruptcy, reorganization or insolvency of the Tenant or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Tenant. Guarantor's obligations under this Guaranty may not be assigned and shall be binding upon Guarantor's heirs and successors. This Guaranty shall be governed by the laws of, and may be enforced in the courts of, the State of Texas. Guarantor:

Dated: _____, 2005.

RAQUETBALL & FITNESS, INC.,
a Texas corporation

By: _____
_____, President

Its: _____

By: _____
_____, Secretary

EXHIBIT "G"

HAZARDOUS WASTE INDEMNIFICATION AGREEMENT

1. During the entire term of the Lease (including any period of time Tenant occupies any part of the Premises prior to the commencement date of the term of the Lease) and including any extensions or renewals thereof, Tenant shall fully and strictly comply with all federal, state and local laws, ordinances, rules and regulations now or at any time hereafter in effect which regulate, relate to or impose liability or standards of conduct concerning any Hazardous Substances (as such term is hereafter defined), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Texas Environmental Protection Act and Texas Responsible Property Transfer Act (collectively, the "Environmental Laws"), and which affect Tenant's business and Tenant's use of the Premises and Tenant shall not permit the Premises to be used to store or otherwise handle Hazardous Substances except where stored in sealed containers and in quantities normally associated with Tenant's business conducted on the Premises or for office maintenance and cleaning and, in those instances, the Hazardous Substances shall be handled or stored in compliance with all Environmental Laws. Tenant acknowledges that its compliance shall include, by way of illustration and not by way of limitation, the completion and timely filing of all reports and statements required pursuant to any Environmental Laws and the payment of all charges, fees and costs that may be assessed or imposed from time to time in connection therewith; and the timely disclosure to Landlord upon request of any information requested by Landlord when and as required pursuant to the Texas Responsible Property Transfer Act, as the same may be amended or replaced from time to time in order to permit Landlord or others to make full and complete disclosures or filings as required.

2. Landlord at any time, and from time to time, during the entire term of the Lease, including any extensions or renewals thereof, may at its option (but without any obligation to Tenant to do so) cause any environmental tests, inspections or evaluations of the Premises or the land which Landlord may deem reasonable or necessary in connection with Tenant's business and Tenant's use of the Premises. The selection of the person, firm or entity retained to complete such tests, inspections or evaluations shall be within the sole discretion of Landlord; however, all costs and expenses in connection therewith shall be charged to and paid for by Tenant promptly upon receipt of any statements therefor if Tenant has been found to have violated the provisions of this Exhibit "G". In connection therewith, Tenant shall permit Landlord and its environmental consultants or inspectors to have access to the Premises at all reasonable times and Tenant agrees to make available to Landlord or any such environmental consultant or inspector any information reasonably requested regarding the nature of any Hazardous Substances used, stored or present at the Premises in connection with Tenant's business and use of the Premises.

3. If any environmental test, inspection or evaluation completed in connection with Tenant's business or Tenant's use of the Premises discloses a disposal, release, threatened release or the presence of Hazardous Substances on, over, under, from or affecting the Premises or the land in violation of any Environmental Laws caused by Tenant or by anyone acting by, through or under Tenant, including without limitation, any of Tenant's agents, employees, invitees, licensees, subtenants or assignees that requires cleanup or any other remedial action, Tenant shall, at Tenant's sole cost and expense, immediately cause such cleanup or any such remedial action to be completed to the extent necessary to return the property to its prior state and in accordance with and to the extent required by all applicable Environmental Laws and any orders and directives of any federal, state or local government authorities charged with responsibility or to cause such cleanup or remedial action to be conducted.

4. Should a release of any Hazardous Substances onto or from the Premises or land occur as a result of any intentional or unintentional act or omission on the part of Tenant or any other person, Tenant shall immediately notify Landlord thereof.

5. Tenant shall indemnify, defend and hold Landlord, its officers, directors, agents and employees harmless from and against all claims, penalties, fines, liabilities, settlements, damages and costs (including, but not limited to, reasonable attorneys' and other consultants' fees, investigation or laboratory fees, court costs and litigation expenses) to the extent resulting from (a) the presence, disposal, release or threatened release of any Hazardous Substances, on, over, under, from or affecting the Premises by Tenant or by anyone acting by, through or under Tenant, including without limitation, any of Tenant's employees, agents, invitees, licensees, subtenants or assignees; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or relating to any such presence, disposal, release or threatened release of any Hazardous Substances by Tenant; (c) any violation of or failure to comply with any Environmental Laws or any orders, requirements or demands of any governmental authorities which are based upon or in any way related to such presence, disposal, release or threatened release of any Hazardous Substances; or (d) Tenant's failure to comply with any of the requirements of this Exhibit "G".

6. For purposes of this Exhibit "G", the term "Hazardous Substances" shall mean and include (a) any asbestos, PCBs or dioxins; (b) any petroleum products; (c) any waste, substances, material pollutant or contaminant defined as hazardous or toxic in (or for purposes of) the Comprehensive Environmental Response, Compensation of Liability Act or the Resource Conservation and

Recovery Act as the same may heretofore or hereafter be amended; and (d) any waste, substance, material, pollutant or contaminant either (i) defined as hazardous or toxic in (or for purposes of) or (ii) the presence, disposal, release or threatened release of which on, onto or from any Premises (including the Premises or the land) is governed by any other applicable Environmental Laws.

7. No part of the above and foregoing agreements to be kept and performed by Tenant are intended to be a substitute for, or a limitation upon, each and every other agreement contained in the Lease to be kept and performed by Tenant.

8. Landlord represents and warrants that it has no knowledge or reasonable cause to believe that any Hazardous Substances are present in excess of applicable action levels in, on or about the Premises. Landlord shall protect, defend, indemnify and hold Tenant free and harmless from and against any claims, penalties, fines, liabilities, settlements, damages and costs (including, but not limited to, reasonable attorneys' and other consultants' fees, investigation or laboratory fees, court costs and litigation expenses) to the extent resulting from any Hazardous Substances present in, on or about the Project as of the Commencement Date. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall have no obligation to clean up, remediate, monitor, abate, or comply with any law regarding, or to reimburse, release, indemnify or defend Landlord with respect to, any Hazardous Substances which Tenant did not cause to be introduced onto the Premises or any other portion of the Project. No part of the above and foregoing agreements to be kept and performed by Landlord are intended to be a substitute for, or a limitation upon, each and every other agreement contained in the Lease to be kept and performed by Landlord.

EXHIBIT "H"

MEMORANDUM OF LEASE

WHEN RECORDED MAIL TO:

Advisors LLP
11911 San Vicente Boulevard, Suite 265
Los Angeles, California 90049
Attn. Robert Plotkowski

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This is a Memorandum of Lease by and between 214 TRAVIS, LTD., a Texas limited partnership ("Landlord"), and RACQUETBALL AND FITNESS CLUBS, INC., a Texas corporation ("Tenant") upon the following terms:

1. Date of Lease: May 15, 2005
2. Description of Leased Premises: Approximately 15,156 square feet on the 1st, mezzanine and basement levels of the building located at 214 East Travis Street in San Antonio, Texas as depicted on the site plan attached as Exhibit "A". The Project is situated on the land described in Exhibit A-1 attached hereto.
3. Term Commencement Date: May 15, 2005
4. Term Expiration Date: December 31, 2016
5. Renewal Option(s): Three (3) additional terms of five (5) years each

The purpose of this Memorandum of Lease is to give record notice of the lease and of the rights created thereby, all of which are hereby confirmed. This Memorandum of Lease shall be void and of no further force or effect on the Term Expiration Date referenced above unless extended by amendment executed by Landlord and Tenant.

IN WITNESS WHEREOF the parties have executed this Memorandum of Lease as of the dates set forth in their respective acknowledgments.

LANDLORD:

By: 214 TRAVIS LTD.

By: JR Realty Corp
Its: General Partner

By: _____
Name: _____
Title: _____

TENANT:

RACQUETBALL AND FITNESS CLUBS, INC.

