

Fill in this information to identify the case:

Debtor 1 Gold's Holding Corp.

Debtor 2  
(Spouse, if filing) \_\_\_\_\_

United States Bankruptcy Court for the: Northern District of Texas

Case number 20-31320

RECEIVED

SEP 08 2020

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?

Washington Real Estate Investment Trust

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

Other names the creditor used with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?

☒ No

☐ Yes. From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Magruder Cook Koutsouftikis & Palanzi

Name

1889 Preston White Drive, Suite 200

Number Street

Reston

VA

20191

City

State

ZIP Code

Contact phone 703-766-4400

Contact email lkouts@maguderpc.com

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

Name

Number

Street

City

State

ZIP Code

Contact phone \_\_\_\_\_

Contact email \_\_\_\_\_

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

4. Does this claim amend one already filed?

☒ No

☐ Yes. Claim number on court claims registry (if known) \_\_\_\_\_

Filed on \_\_\_\_\_

MM / DD / YYYY

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

☒ No

☐ Yes. Who made the earlier filing? \_\_\_\_\_

**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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>745,354.35</u> . Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> 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.  <u>pre-petition rent and rejection damages</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.  <b>Nature of property:</b> <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ 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.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ <u>262,859.55</u>
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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:

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

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

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

\$ \_\_\_\_\_

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

\$ \_\_\_\_\_

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

\$ \_\_\_\_\_

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

**Part 3: Sign Below**

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

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

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

Check the appropriate box:

☐ I am the creditor.

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

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

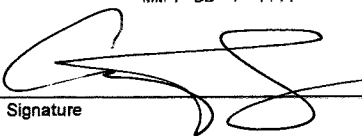
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

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

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

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

Executed on date 06/26/2020  
MM / DD / YYYY

  
Signature

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

Name Anthony Chang  
First name Middle name Last name

Title Vice President, Asset Management

Company Washington Real Estate Investment Trust  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1775 Eye Street, NW, Suite 1000  
Number Street

Washington DC 20006

City State ZIP Code

Contact phone 202-774-3248 Email achang@washreit.com

LAW OFFICE  
**MAGRUDER COOK KOUTSOUFTIKIS & PALANZI\***  
**1889 PRESTON WHITE DRIVE SUITE 200**

ANNE M. MAGRUDER • +  
CYNTHIA R. COOK •  
LEON KOUTSOUFTIKIS •  
ANDREW PALANZI • +  
CAMERON M. HAMES •  
ELLIOTT MORRIS •

**RESTON, VIRGINIA 20191**

Telephone (703) 766-4400  
Telephone (571) 313-1503  
Facsimile (571) 313-8967

• ALSO ADMITTED IN DC & MD  
+ ALSO ADMITTED IN PA

\*Registered trade name of  
Magruder & Associates, P.C.

**VIA OVERNIGHT DELIVERY**

September 4, 2020

BMC Group  
Attn: GGI Holdings Claims Processing  
3732 West 120<sup>th</sup> Street  
Hawthorne, CA 90250

Re: **PROOF OF CLAIM**  
In re: Gold's Holding Corp.  
Case No. 20-31320

Dear Sir or Madam:

Please find enclosed for filing an original Proof of Claim (with exhibits attached thereto) in the above-referenced case to be filed on behalf of creditor Washington Real Estate Investment Trust. Please provide the undersigned with a file-stamped copy of the Proof of Claim in the enclosed, self-addressed stamped envelope and note that the copy to be file-stamped does not include the attachments.

If you have any questions, please feel free to contact me. Thank you.

Sincerely,

MAGRUDER COOK  
KOUTSOUFTIKIS & PALANZI

By:



Leon Koutsouftikis, Esq.

LK:mdc  
Enclosures  
W3561804.017



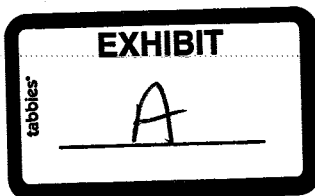
UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	)	Case No. 20-31320
	)	
GOLD'S HOLDING CORP.,	)	Chapter 11
	)	
Debtor.	)	

**AFFIDAVIT OF ANTHONY CHANG IN SUPPORT OF PROOF  
OF CLAIM FILED BY WASHINGTON REAL ESTATE INVESTMENT TRUST**

I, Anthony Chang, being duly sworn, do depose and state under the penalty of perjury that the following is true to the best of my personal knowledge:

1. I am an adult and competent to testify herein.
2. Washington Real Estate Investment Trust ("Landlord") is the current owner of the non-residential real property and improvements located at 5520 Randolph Road, Rockville, Maryland 20852 ("Premises").
3. I am Vice President, Asset Management, for Washington Real Estate Investment Trust, and as such, I am a custodian of the books and records relating to the Premises.
4. Landlord, successor in interest to CDT Associates Limited Partnership, and GBG, LLC d/b/a Gold's Gym f/k/a GBG, Inc. ("Tenant") are parties to a Lease dated October 15, 2004, as amended by a First Amendment to Lease dated May 2, 2011, an Assignment and Assumption of Lease dated March 26, 2014, a Second Amendment to Lease dated January 20, 2015, and a Third Amendment to Lease dated September 17, 2018 (collectively, the "Lease"). The Lease expires on May 31, 2022. A true and accurate copy of the Lease is attached to Landlord's Proof of Claim as Exhibit B.




5. Pursuant to the Assignment and Assumption of Lease dated March 26, 2014 (the "Assignment"), Gold's Gym Holding Corp. ("Debtor" or "Assignor") continues to be jointly and severally liable with Tenant for compliance with all terms of the Lease

6. Landlord is NOT holding a security deposit under the Lease.

7. The Statements of Account attached hereto as Exhibit A-1 and A-2 and incorporated by reference herein are accurate statements of the amount of the Lease pre-petition and rejection damages, which Lease rejection damages are calculated pursuant to Bankruptcy Code Section 502(b)(6) as the greater of one (1) year's rent under the Lease or fifteen percent (15%) of the rent remaining under the Lease, but not to exceed three (3) years rent, and calculated from the earlier of the date of filing of the petition (May 4, 2020) or the date on which Landlord repossessed or Tenant surrendered the Premises (January 17, 2020).

8. The amount of damages stated in the attached Statements of Account are true and correct to the best of my personal knowledge, information, and belief and includes any deduction for payments, credits, and offsets to which Debtor is entitled.

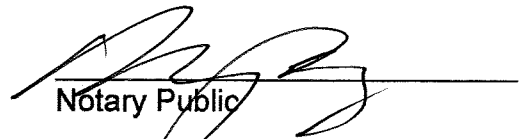
[signature block and notary provision on the following page]

  
Anthony Chang  
Vice President, Asset  
Management  
Washington Real Estate  
Investment Trust

STATE OF District of  
COUNTY OF Columbia ) ss:

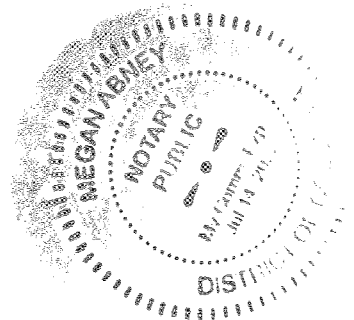
On this the 26<sup>th</sup> day of August, 2020, before me, Megan Abney, the undersigned officer, personally appeared Anthony Chang, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing document, and acknowledged that she executed the foregoing document for the purposes therein contained and that she is duly authorized to execute said document.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public

My Commission Expires: July 14<sup>th</sup>, 2022

W3561804.015



UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	)	Case No. 20-31320
	)	
GOLD'S HOLDING CORP.,	)	Chapter 11
	)	
Debtor.	)	

**STATEMENT OF ACCOUNT IN SUPPORT OF PROOF OF  
CLAIM FILED BY WASHINGTON REAL ESTATE INVESTMENT TRUST**

**I. PRE-PETITION RENT:**

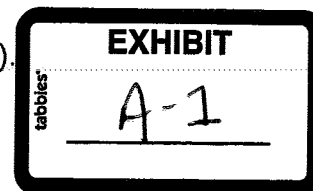
DATE	DESCRIPTION	CHARGE	BALANCE
	Rent and additional rent due through April 2020 - See Exhibit A-2	\$204,933.39	\$204,933.39
5/1/20 – 5/3/20	Minimum Rent ("Rent") (pro-rated at \$26,615.42 a month)	\$2,575.69	\$207,509.08
5/1/20 – 5/3/20	Common Area Maintenance ("CAM") (pro-rated at \$8,660.98)	\$838.16	\$208,347.24
5/1/20 – 5/3/20	Real Estate Taxes ("RET") (pro-rated at \$4,974.90 a month)	\$466.40	\$208,813.64
	Damages (waterproofing)	\$38,653.00	\$247,466.64
	Damages (compressor and control board)	\$8,025.00	\$255,491.64
	2019 CAM Reconciliation	\$6,124.05	\$261,615.69
	2019 RET Reconciliation	\$1,243.86	\$262,859.55