By: _____
Name: Matthew Stevens
Title: President

-1-

[Landlord Acknowledgment]

STATE OF _____

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

Printed/Typed Name of Notary

My Commission Expires:

[Tenant Acknowledgment]

STATE OF _____

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2005, by Matthew Stevens, the President of Racquetball and Fitness Clubs, Inc., a Texas corporation, on behalf of said corporation.

Notary Public, State of California

Printed/Typed Name of Notary

My Commission Expires:

ORIGINAL

GUARANTY

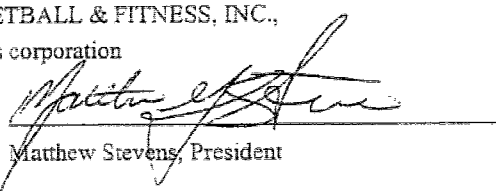
1. Guaranty. RACQUETBALL & FITNESS, INC., a Texas corporation ("Guarantor"), whose address is 15759 San Pedro Avenue, San Antonio, Texas 78232 and whose Social Security/tax identification number is 954769545, as a material inducement to and in consideration of 214 TRAVIS LTD., a Texas limited partnership, as Landlord, entering into that certain lease (the "Lease") dated as of even date herewith, with RACQUETBALL AND FITNESS CLUBS, INC., a Texas corporation, as Tenant, concerning retail space located at 214 East Travis Street, San Antonio, Texas 78209, hereby unconditionally, irrevocably and jointly and severally guarantees and promises to and for the benefit of Landlord that Tenant shall perform all of its covenants under the Lease, including but not limited to the payment of rent and all other sums now or hereafter becoming due or payable under the Lease.

2. Standard Provisions. A separate action may be brought or prosecuted against any Guarantor whether or not the action is brought or prosecuted against any other Guarantor or Tenant. If Tenant defaults under the Lease, Landlord may proceed immediately against Guarantor or Tenant, or both, or Landlord may enforce against Guarantor or Tenant, or both, any rights that it has under the Lease or against Guarantor pursuant to this Guaranty. If the Lease terminates, Landlord may enforce any remaining rights thereunder against Guarantor without giving previous notice to Tenant or Guarantor, and without making any demand on either of them. This Guaranty shall not be affected by Landlord's failure or delay to enforce any of its rights hereunder or under the Lease. Guarantor hereby waives notice of or the giving of its consent to any amendments which may hereafter be made to the terms of the Lease, and this Guaranty shall guarantee the performance of the Lease as amended, or as the same may be assigned from time to time. Guarantor waives the right to require Landlord to (i) proceed against Tenant; (ii) proceed against or exhaust any security that Landlord holds from Tenant, or (iii) pursue any remedy in Landlord's power. Until all of Tenant's obligations to Landlord have been discharged in full, Guarantor shall have no right of subrogation against Tenant. Guarantor waives its right to enforce any remedies that Landlord now has, or later may have, against Tenant. Guarantor waives any right to participate in any security now or later held by Landlord. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty, and waives all notices of existence, creation, or incurring of new or additional obligations from Tenant to Landlord. In addition, each Guarantor agrees that Landlord (not Tenant) shall have the right to designate the portion of Tenant's obligations under the Lease that is satisfied by a partial payment by Tenant. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors in interest and assigns. If Landlord is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Landlord all costs incurred, including, without limitation, Landlord's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed, or in enforcing this Guaranty against the undersigned, individually and jointly. This Guaranty will continue unchanged by any bankruptcy, reorganization or insolvency of the Tenant or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Tenant. Guarantor's obligations under this Guaranty may not be assigned and shall be binding upon Guarantor's heirs and successors. This Guaranty shall be governed by the laws of, and may be enforced in the courts of, the State of Texas. Guarantor:

Dated: 6/3, 2005.

RACQUETBALL & FITNESS, INC.,
a Texas corporation

By:


Matthew Stevens, President

COPY

MEMORANDUM OF LEASE

WHEN RECORDED MAIL TO:

Advisors LLP
11911 San Vicente Boulevard, Suite 265
Los Angeles, California 90049
Attn. Robert Plotkowski

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This is a Memorandum of Lease by and between 214 TRAVIS, LTD., a Texas limited partnership ("Landlord"), and RACQUETBALL AND FITNESS CLUBS, INC., a Texas corporation ("Tenant") upon the following terms:

1. Date of Lease: May 15, 2005
2. Description of Leased Premises: Approximately 15,156 square feet on the 1st, mezzanine and basement levels of the building located at 214 East Travis Street in San Antonio, Texas as depicted on the site plan attached as Exhibit "A". The Project is situated on the land described in Exhibit A-1 attached hereto.
3. Term Commencement Date: May 15, 2005
4. Term Expiration Date: December 31, 2016
5. Renewal Option(s): Three (3) additional terms of five (5) years each

The purpose of this Memorandum of Lease is to give record notice of the lease and of the rights created thereby, all of which are hereby confirmed. This Memorandum of Lease shall be void and of no further force or effect on the Term Expiration Date referenced above unless extended by amendment executed by Landlord and Tenant.

IN WITNESS WHEREOF the parties have executed this Memorandum of Lease as of the dates set forth in their respective acknowledgments.

LANDLORD:


By: 214 TRAVIS LTD.

By: JR Realty Corp
Its: General Partner

By: 
Name: _____
Title: _____

TENANT:

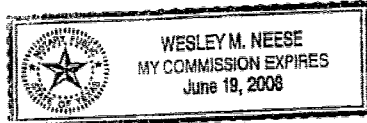
RACQUETBALL AND FITNESS CLUBS, INC.

By: 
Name: Matthew Stevens
Title: President

[Landlord Acknowledgment]

STATE OF Texas §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 27th day of May, 2005, by 214 Travis, Ltd., a Texas limited partnership, on behalf of said limited partnership.



[Signature]
Notary Public, State of Texas

Wesley M Neese
Printed/Typed Name of Notary

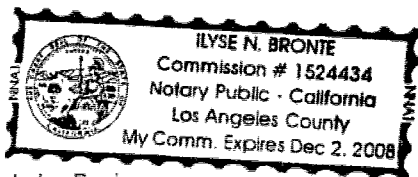
My Commission Expires:

6-19-08

[Tenant Acknowledgment]

STATE OF California §
COUNTY OF Los Angeles §

This instrument was acknowledged before me on the 2nd day of June, 2005, by Matthew Stevens, the President of Racquetball and Fitness Clubs, Inc., a Texas corporation, on behalf of said corporation.



[Signature]
Notary Public, State of California

Ilyse N. Bronte
Printed/Typed Name of Notary

My Commission Expires:

12-2-08

EXHIBIT "A-1"
LEGAL DESCRIPTION

PAGE 1 OF 2

STATE OF TEXAS
COUNTY OF BEXAR

BEING a called 0.210 acre tract of land, located in the remainder of Lot 8, Block 17, New City Block No. 407, City of San Antonio, Bexar County, Texas, and being more particularly described as follow:

BEGINNING at P.K. nail found on the south right-of-way line of East Travis Street at the northwest corner of said called 0.210 acre tract of land, from which the southeast intersection of East Travis Street with St. Mary's Street bears North 89°43'18" West, a distance of 169.26 feet;

THENCE, South 89°43'18" East, along the south right-of-way line of E. Travis Street, a distance of 56.42 feet to a concrete nail found corner;

THENCE, South 00°06'43" West, a distance of 162.47 feet to a P.K. nail found for corner, in the north right-of-way line of an alley conveyed to the City of San Antonio by Special Warranty Deed recorded in Volume 474, Page 317, Deed Record, Bexar County, Texas, for southeast corner of the called 0.210 acre tract;

THENCE, South 89°45'50" West, along the said north alley right-of-way line, a distance of 50.48 feet to a concrete nail found for corner;

THENCE, North 44° 53' 18" West, along the said north alley right-of-way line, a distance of 8.40 feet to a concrete nail found for corner, in the west line of Lot 8;

THENCE, North 00°06'43" East, along the west line of Lot 8, a distance of 157.00 feet to the Point of Beginning and containing 0.210 acre of land more or less.(9163 Square Feet) to a Point of Beginning and containing 2477 square feet within this unit;

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FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made and entered into as of the 7 day of October, 2005, by and between 214 TRAVIS, LTD. ("Landlord") and RACQUETBALL AND FITNESS CLUBS, INC. ("Tenant").