**TOTAL PRE-PETITION RENT**

**\$262,859.55**

**II. LEASE REJECTION DAMAGES**

Pursuant to Bankruptcy Code Section 502(b)(6), rejection damages are calculated as the greater of one (1) year's rent under the Lease or fifteen percent (15%) of the rent remaining under the Lease, but not to exceed three (3) years rent, and calculated from the earlier of the date of filing of the petition (May 4, 2020) or the date on which Landlord repossessed or Tenant surrendered the Premises (January 17, 2020).



**a. TOTAL RENT AND ADDITIONAL RENT  
RESERVED UNDER LEASE:**

<b>DATE</b>	<b>DESCRIPTION</b>	<b>CHARGE</b>	<b>BALANCE</b>
1/17/20 – 1/31/20	Rent (pro-rated at \$26,615.42 a month)	\$12,878.43	\$12,878.43
1/17/20 – 1/31/20	CAM (pro-rated at \$7,584.66)	\$3,670.00	\$16,548.43
1/17/20 – 1/31/20	Real Estate Taxes ("RET") (pro-rated at \$4,974.90 a month)	\$2,407.21	\$18,955.64
2/1/20 – 12/31/20	Rent (at \$26,615.42 a month)	\$292,769.62	\$311,725.26
2/1/20 – 12/31/20	CAM (at \$8,660.98 a month)	\$95,270.78	\$406,996.04
2/1/20 – 12/31/20	RET (at \$4,974.90 a month)	\$54,723.90	\$461,719.94
1/1/21 – 1/16/21	Rent (pro-rated at \$26,615.42 a month)	\$13,736.99	\$475,456.93
1/1/21 – 1/16/21	CAM (pro-rated at \$8,660.98)	\$4,470.18	\$479,927.11
1/1/21 – 1/16/21	Real Estate Taxes ("RET") (pro-rated at \$4,974.90 a month)	\$2,567.69	\$482,494.80 <sup>1</sup>
1/17/21 – 1/31/21	Rent (pro-rated at \$26,615.42 a month)	\$12,878.43	\$495,373.23
1/17/21 – 1/31/21	CAM (pro-rated at \$8,660.98)	\$4,190.80	\$499,564.03
1/17/21 – 1/31/21	Real Estate Taxes ("RET") (pro-rated at \$4,974.90 a month)	\$2,407.21	\$501,971.24
2/1/21 – 5/1/22	Rent (at \$26,615.42 a month)	\$425,846.72	\$927,817.96
2/1/21 – 5/1/22	CAM (at \$8,660.98 a month)	\$138,575.68	\$1,066,393.64
2/1/21 – 5/1/22	RET (at \$4,974.90 a month)	\$79,598.40	\$1,145,992.04

**TOTAL RENT AND ADDITIONAL RENT REMAINING UNDER LEASE: \$1,145,992.04**

<sup>1</sup> This amount constitutes one year's rent under the Lease from the date on which Tenant surrendered possession of the Premises to Landlord.

<b>b. ONE (1) YEAR CAP PURSUANT TO SECTION 502(b)(6):</b>	<b>\$482,494.80</b>
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**III. TOTAL CLAIM**

Pre-Petition Damages	\$262,859.55
Lease Rejection Damages	<u>\$482,494.80</u>
<b>TOTAL CLAIM:</b>	<b>\$745,354.35</b>

W3561804.015

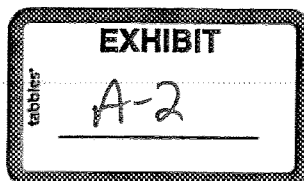
**Tenant Statement of Account**  
as of 08/19/2020  
Excluding Deposits

**Gold's Gym**  
c/o E Smith Realty Partners  
1600 North Dallas Parkway, Suite 550 N  
Attn: Alyssa Haydin  
Dallas, TX 75248