R E C I T A L S :

A. Landlord and Tenant entered into that certain LEASE dated May 15, 2005 (the "Original Lease"), whereby Landlord leased to Tenant and Tenant leased from Landlord certain space located in that certain building located and addressed at 214 East Travis Street, San Antonio, Texas (the "Premises").

B In connection with the Original Lease, RACQUETBALL & FITNESS, INC. executed a GUARANTY OF LEASE dated May 15, 2005 (the "Original Guaranty") guaranteeing all obligations of Tenant under the Original Lease.

C. By this First Amendment, Landlord and Tenant desire to modify the Original Lease and the Original Guaranty as provided herein.

D. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Original Lease.

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

A G R E E M E N T :

1. Original Guaranty. The Original Guaranty is hereby terminated and shall be of no further force or effect.

2. New Guaranty. Attached to this First Amendment as **Schedule "F-2"** is a guaranty (the "New Guaranty") by which Spectrum Clubs, Inc. ("SCI") shall guarantee all obligations of Tenant under the Original Lease. Concurrently with the mutual execution and delivery of this First Amendment, Tenant shall cause SCI to execute and deliver to Landlord the New Guaranty in the form of Schedule "F-2."

3. Modification of Original Lease. Exhibit "F" to the Original Lease is hereby deleted in its entirety and Schedule "F-2" to this First Amendment is inserted in its place and stead. All references in the Original Lease to the "Guaranty" shall refer to the New Guaranty.

4. Partial Invalidity. If any term, provision or condition contained in this First Amendment shall, to any extent, be invalid or unenforceable, the remainder of this First Amendment, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this First Amendment shall be valid and enforceable to the fullest extent possible permitted by law.

5. No Further Modification. Except as set forth in this First Amendment, all of the terms and provisions of the Original Lease shall apply with respect to the Premises and shall remain unmodified and in full

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force and effect. Effective as of the first set forth above, all references to the "Lease" shall refer to the Lease as amended by this First Amendment.

IN WITNESS WHEREOF, this First Amendment has been executed as of the day and year first above written.

LANDLORD:

214 TRAVIS, LTD.,
By: JR Realty Corp.,
Its General Partner

By: [Signature]
Name: KEVIN WEST SR
Title: VICE PRES.

TENANT:

RACQUETBALL & FITNESS CLUBS, INC.,

By: [Signature]
Name: Matthew Stevens Maggie Morins
Title: President C.F.O.

GUARANTY

1. Guaranty. SPECTRUM CLUBS, INC., a Texas corporation ("Guarantor"), whose address is 15759 San Pedro Avenue, San Antonio, Texas 78232 and whose Social Security/tax identification number is 75-2890744, as a material inducement to and in consideration of 214 TRAVIS LTD., a Texas limited partnership, as Landlord, entering into that certain lease (the "Lease") dated as of May 15, 2005, with RACQUETBALL AND FITNESS CLUBS, INC., a Texas corporation, as Tenant, concerning retail space located at 214 East Travis Street, San Antonio, Texas 78209, hereby unconditionally, irrevocably and jointly and severally guarantees and promises to and for the benefit of Landlord that Tenant shall perform all of its covenants under the Lease, including but not limited to the payment of rent and all other sums now or hereafter becoming due or payable under the Lease.

2. Standard Provisions. A separate action may be brought or prosecuted against any Guarantor whether or not the action is brought or prosecuted against any other Guarantor or Tenant. If Tenant defaults under the Lease, Landlord may proceed immediately against Guarantor or Tenant, or both, or Landlord may enforce against Guarantor or Tenant, or both, any rights that it has under the Lease or against Guarantor pursuant to this Guaranty. If the Lease terminates, Landlord may enforce any remaining rights thereunder against Guarantor without giving previous notice to Tenant or Guarantor, and without making any demand on either of them. This Guaranty shall not be affected by Landlord's failure or delay to enforce any of its rights hereunder or under the Lease. Guarantor hereby waives notice of or the giving of its consent to any amendments which may hereafter be made to the terms of the Lease, and this Guaranty shall guarantee the performance of the Lease as amended, or as the same may be assigned from time to time. Guarantor waives the right to require Landlord to (i) proceed against Tenant; (ii) proceed against or exhaust any security that Landlord holds from Tenant, or (iii) pursue any remedy in Landlord's power. Until all of Tenant's obligations to Landlord have been discharged in full, Guarantor shall have no right of subrogation against Tenant. Guarantor waives its right to enforce any remedies that Landlord now has, or later may have, against Tenant. Guarantor waives any right to participate in any security now or later held by Landlord. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty, and waives all notices of existence, creation, or incurring of new or additional obligations from Tenant to Landlord. In addition, each Guarantor agrees that Landlord (not Tenant) shall have the right to designate the portion of Tenant's obligations under the Lease that is satisfied by a partial payment by Tenant. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors in interest and assigns. If Landlord is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Landlord all costs incurred, including, without limitation, Landlord's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed, or in enforcing this Guaranty against the undersigned, individually and jointly. This Guaranty will continue unchanged by any bankruptcy, reorganization or insolvency of the Tenant or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Tenant. Guarantor's obligations under this Guaranty may not be assigned and shall be binding upon Guarantor's heirs and successors. This Guaranty shall be governed by the laws of, and may be enforced in the courts of, the State of Texas.

- i -

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Dated: October 7, 2005.

Guarantor:

SPECTRUM CLUBS, INC.,
a Texas corporation

By:


Matthew Stevens, President

Maqqe Morris, CEO.

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SCHEDULE "F-2"

GUARANTY

1. Guaranty. SPECTRUM CLUBS, INC., a Texas corporation ("Guarantor"), whose address is 15759 San Pedro Avenue, San Antonio, Texas 78232 and whose Social Security/tax identification number is 75-2890744, as a material inducement to and in consideration of 214 TRAVIS LTD., a Texas limited partnership, as Landlord, entering into that certain lease (the "Lease") dated as of May 15, 2005, with RACQUETBALL AND FITNESS CLUBS, INC., a Texas corporation, as Tenant, concerning retail space located at 214 East Travis Street, San Antonio, Texas 78209, hereby unconditionally, irrevocably and jointly and severally guarantees and promises to and for the benefit of Landlord that Tenant shall perform all of its covenants under the Lease, including but not limited to the payment of rent and all other sums now or hereafter becoming due or payable under the Lease.

2. Standard Provisions. A separate action may be brought or prosecuted against any Guarantor whether or not the action is brought or prosecuted against any other Guarantor or Tenant. If Tenant defaults under the Lease, Landlord may proceed immediately against Guarantor or Tenant, or both, or Landlord may enforce against Guarantor or Tenant, or both, any rights that it has under the Lease or against Guarantor pursuant to this Guaranty. If the Lease terminates, Landlord may enforce any remaining rights thereunder against Guarantor without giving previous notice to Tenant or Guarantor, and without making any demand on either of them. This Guaranty shall not be affected by Landlord's failure or delay to enforce any of its rights hereunder or under the Lease. Guarantor hereby waives notice of or the giving of its consent to any amendments which may hereafter be made to the terms of the Lease, and this Guaranty shall guarantee the performance of the Lease as amended, or as the same may be assigned from time to time. Guarantor waives the right to require Landlord to (i) proceed against Tenant; (ii) proceed against or exhaust any security that Landlord holds from Tenant, or (iii) pursue any remedy in Landlord's power. Until all of Tenant's obligations to Landlord have been discharged in full, Guarantor shall have no right of subrogation against Tenant. Guarantor waives its right to enforce any remedies that Landlord now has, or later may have, against Tenant. Guarantor waives any right to participate in any security now or later held by Landlord. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty, and waives all notices of existence, creation, or incurring of new or additional obligations from Tenant to Landlord. In addition, each Guarantor agrees that Landlord (not Tenant) shall have the right to designate the portion of Tenant's obligations under the Lease that is satisfied by a partial payment by Tenant. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors in interest and assigns. If Landlord is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Landlord all costs incurred, including, without limitation, Landlord's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed, or in enforcing this Guaranty against the undersigned, individually and jointly. This Guaranty will continue unchanged by any bankruptcy, reorganization or insolvency of the Tenant or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Tenant. Guarantor's obligations under this Guaranty may not be assigned and shall be binding upon Guarantor's heirs and successors. This Guaranty shall be governed by the laws of, and may be enforced in the courts of, the State of Texas.

Guarantor:

Dated: October __, 2005.

SPECTRUM CLUBS, INC.,
a Texas corporation

By: _____

Matthew Stevens, President

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EXHIBIT B

ASSIGNMENT AND ASSUMPTION OF LEASE

ASSIGNMENT AND ASSUMPTION OF LEASE, dated as of March 1, 2012, by and among Racquetball & Fitness Clubs, Inc., a Texas corporation ("Assignor"), and Gold's Texas Holdings Group, Inc., a Delaware corporation ("Assignee").

WITNESSETH:

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement, dated February 8, 2012 (the "**Purchase Agreement**"), pursuant to which Assignor has agreed to sell, assign and transfer certain personal property and contracts to Assignee, including that certain Lease dated May 15, 2005, as amended, by and between Assignor, as tenant, and 214 Travis, Ltd., as landlord ("**Landlord**"), with respect to property located at 214 East Travis Street, First Floor, Mezzanine and Basement, San Antonio, Texas 78209 (the "**Lease**").

WHEREAS, as an inducement to Assignor to assign the Lease to Assignee, Gold's Gym International, Inc. has agreed to guaranty a portion of the obligations under the Lease pursuant to, and on the terms contained in, that certain Guaranty in favor of Landlord dated as of the date hereof.

NOW, THEREFORE, in consideration of the Purchase Price (as defined in the Purchase Agreement) and other good and valuable consideration paid by Assignee to Assignor, 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 tenant in and to the Lease to have and to hold the same unto Assignee, its successors and assigns, forever, 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.

EXHIBIT
B

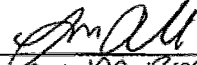
(b) This Assignment and Assumption of Lease is made without any covenant, warranty or representation by Assignor except as otherwise provided in this Assignment.

[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:

Racquetball & Fitness Clubs, Inc.

By: 
Name: Anthony M. Racknill
Title: CEO

ASSIGNEE:

**Gold's Texas Holdings Group, Inc., a
Delaware corporation**

By: _____
Name: _____
Title: _____

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

ASSIGNOR:

Racquetball & Fitness Clubs, Inc.

By: _____
Name: _____
Title: _____

ASSIGNEE:

**Gold's Texas Holdings Group, Inc., a
Delaware corporation**


By:  _____
Name: michael G. SMITH
Title: VICE PRESIDENT

EXHIBIT C

AMENDMENT OF LEASE AGREEMENT

THIS AMENDMENT OF LEASE AGREEMENT (hereinafter, this "Amendment"), dated as of July 31, 2016, but to be effective as of June 1, 2016 (the "Effective Date"), is made by and between GOLD'S TEXAS HOLDINGS GROUP, INC., a Delaware corporation (hereinafter, the "Tenant"), and 214 TRAVIS, LTD., a Texas limited partnership (hereinafter, "Landlord"). The Landlord and Tenant are individually referred to herein as a "Party," and collectively referred to herein as the "Parties."

WHEREAS, Landlord entered into that certain Lease with Racquetball and Fitness Clubs, Inc., a Texas corporation (hereinafter, the "Original Tenant"), dated effective as of the 15th day of May, 2005, as amended over time (hereinafter, the "Original Lease"), the terms of which are herein incorporated by reference as though fully set forth and attached hereto.

WHEREAS, the Original Tenant assigned its rights and obligations under the Original Lease to Tenant by that certain Assignment and Assumption of Lease, dated effective as of the 1st day of March, 2012 (hereinafter, the "Assignment"), the terms of which are herein incorporated by reference as though fully set forth and attached hereto. The Original Lease and the Assignment, collectively hereinafter referred to as the "Lease Agreement."

WHEREAS, Landlord and Tenant desire to renew, extend and amend the Lease Agreement as herein described.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are incorporated herein and made a part of this Amendment.
2. This Amendment forms part of the Lease Agreement, and should be construed so that the provisions of the Lease Agreement and this Amendment are read consistently; in the event of a conflict in the terms of the Lease Agreement and this Amendment, the terms of this Amendment shall control. The Lease Agreement shall be considered to include this Amendment. To the extent a term is not defined herein, it shall have the meaning provided in the Lease Agreement.
3. Effective as of the Effective Date, the Lease is hereby amended as follows:
 - a. Expiration Date. Section "II" of the Basic Lease Information is hereby deleted in its entirety. A new Section "H" is hereby inserted to read as follows:

"Expiration Date: May 31, 2021."

All references in the Lease Agreement to the Expiration Date are hereby deemed to refer to May 31, 2021.

- b. Rent. Section "J" of the Basic Lease Information is hereby deleted in its entirety. A new Section "J" is hereby inserted to read as follows:

"Minimum Rent (Payable Monthly): See Paragraph 1.1:

May 15, 2005 – August 31, 2006: \$0.00

September 1, 2006 – May 31, 2016: \$12,693.15

June 1, 2016 – May 31, 2017 \$12,630.00

June 1, 2017 – May 31, 2018 \$12,945.75

June 1, 2018 – May 31, 2019 \$13,269.39

June 1, 2019 – May 31, 2020 \$13,601.12

June 1, 2020 – May 31, 2021 \$13,941.15

- c. Waiver of Renewal. Tenant's option(s) to renew the Lease Agreement, as provided in Exhibit "D" of the Original Lease, are hereby waived and of no further force or affect. The Lease Agreement shall expire on the Expiration Date.
- d. CAM Charges. Section 6.8 of the Lease Agreement is hereby deleted in its entirety. A new Section 6.8 of the Lease Agreement is hereby inserted to read as follows:

"6.8. Common Area Charges as Additional Rent

Tenant shall pay Landlord, as additional rental, Tenant's share of all costs and expenses incurred by Landlord in the operation and maintenance of the Common Areas during the term of this Lease (hereinafter, the "CAM Charges"). The CAM Charges shall include, without limiting the generality thereof, the cost of building systems maintenance and repairs, landscaping, resurfacing, striping, bumpers, directional signs and other markers, lighting and other utilities, cleaning, sewage and garbage disposal (if Tenant shares trash facilities with other Project occupants), installation and removal of community projects, exterminating, depreciation of equipment used in and about the Project, fire protection, security (if and to the extent Landlord provides security), and similar items. CAM Charges will also include all management fees and expenses and all costs of maintenance and repairs concerning the Project (to the extent not covered by insurance), whether or not allocable to the Common Areas, but will not include leasing commissions and any costs incurred by Landlord to make space in the Project ready for another particular tenant. Effective as of the Effective Date, Tenant's share of the CAM Charges shall remain fixed at the present 2016 rate of \$5,724.25 per month, and shall be payable by Tenant on the same date as, and in addition to, the Minimum Rent, however, within thirty (30) days of January 1, 2017, and continuing regularly thereafter on an annual basis, Landlord shall provide Tenant an accounting of all CAM Charges actually incurred by Landlord for the preceding calendar year and adjusted to reflect Tenant's actual share of the CAM Charges for the preceding calendar year (the "Annual CAM Accounting"). Further, within thirty (30) days after Landlord's delivery of the Annual CAM Accounting, (a. Tenant shall reimburse Landlord, in one lump sum, as additional rent, for any shortages between the CAM Charges actually paid by Tenant and received by Landlord for the preceding calendar year, and the amounts reflected on the Annual CAM Accounting, or b. Landlord shall refund Tenant, in one lump sum, for any overages between the CAM Charges actually paid by Tenant and received by Landlord for the preceding calendar year, and the amounts reflected on the Annual CAM Accounting; provided, however, if there is a shortage between the CAM Charges paid by Tenant and the CAM Charges actually incurred by

Landlord for the preceding calendar year, in no event shall Tenant's reimbursement of Landlord for such shortage exceed two percent (2%) of the CAM Charges actually paid by Tenant.