Page 1 of 5  
Tenant #: 29628

Month /Date	Invoice	Lease	Bill Code	Description	Amount	Monthly Balance	Running Balance
<b>Montrose Shopping Center</b>							
Beginning Balance as of 12/31/2018							(32,696.37)
<b>2019 January</b>							
01/01	1260805	27888	CAM	CAM Estimate	6,558.31		
01/01	1260805	27888	RRTL	Retail Rent	26,615.42		
01/01	1260805	27888	TAX	Real Estate Tax Estimate	4,955.86		
Total Monthly Charges					38,129.59		
01/30				Check #: ACH WIRE	(42,641.00)		
Total Monthly Payments					(42,641.00)	(4,511.41)	(37,207.78)
<b>2019 February</b>							
02/01	1263914	27888	CAM	CAM Estimate	6,558.31		
02/01	1263914	27888	RRTL	Retail Rent	26,615.42		
02/01	1263914	27888	TAX	Real Estate Tax Estimate	4,955.86		
Total Monthly Charges					38,129.59		
02/28				Check #: ACHWIRE	(38,129.59)		
Total Monthly Payments					(38,129.59)	0.00	(37,207.78)
<b>2019 March</b>							
03/01	1265756	27888	CAM	CAM Estimate	6,558.31		
03/01	1265756	27888	RRTL	Retail Rent	26,615.42		
03/01	1265756	27888	TAX	Real Estate Tax Estimate	4,955.86		
Total Monthly Charges					38,129.59		
03/29				Check #: ACHWIRE April Rent	(38,129.59)		
Total Monthly Payments					(38,129.59)	0.00	(37,207.78)
<b>2019 April</b>							
04/01	1268489	27888	CAM	CAM Estimate	6,558.31		
04/01	1268489	27888	RRTL	Retail Rent	26,615.42		
04/01	1268489	27888	TAX	Real Estate Tax Estimate	4,955.86		
04/01	1269948	27888	LEGL	April 19 Legal Fees	518.65		
04/09	1269359	27888	H2O	1st Qtr 2019 Water Usage	4,203.39		
Total Monthly Charges					42,851.63		
04/30				Check #: ACHWIRE	(38,129.59)		
Total Monthly Payments					(38,129.59)	4,722.04	(32,485.74)

washreit.com  
NYSE: WRE



1775 I Street, NW, Suite 1000  
Washington, DC 20006  
+1 202 774 3200

**Gold's Gym**  
c/o E Smith Realty Partners  
1600 North Dallas Parkway, Suite 550 N  
Attn: Alyssa Haydin  
Dallas, TX 75248

Page 2 of 5  
Tenant #: 29628

Month /Date	Invoice	Lease	Bill Code	Description	Amount	Monthly Balance	Running Balance
<b>2019 May</b>							
05/01	1271552	27888	CAM	CAM Estimate	6,558.31		
05/01	1271552	27888	RRTL	Retail Rent	26,615.42		
05/01	1271552	27888	TAX	Real Estate Tax Estimate	4,955.86		
				<b>Total Monthly Charges</b>	<b>38,129.59</b>		
05/31				Check #: ACHWIRE	(42,332.98)		
				<b>Total Monthly Payments</b>	<b>(42,332.98)</b>	(4,203.39)	(36,689.13)
<b>2019 June</b>							
06/01	1273747	27888	CAM	CAM Estimate	6,558.31		
06/01	1273747	27888	RRTL	Retail Rent	26,615.42		
06/01	1273747	27888	TAX	Real Estate Tax Estimate	4,955.86		
06/03	1275431	27888	LEGL	June 19 Legal Fees	421.48		
06/15	1275336	27888	LATE	6/19 Late Fee	327.92		
06/15	1275336	27888	LATE	6/19 Late Fee	1,330.77		
06/15	1275336	27888	LATE	6/19 Late Fee	247.79		
06/18	1275589	27888	H2O	Water Usage 3/21/19-6/3/19	2,711.07		
				<b>Total Monthly Charges</b>	<b>43,168.62</b>		
06/28				Check #: ACHWIRE	(38,129.59)		
				<b>Total Monthly Payments</b>	<b>(38,129.59)</b>	5,039.03	(31,650.10)
<b>2019 July</b>							
07/01	1276601	27888	CAM	CAM Estimate	6,558.31		
07/01	1276601	27888	RRTL	Retail Rent	26,615.42		
07/01	1276601	27888	TAX	Real Estate Tax Estimate	4,955.86		
07/01	1278067	27888	CAMR	2018 CAMSettlement	5,765.33		
07/01	1278081	27888	TAXR	2018 RET Settlement	(6,027.82)		
				<b>Total Monthly Charges</b>	<b>37,867.10</b>		
07/31				Check #: ACHWIRE	(38,129.59)		
				<b>Total Monthly Payments</b>	<b>(38,129.59)</b>	(262.49)	(31,912.59)
<b>2019 August</b>							
08/01	1279867	27888	CAM	CAM Estimate	6,558.31		
08/01	1279867	27888	RRTL	Retail Rent	26,615.42		
08/01	1279867	27888	TAX	Real Estate Tax Estimate	4,955.86		
				<b>Total Monthly Charges</b>	<b>38,129.59</b>		
08/01				Check #: Credit Apply	0.00		
				<b>Total Monthly Payments</b>	<b>0.00</b>	38,129.59	6,217.00
<b>2019 September</b>							
09/01	1282555	27888	CAM	CAM Estimate	6,558.31		
09/01	1282555	27888	RRTL	Retail Rent	26,615.42		
09/01	1282555	27888	TAX	Real Estate Tax Estimate	4,955.86		
				<b>Total Monthly Charges</b>	<b>38,129.59</b>		
09/03				Check #: ACHWIRE	(38,129.59)		
				<b>Total Monthly Payments</b>	<b>(38,129.59)</b>	0.00	6,217.00
<b>2019 October</b>							
10/01	1284880	27888	CAM	CAM Estimate	6,558.31		
10/01	1284880	27888	RRTL	Retail Rent	26,615.42		