Notwithstanding anything to the contrary herein CAM Charges shall not include (1) the cost of providing any service directly to and paid directly by Tenant; (2) the cost of any items for which the Landlord is reimbursed by any other tenant or occupant of the Project, insurance proceeds, warranties, condemnation awards, or otherwise to the extent so reimbursed; (3) any real estate brokerage commissions or other costs incurred in procuring tenants, or any fee in lieu of commission; (4) depreciation and amortization of principal and interest on mortgages or ground lease payments (if any); (5) cost of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied except to the extent that such capital costs (A) reduce other CAM Charges payable hereunder, or (B) are required under any governmental law or regulation enacted after the Commencement Date (provided that any permitted capital expenditure shall be amortized with interest over their useful life); (6) costs incurred by Landlord due to any violation by Landlord of the terms and conditions of the Lease or any law, code, regulation, ordinance or the like; (7) Landlord's general corporate overhead or general administrative expenses; (8) any compensation paid to clerks, tenants or other persons in commercial concessions operated by Landlord; (9) costs incurred in connection with upgrade of the Building performed by Landlord to comply with disability, life, seismic, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including without limitations, the ADA, including penalties or damage incurred due to such non-compliance; (10) the cost of any goods or services (including any management fees) in excess of the fair market value of such goods or services; (11) costs incurred to remove, remedy, contain, or treat any Hazardous Materials in, on or about the Project; and (12) reserves."

- e. Section 6.9 of the Lease Agreement is hereby deleted in its entirety.
- f. Early Termination. Provided Tenant is not then in default of the terms of the Lease Agreement beyond applicable notice and/or cure periods, Tenant shall have the option to terminate the Lease Agreement at any time after May 1, 2020, hereinafter, the "Early Termination". Should Tenant elect to terminate the Lease Agreement in accordance with this paragraph, Tenant shall provide Landlord with one hundred and twenty (120) days prior written notice of such Early Termination (the "Early Termination Notice"). For clarification purposes, Tenant may elect to give the Early Termination Notice 120 days prior to May 1, 2020 such that the Early Termination will occur on May 1, 2020.

In the event Tenant sends Landlord such Early Termination Notice, Tenant shall continue to comply with the terms of the Lease Agreement, and shall continue to pay all sums due thereunder through and including the effective date of the Early Termination, and Tenant shall vacate and surrender the Premises on the effective date of the Early Termination in the condition required by the Lease Agreement.

- g. HVAC Service Contract. Landlord and Tenant acknowledge and agree that Landlord has undertaken efforts to replace the existing heating, ventilation, and air conditioning system (hereinafter, the "HVAC System"). Further, in connection with installation of the new HVAC System, a separate agreement for the ongoing care, repair and maintenance of the

HVAC System will be entered into by and between Landlord and a third-party provider (hereinafter, the "Maintenance Contract"); with the full particulars of such Maintenance Contract being hereby referenced as though fully set forth herein.

Landlord hereby assigns to Tenant, and Tenant hereby fully assumes, the rights, duties, responsibilities and obligations under the Maintenance Contract, including, but not limited to, any payment installments and/or expenses required thereunder (hereinafter, the "HVAC Maintenance Expenses"), with the Landlord having no further liability therefor. For the purposes of clarity, the HVAC Maintenance Expenses shall be above and beyond the Tenant's obligations to pay Rent hereunder, and in no event shall Landlord be obligated to refund any part of the HVAC Maintenance Expenses to the Tenant.

The Tenant's obligations under this section shall remain in full force and effect until the earlier to occur of: (i) the expiration of the Maintenance Contract, as may be renewed and extended over time; and expressly to include any similar maintenance contracts that may subsequently take the place of the Maintenance Contract, or (ii) the expiration or earlier termination of the Lease.


4. Ratification. Except as modified herein, in all other respects, the Lease is ratified and confirmed.
5. Estoppel. In consideration of Landlord's agreement to enter into this Amendment, Tenant warrants and represents to Landlord that Landlord is not currently in default under the terms of the Lease and Tenant knows of no event or condition which but for notice and opportunity to cure would be an event of default under the Lease. Furthermore, Tenant confirms that Landlord has complied fully and completely with all of the terms of the Lease to the date hereof. In consideration of Tenant's agreement to enter into this Amendment, Landlord warrants and represents to Tenant that Tenant is not currently in default under the terms of the Lease and Landlord knows of no event or condition which but for notice and opportunity to cure would be an event of default under the Lease. Furthermore, Landlord confirms that Tenant has complied fully and completely with all of the terms of the Lease to the date hereof.
6. Authority. Each person executing this Amendment represents and warrants that he or she has been duly authorized to do so by all requisite actions on the part of the Party on whose behalf he or she is signing, and that in so doing he or she bind such Party to all of the terms and provisions hereof.
7. Facsimile or Scanned and Emailed Signatures. This Amendment may be executed by facsimile or scanned and emailed signature and facsimile or scanned and emailed signatures shall be considered to be the same as original signatures.
8. This Amendment shall be governed by and interpreted in accordance with the laws of the State of Texas and is fully performable and enforceable in Bexar County, Texas. This Amendment may be executed in counterparts and, taken together, such counterparts shall constitute one and the same agreement, valid and binding on the Parties.
9. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of each of the parties hereto.
10. The Parties agree that this this Amendment shall be effective on the Effective Date hereof.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth herein, but to be effective as of the Effective Date.

LANDLORD:

214 TRAVIS, L.P., a Texas limited partnership

By: 
Name: JUAN CARLOS HERLO
Title: PRESIDENT

TENANT:

GOLD'S TEXAS HOLDINGS GROUP, INC., a Delaware corporation

By: 
Name: BRANDON P. A.
Title: CEO

EXHIBIT D

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT is made effective the 3rd day of November, 2017, by and between 214 E Travis Street LLC (the "Seller") and Brazoria Smith Lease, LLC (the "Buyer").

WHEREAS, Seller and Buyer entered into that certain Commercial Earnest Money Contract with an Effective Date of July 17, 2017 (the "Contract") pursuant to which Seller agreed to sell and Buyer agreed to purchase the real property legally described as follows, to-wit:

Basement Unit, First Floor Unit, and the Mezzanine Unit, together with the undivided percentage interests in the common elements of THE TRAVIS PARK LOFTS CONDOMINIUMS, a condominium project located in part of Lot 8, New City Block 407, City of San Antonio, Bexar County, Texas, as fully described in Condominium Declaration recorded in Volume 9478, Page 34, in Volume 10425, Page 1058, in Volume 13836, Page 666, and in Volume 17448, Page 111, Real Property Records of Bexar County, Texas, (the "Property"); and

WHEREAS, the Contract calls for Seller to assign to Buyer, to the extent assignable, licenses, permits, agreements, warranties, guaranties and trade names as they relate to the Property or its operation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

1. Assignment. Seller hereby assigns, sells, and transfers to Buyer, subject to the encumbrances set forth in the Special Warranty Deed from Seller to Buyer of even date herewith (a) Seller's interest in all licenses and permits, if any, related to the Property or its operations, (b) Seller's interest in any occupancy, maintenance, management, or other agreements, if any, related to the Property or its operations, and (c) Seller's interest in all assignable tradenames (if any) and third party warranties or guaranties related to the Property or its operations.
2. Assumption. Buyer hereby accepts such assignment and assumes all of the benefits and obligations of the licenses, permits, occupancy, maintenance, management, or other agreements, warranties, and guaranties described above, and agrees to perform all of the covenants and obligations of Seller thereunder to the extent arising from and after the date hereof and Buyer further agrees to indemnify and hold harmless Seller from any cost, liability, damage, or expense arising out of or relating to the benefits and obligations accepted and assumed by Buyer hereunder which arise from or after the date hereof.
3. Miscellaneous. This Agreement is binding on the parties, their representatives, successors, and assigns. This Agreement is to be construed in accordance with the laws of the State of Texas. If this Agreement is executed in

a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one and the same agreement.

SELLER:

214 E TRAVIS STREET LLC

By: [Signature]
Juan Carlos Merlo, Manager

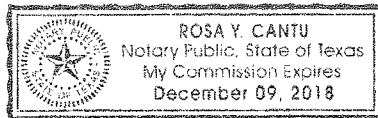
BUYER:

BRAZORIA SMITH LEASE, LLC

By: _____
Name: _____
Title: _____

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this 3rd day of November, 2017, by Juan Carlos Merlo, Manager of 214 E Travis Street LLC, a Texas limited liability company, on behalf of said company.



[Signature]
Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this ____ day of November, 2017, by _____ of Brazoria Smith Lease, LLC, a Texas limited liability company, on behalf of said company.

[Signature]
Notary Public, State of Texas

a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one and the same agreement.

SELLER:

214 E TRAVIS STREET LLC

By: Juan Carlos Merlo, Manager

BUYER:

BRAZORIA SMITH LEASE, LLC

By: [Signature]
Name: Richard Nagler
Title: Manager

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this ____ day of November, 2017, by Juan Carlos Merlo, Manager of 214 E Travis Street LLC, a Texas limited liability company, on behalf of said company.

[Signature]
Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this ____ day of November, 2017, by _____ of Brazoria Smith Lease, LLC, a Texas limited liability company, on behalf of said company.

[Signature]
Notary Public, State of Texas

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of LOS ANGELES

On November 2, 2017 before me, JERUSHA DAY - Notary Public
Date Here Insert Name and Title of the Officer

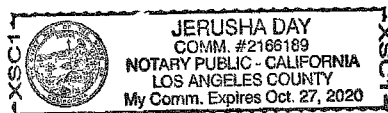
personally appeared RICHARD B. NALDER

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Place Notary Seal and/or Stamp Above

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: ASSIGNMENT AGREEMENT

Document Date: November 2, 2017 Number of Pages: 2

Signer(s) Other Than Named Above: JUAN CARLOS MENDO

Capacity(ies) Claimed by Signer(s)

Signer's Name: RICHARD B. NALDER

☐ Corporate Officer - Title(s):

☐ Partner - ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☒ Other: MANAGER

Signer is Representing:

Signer's Name:

☐ Corporate Officer - Title(s):

☐ Partner - ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other:

Signer is Representing:

EXHIBIT E

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE is made effective on the 3rd day of November, 2017 (the "Effective Date") by and between 214 E TRAVIS STREET LLC (the "Assignor") and BRAZORIA SMITH LEASE, LLC (the "Assignee").

WHEREAS, Assignor and Assignee entered into a Commercial Earnest Money Contract with Effective Date July 17, 2017, as amended (the "Contract") whereby Assignee would purchase from Assignor the following property:

Basement Unit, First Floor Unit, and the Mezzanine Unit, together with the undivided percentage interests in the common elements of THE TRAVIS PARK LOFTS CONDOMINIUMS, a condominium project located in part of Lot 8, New City Block 407, City of San Antonio, Bexar County, Texas, as fully described in Condominium Declaration recorded in Volume 9478, Page 34, in Volume 10425, Page 1058, in Volume 13836, Page 666, and in Volume 17448, Page 111, Real Property Records of Bexar County, Texas, (the "Property"); and

WHEREAS, the Property is leased to GOLD'S TEXAS HOLDINGS GROUP, INC., a Delaware corporation (the "Tenant") pursuant to that certain Lease Agreement, originally between 214 Travis, Ltd., a Texas limited partnership (as original landlord) and Racquetball and Fitness Clubs, Inc. (as original tenant) dated effective as of May 15, 2005 as assigned to Tenant by that certain Assignment and Assumption of Lease dated March 1, 2012 between original tenant and Tenant, as amended *inter alia* by that certain Amendment of Lease Agreement between Tenant and Assignor, as landlord dated effective as of June 1, 2016 pertaining to the Property (hereinafter, as amended, the "Lease"); and

WHEREAS, Assignor desires to assign the Lease to Assignee.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are incorporated in and made a part hereof.
2. Assignor represents and warrants to Assignee that there is no other lease of the Property by Assignor except the Lease described above and Assignor further represents that there is no security deposit held by Assignor from Tenant.
3. Assignor hereby grants, transfers, conveys, assigns, and sets over to Assignee its entire right, title, interest and estate in and to the Lease and the rents and all other amounts payable thereunder and all other benefits and advantages to be derived therefrom, to have and to hold unto Assignee.
4. Assignor hereby further grants, transfers, conveys, assigns, and sets over to Assignee its entire right, title, and interest, to the extent there are or exist any, to any legal claims or causes of action arising from or out of the Lease (together, "Claims").

5. As consideration for the assignment of Claims, Assignee hereby agrees to indemnify and hold harmless Assignor from any loss, attorney's fees, costs, liability, damages, or expenses relating to any Claims, whether by Assignee or Tenant or any of their respective successors or assigns.

6. Except with respect to any Claims, Assignor will indemnify, defend, and hold Assignee harmless from any loss, attorney's fees, expenses, or claims arising out or related to Assignor's failure to perform any of the obligations of the Landlord under the Lease before the Effective Date.

7. Assignee assumes and agrees to perform the Landlord's obligations under the Lease arising after the Effective Date. The obligation to repay security and prepaid rental deposits to the Tenant under the Lease is limited to the amount of cash delivered or credited by Assignor to Assignee with respect to security and prepaid rental deposits, if any. Assignee will indemnify, defend, and hold Assignor harmless from any loss, attorney's fees, expenses, or claims arising out of or related to Assignee's failure to perform any of the obligations of the Landlord under the Leases as of and after the Effective Date.

8. The parties agree that this Assignment shall be effective immediately upon the closing of the purchase of the Property by Assignee.

9. The covenants and agreements herein contained shall be binding upon the parties hereto and inure to the benefit of the successors and assigns of each of the parties hereto.

10. If this Agreement is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment effective as of the Effective Date.

ASSIGNOR:

214 E TRAVIS STREET LLC

By: Juan Carlos Merlo
Manager

ASSIGNEE:

BRAZORIA SMITH LEASE, LLC

By: _____

5. As consideration for the assignment of Claims, Assignee hereby agrees to indemnify and hold harmless Assignor from any loss, attorney's fees, costs, liability, damages, or expenses relating to any Claims, whether by Assignee or Tenant or any of their respective successors or assigns.

6. Except with respect to any Claims, Assignor will indemnify, defend, and hold Assignee harmless from any loss, attorney's fees, expenses, or claims arising out or related to Assignor's failure to perform any of the obligations of the Landlord under the Lease before the Effective Date.

7. Assignee assumes and agrees to perform the Landlord's obligations under the Lease arising after the Effective Date. The obligation to repay security and prepaid rental deposits to the Tenant under the Lease is limited to the amount of cash delivered or credited by Assignor to Assignee with respect to security and prepaid rental deposits, if any. Assignee will indemnify, defend, and hold Assignor harmless from any loss, attorney's fees, expenses, or claims arising out of or related to Assignee's failure to perform any of the obligations of the Landlord under the Leases as of and after the Effective Date.

8. The parties agree that this Assignment shall be effective immediately upon the closing of the purchase of the Property by Assignee.

9. The covenants and agreements herein contained shall be binding upon the parties hereto and inure to the benefit of the successors and assigns of each of the parties hereto.

10. If this Agreement is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment effective as of the Effective Date.

ASSIGNOR:

214 E TRAVIS STREET LLC

By: _____

Juan Carlos Merlo
Manager

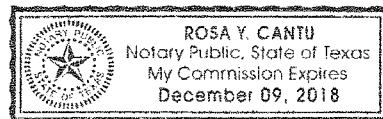
ASSIGNEE:

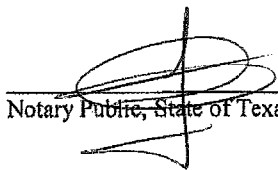
BRAZORIA SMITH LEASE, LLC

By: _____

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this 3rd day of November, 2017, by Juan Carlos Merlo, Manager of 214 E Travis Street LLC, a Texas limited liability company, on behalf of said company.