**Gold's Gym**  
c/o E Smith Realty Partners  
1600 North Dallas Parkway, Suite 550 N  
Attn: Alyssa Haydin  
Dallas, TX 75248

Page 3 of 5  
Tenant #: 29628

Month /Date	Invoice	Lease	Bill Code	Description	Amount	Monthly Balance	Running Balance
10/01	1284880	27888	TAX	Real Estate Tax Estimate	4,955.86		
10/17	1285430	27888	H2O	Water Usage 6/3/19-9/11/19	3,407.84		
				<b>Total Monthly Charges</b>	<b>41,537.43</b>		
10/01				Check #: ACHWIRE	(38,129.59)		
10/31				Check #: ACHWIRE	(38,129.59)		
				<b>Total Monthly Payments</b>	<b>(76,259.18)</b>		
						(34,721.75)	(28,504.75)
<b>2019 November</b>							
11/01	1286697	27888	CAM	CAM Estimate	6,558.31		
11/01	1286697	27888	RRTL	Retail Rent	26,615.42		
11/01	1286697	27888	TAX	Real Estate Tax Estimate	4,955.86		
				<b>Total Monthly Charges</b>	<b>38,129.59</b>		
						38,129.59	9,624.84
<b>2019 December</b>							
12/01	1289436	27888	CAM	CAM Estimate	6,558.31		
12/01	1289436	27888	RRTL	Retail Rent	26,615.42		
12/01	1289436	27888	TAX	Real Estate Tax Estimate	4,955.86		
12/15	1289700	27888	H2O	Water Usage 9/11/19-12/13/19	4,753.87		
				<b>Total Monthly Charges</b>	<b>42,883.46</b>		
12/02				Check #: ACHWIRE	(41,537.43)		
				<b>Total Monthly Payments</b>	<b>(41,537.43)</b>		
						1,346.03	10,970.87
<b>2020 January</b>							
01/01	1290704	27888	CAM	CAM Estimate	7,584.66		
01/01	1290704	27888	RRTL	Retail Rent	26,615.42		
01/01	1290704	27888	TAX	Real Estate Tax Estimate	4,974.90		
01/15	1291658	27888	LATE	1/20 Late Fee	379.24		
01/15	1291658	27888	LATE	1/20 Late Fee	1,330.77		
01/15	1291658	27888	LATE	1/20 Late Fee	248.74		
				<b>Total Monthly Charges</b>	<b>41,133.73</b>		
01/02				Check #: ACHWIRE	(12,299.86)		
				<b>Total Monthly Payments</b>	<b>(12,299.86)</b>		
						28,833.87	39,804.74

Gold's Gym  
c/o E Smith Realty Partners  
1600 North Dallas Parkway, Suite 550 N  
Attn: Alyssa Haydin  
Dallas, TX 75248