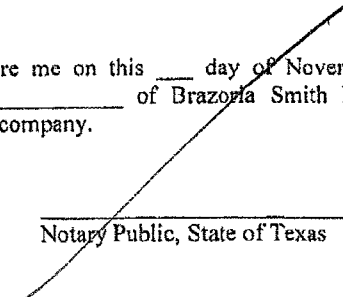




Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this ____ day of November, 2017, by _____ of Brazoria Smith Lease, LLC, a Texas limited liability company, on behalf of said company.



Notary Public, State of Texas

After recording, please return to:

214 E Travis Street, LLC
c/o Lui Chambers
Langley & Banack
745 E. Mulberry, Suite 700
San Antonio, Texas 78212

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this ____ day of November, 2017, by Juan Carlos Merlo, Manager of 214 E Travis Street LLC, a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on this ____ day of November, 2017, by _____ of Brazoria Smith Lease, LLC, a Texas limited liability company, on behalf of said company.

SEE ATTACHMENT

Notary Public, State of Texas

After recording, please return to:

214 E Travis Street, LLC
c/o Lui Chambers
Langley & Banack
745 E. Mulberry, Suite 700
San Antonio, Texas 78212

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On November 2, 2017 before me, JERUSHA DAY - NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared RICHARD B. NAGLER
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature [Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: ASSIGNMENT OF LEASE

Document Date: NOVEMBER 2, 2017 Number of Pages: 3

Signer(s) Other Than Named Above: JUAN CARLOS MENDO

Capacity(ies) Claimed by Signer(s)

Signer's Name: RICHARD B. NAGLER

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other: _____

Signer is Representing: _____

From: RJ McMinn <RMcMinn@gia-usa.com>
Sent: Wednesday, August 30, 2017 12:03 PM
To: accounts payable@goldsgym.com
Cc: Chase Nixon
Subject: [EXTERNAL] letter and invoice
Attachments: 214 E.Travis - Letter to Tenant (2).pdf; invoice #1001.pdf

Good Morning,

Attached you will find a letter and invoice regarding delinquent additional rent.

These items have also been sent certified mail to:

4001 Maple Ave
Suite 200
Dallas, TX 75219

Please contact me with any questions or concerns.

We hope to have a quick resolution to this matter.

Regards,

RJ



R.J. McMinn
Controller
rmcminn@gia-usa.com

3512 Passano Parkway
Suite 100
San Antonio, Texas 78231
Office: (210) 499-0700
Ext. #222
Fax: (210) 499-0702

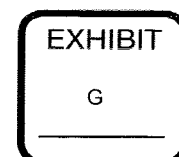
www.gia-usa.com

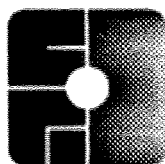
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Global Insurance Agency, Inc. is a member of the Global Insurance Group. The Global Insurance Group is a leading provider of insurance services in the United States. The Global Insurance Group is a leading provider of insurance services in the United States. The Global Insurance Group is a leading provider of insurance services in the United States.





**Global Insurance
Agency**

R.J. McMinn
Controller
rmcminn@gia-usa.com

3512 Paesanos Parkway
Suite 100
San Antonio, Texas 78231
Office: (210) 499-0700
Ext. #222
Fax: (210) 499-0702

www.gia-usa.com

Member of Global Insurance Group



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GOLDS0000453

**214 Travis, Ltd.
3512 Paesanos Parkway, STE 100
San Antonio, TX 78231**

August 29, 2017

Gold's Holding Corp.
4001 Maple Ave
Suite 200
Dallas, Texas 75219
Attn: Chase Nixon & Accounts Payable Department

By email & certified mail – return receipt requested

Re: 214 E. Travis Street, First Floor, Mezzanine and Basement

Dear Chase,

We received a partial payment on August 29, 2017 totaling \$13,670.00. This letter is to inform you that additional rent (taxes and insurance) totaling \$3,444.72 for September was not received and will be delinquent. Furthermore, 2016 taxes and insurance totaling \$24,150.98 and 2017 taxes and insurance totaling \$27,557.76 are still outstanding. The attached invoice reflects all amounts currently due. Please contact me as soon as you can to resolve this matter.

Sincerely,

214 Travis, Ltd.

R.J. McMinn
Controller
rmcminn@gia-usa.com
(210) 499-0700

214 E Travis St LLC
 3512 PAESANOS PKWY STE100
 SAN ANTONIO, TX 78231
 (210)499-0700
 rcantu@gia-usa.com

INVOICE

BILL TO

Gold's Holding Corp.
 4001 Maple Ave.
 Suite 200
 Dallas, TX 75219

INVOICE # 1001

DATE 08/29/2017

DUE DATE 09/01/2017

TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
September Base Rent Per section 3.b. AMENDMENT OF LEASE AGREEMENT	1	12,945.75	12,945.75
September CAM Per section 6.8. AMENDMENT OF LEASE AGREEMENT	1	5,724.25	5,724.25
September Taxes Additional Rent Per section 9.1 & 9.2 ORIGINAL LEASE	1	3,088.31	3,088.31
September Insurance Additional Rent Per Section 10.3 & 10.4 ORIGINAL LEASE	1	356.41	356.41
			Subtotal: 22,114.72
2016 Property Taxes From June 1, 2016 - December 31, 2016	7	3,088.31	21,618.17
2016 Insurance From June 1, 2016 - December 31, 2016	7	361.83	2,532.81
			Subtotal: 24,150.98
2017 Property Taxes From January 1, 2017 - August 30, 2017	8	3,088.31	24,706.48
2017 Insurance From January 1, 2017 - August 30, 2017	8	356.41	2,851.28
			Subtotal: 27,557.76
Partial Payment Received payment number 438783 8/29/2017	1	-18,670.00	-18,670.00

BALANCE DUE

\$55,153.46

GOLDS000455

EXHIBIT H

Snell & Wilmer
L.L.P.
LAW OFFICES

Plaza Tower
600 Anton Boulevard
Suite 1400
Costa Mesa, California 92626-7689
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RENO
SALT LAKE CITY
TUCSON

Anthony J. Carucci
(714) 427-7513
acarucci@swlaw.com

February 5, 2018

VIA MAIL AND E-MAIL (alyssa.haydin@esrp.com)

Ms. Alyssa Haydin
Gold's Texas Holdings Group, Inc.
c/o ESRP Real Estate Services
16000 N. Dallas Parkway, Suite 550
Dallas, Texas 75248

**Re: Notice of Default and Demand for Payment of Amounts Past Due
214 East Travis Street, First Floor, Mezzanine, and Basement, San
Antonio, Texas 78209**

Dear Ms. Haydin:

Brazoria Smith Lease, LLC ("Brazoria Smith"), has engaged this law firm to take all appropriate legal action to recover the amounts Gold's Texas Holdings Group, Inc. ("Gold's"), owes under that lease of real property located at 214 East Travis Street, First Floor, Mezzanine, and Basement, San Antonio, Texas 78209 (the "Property").

As you know, on or about May 15, 2005, 214 Travis, Ltd. (the "Prior Owner") entered into a lease with Racquetball and Fitness Clubs, Inc. (the "Prior Tenant") for the Property (the "Lease"). A true and correct copy of the Lease is attached hereto as Exhibit A. On or about March 1, 2012, Gold's entered into an Assignment and Assumption of Lease (the "Assignment") with the Prior Tenant, assuming all rights, duties, and obligations under the Lease. A true and correct copy of the Assignment is attached hereto as Exhibit B. Then, on or about July 31, 2016, Gold's entered into an Amendment of Lease Agreement (the "Amendment") with the Prior Owner, amending certain provisions of the Lease, including the provision governing CAM Charges, and a provision governing HVAC maintenance costs. A true and correct copy of the Amendment is attached hereto as Exhibit C.

EXHIBIT

H

4816-2328-0474.3

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Thereafter, Brazoria Smith acquired all rights, title, and interest in the Property from the Prior Owner, as noted in the Assignment Agreement between Brazoria Smith and the Prior Owner on or about November 3, 2017 (the "Brazoria Smith Assignment"). A true and correct copy of the Brazoria Smith Assignment is attached hereto as Exhibit D. Also on or about November 3, 2017, Brazoria Smith and the Prior Owner entered into an Assignment of Lease (the "Brazoria Smith Lease Assignment"), assigning all of the Prior Owner's rights, title, and interest to the Lease (as amended), to Brazoria Smith. A true and correct copy of the Brazoria Smith Lease Assignment is attached hereto as Exhibit E. In section 4 of the Brazoria Smith Lease Assignment, the Prior Owner granted, transferred, conveyed, assigned, and set over to Brazoria Smith its entire right, title, and interest to any legal claims or causes of action arising from or out of the Lease (as amended).

The purpose of this letter is to inform you that Gold's is in default under section 14.1 of the Lease, as amended, by failing to pay all sums due and owing thereunder. More specifically, Gold's is in default by virtue of its failure to pay for outstanding real estate taxes and insurance costs. The current amount due and owing is \$122,164.28, as calculated on the spreadsheet attached hereto as Exhibit F.

Real Estate Taxes

Section 9 of the Lease governs Real Estate Taxes, and provides, in pertinent part:

9.1 Tax Costs As Additional Rental

Tenant shall pay Landlord additional rental equal to all ad valorem taxes, charges, impositions and liens for public improvements, and assessments allocable to the Premises that Landlord pays for any portion of the term of this Lease (collectively, "Taxes"). As used herein, "Taxes" shall include, to the extent allocable to any calendar year or partial calendar year during the Lease Term, all ad valorem taxes, charges, impositions and other assessments described in the preceding sentence that are separately assessed against the Premises. "Taxes" shall also include, to the extent allocable to any calendar year or partial calendar year during the Lease Term, Tenant's share of any such items that are assessed against the Project or against other property of which the Premises are only a portion. For the first floor of the Premises, Tenant's share of Taxes for each calendar year or partial calendar year will be based on the floor area of the



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first floor of the Premises (i.e., 6,809). For the mezzanine and basement levels of the Premises, Tenant's share of Taxes for each calendar year or partial calendar year will be based on fifty percent (50%) of the floor area of the mezzanine and basement levels of the Premises (i.e., 4,173.5). . . . (emphasis added.)

Pursuant to the Lease, Gold's owes a total of \$109,416.14 in past due real estate taxes, representing the amounts owed for the years of 2015, 2016, and 2017.

Insurance Costs

Section 10.3 governs Insurance, and provides, in pertinent part:

10.3 Insurance Costs as Additional Rent

Tenant shall pay Landlord additional rental equal to all insurance costs allocable to the Premises (as determined by Landlord pursuant to this Paragraph) that Landlord pays for the term of this Lease (collectively, "Insurance Costs"). . . . Tenant's share of such cost for each calendar year or partial calendar year during the Lease Term will be determined by multiplying the total amount thereof times a fraction, the numerator of which is the floor area of the Premises and the denominator of which is the total, rentable, floor area of the building on the insured property during the applicable calendar year. (emphasis added.)

Pursuant to the Lease, Gold's owes a total of \$12,748.16 in past due insurance costs, representing the amounts owed for the years of 2015, 2016, and 2017.

HVAC Maintenance Costs

Pursuant to section 4.1.1 of the Lease, Gold's agreed to "be responsible for maintenance of all systems exclusively serving the Premises." Moreover, pursuant to section 3.g. of the Amendment, Gold's agreed to assume all rights, duties, responsibilities, and obligations regarding the payment of installation and other expenses required regarding the HVAC system at the Property, and acknowledged and agreed that Brazoria Smith—as the Prior Owner's successor-in-interest—would have "no further liability therefor." There are currently noise and vibration issues with the HVAC system at the Property. To the extent that Brazoria Smith is required to front certain costs to remedy these issues, then Brazoria Smith expects reimbursement from Gold's. Brazoria Smith



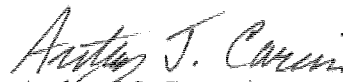
Ms. Alyssa Haydin
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will provide an invoice with the exact amount due and owing with respect to HVAC maintenance costs upon receipt.

This letter shall serve as Brazoria Smith's final, formal demand for the immediate payment of the \$122,164.28 amount that it is owed. This offer shall remain open until February 23, 2018. If you do not contact me on or before this time to make satisfactory payment arrangements, we will commence legal action against Gold's to collect the full amount due, plus interest, costs, and attorneys' fees as provided under the Lease. Please recognize that this is not one in a series of demand letters; rather, it represents Brazoria Smith's final effort to resolve this matter amicably. I trust you recognize the seriousness of this matter and will respond by making satisfactory arrangements with me for the payment of the \$122,164.28 by February 23, 2018.

Very truly yours,

Snell & Wilmer


Anthony J. Carucci

Enclosures

cc: Client (via e-mail)
Michael B. Reynolds, Esq. (via e-mail)

EXHIBIT I



GOLD'S TEXAS HOLDINGS GROUP, INC.
4001 Maple Ave., Ste. 200
Dallas, TX 75219

May 31, 2020

VIA FEDEX OVERNIGHT COURIER

BRAZORIA SMITH LEASE, LLC
124 14th St
Manhattan Beach, CA 90266
ATTN: Richard Nagler

RE: Rejection of Lease and Surrender of the Leased Property
214 East Travis St., San Antonio, Texas (the "**Leased Property**")

To Whom It May Concern:

I am writing on behalf of GGI Holdings, LLC, Gold's Gym International, Inc., Gold's Holding Corp. and its subsidiary affiliates (collectively, "**Gold's Gym**" or the "**Company**"), which filed on May 4, 2020, for voluntary petitions for Chapter 11 bankruptcy relief in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "**Bankruptcy Court**").

As you are most likely aware, the Company decided to permanently close a number of its company-owned gyms prior to the bankruptcy filing, including the gym operated from the Leased Property. Along with the bankruptcy petitions, the Company has filed a motion to reject the leases for those closed gyms, including the lease for your Leased Property. As a landlord affected by this motion, you will be receiving a service copy of the applicable pleadings from our notice agent BMC Group.

The purpose of this communication is to notify you that Gold's Gym is surrendering possession of the Leased Property, effective immediately. We believe that you already have copies of keys to take possession of the Leased Property, but we are surrendering our keys to you with this letter out of an abundance of caution.

The Company does not intend to use the Leased Premises during its bankruptcy and, thus, cannot pay any rents to you. If you believe you are owed past due rents or any additional amounts as a result of the Company's rejection of the lease, you will have an opportunity to file a proof of claim in the Company's bankruptcy cases, and those claims will whatever treatment is required by the Bankruptcy Court.

If you have any additional questions, you are welcome to contact our bankruptcy counsel, Aaron Kaufman at Dykema Gossett PLLC. His number is (214) 698-7821, and his e-mail address is akaufman@dykema.com.

We appreciate your understanding and attention to this matter.

Regards,

Paul Early
Chief Administration Office
Gold's Gym

Northern District of Texas

Claims Register

20-31337-hdh11 Gold's Texas Holdings Group, Inc.

Judge: Harlin DeWayne Hale

Chapter: 11

Office: Dallas

Last Date to file claims:

Trustee:

Last Date to file (Govt):

Creditor: (18978970)
Brazoria Smith Lease, LLC
124 14Th St
Manhattan Beach CA
90266

Claim No: 13
Original Filed
Date: 09/04/2020
Original Entered
Date: 09/04/2020

Status:
Filed by: CR
Entered by: Michael B. Reynolds
Modified:

Amount claimed: \$674875.49

History:

Details 13-1 09/04/2020 Claim #13 filed by Brazoria Smith Lease, LLC, Amount claimed: \$674875.49
(Reynolds, Michael)

Description: (13-1) Lease

Remarks:

Claims Register Summary

Case Name: Gold's Texas Holdings Group, Inc.

Case Number: 20-31337-hdh11

Chapter: 11

Date Filed: 05/04/2020

Total Number Of Claims: 1

Total Amount Claimed*	\$674875.49
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured		
Priority		
Administrative		