Page 4 of 5  
Tenant #: 29628

Month /Date	Invoice	Lease	Bill Code	Description	Amount	Monthly Balance	Running Balance
<b>2020 February</b>							
02/01	1292532	27888	CAM	CAM Estimate	(7,584.66)		
02/01	1292532	27888	CAM	CAM Estimate	8,660.98		
02/01	1292532	27888	CAM	CAM Estimate	8,660.98		
02/01	1292532	27888	RRTL	Retail Rent	26,615.42		
02/01	1292532	27888	TAX	Real Estate Tax Estimate	4,974.90		
02/01	1293482	27888	LEGL	Oct?Dec 2019 Legal Bills	834.79		
02/01	1293485	27888	LEGL	Oct?Dec 2019 Legal Bills	516.25		
02/01	1293488	27888	LEGL	Jan 2020 Legal Fees	1,696.25		
02/05	1292551	27888	H2O	H2o Usage 12/13/19-1/10/2020	730.52		
02/15	1293250	27888	LATE	2/20 Late Fee	433.05		
02/15	1293250	27888	LATE	2/20 Late Fee	1,330.77		
02/15	1293250	27888	LATE	2/20 Late Fee	248.75		
<b>Total Monthly Charges</b>					<b>47,118.00</b>		
02/03				Check #: ACHWIRE	(4,753.87)		
<b>Total Monthly Payments</b>					<b>(4,753.87)</b>		
						42,364.13	82,168.87
<b>2020 March</b>							
03/01	1294208	27888	CAM	CAM Estimate	8,660.98		
03/01	1294208	27888	RRTL	Retail Rent	26,615.42		
03/01	1294208	27888	TAX	Real Estate Tax Estimate	4,974.90		
03/06	1294702	27888	LEGL	Feb20 Legal Billback 13-52024	2,010.62		
<b>Total Monthly Charges</b>					<b>42,261.92</b>		
						42,261.92	124,430.79
<b>2020 April</b>							
04/01	1296135	27888	CAM	CAM Estimate	8,660.98		
04/01	1296135	27888	RRTL	Retail Rent	26,615.42		
04/01	1296135	27888	TAX	Real Estate Tax Estimate	4,974.90		
<b>Total Monthly Charges</b>					<b>40,251.30</b>		
						40,251.30	164,682.09
<b>2020 May</b>							
05/01	1297229	27888	CAM	CAM Estimate	8,660.98		
05/01	1297229	27888	RRTL	Retail Rent	26,615.42		
05/01	1297229	27888	TAX	Real Estate Tax Estimate	4,974.90		
<b>Total Monthly Charges</b>					<b>40,251.30</b>		
						40,251.30	204,933.39

### THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE ("Third Amendment") is entered into this 17 day of September, 2018 by and between Washington Real Estate Investment Trust (successor-in-interest to CDT Associates Limited Partnership) ("Landlord") and GBG, LLC, a Virginia limited liability company, d/b/a Gold's Gym (formerly known as GBG, Inc., successor-in-interest to Gold's Holding Corp.) ("Tenant"). Gold's Gym International, Inc., a Delaware corporation ("Guarantor") is signing this Third Amendment solely for purposes of Paragraph 20.

#### RECITALS:

WHEREAS, Landlord and Tenant are parties to a Shopping Center Lease dated October 15, 2004 ("Lease") whereby Tenant leased certain premises described in the Lease as 5620 Randolph Road, Rockville, MD 20852, deemed to contain approximately 29,035 square feet of gross leasable area (said premises being hereinafter called the "Premises"), located at Montrose Shopping Center (hereinafter called the "Shopping Center"); and

WHEREAS, Guarantor executed that certain Guaranty dated October 6, 2004 ("Guaranty") whereby Guarantor guaranteed unto Landlord the prompt, faithful and complete performance and observance by Tenant of all the terms, covenants and conditions of the Lease; and

WHEREAS, the Lease was first amended on May 2, 2011 by a First Amendment to Lease ("First Amendment") whereby, among other things, Prohibited Uses and Restricted Uses under the Lease were amended such that neither included a supermarket or food store; and

WHEREAS, pursuant to an Assignment and Assumption of Lease dated March 26, 2014 ("Assignment") (i) the Lease was assigned from Gold's Holding Corp. to GBG Inc., and (ii) Guarantor reaffirmed its obligations under the Guaranty; and

WHEREAS, the Lease was next amended on January 20, 2015 by a Second Amendment to Lease ("Second Amendment") whereby, among other items, the Term of the Lease was extended until May 31, 2022 ("Extended Term Expiration Date"); and

WHEREAS, on August 25, 2017, GBG, Inc., a Virginia corporation and tenant under the Lease, converted to GBG, LLC, a Virginia limited liability company; and

WHEREAS, as of June 29, 2018, Tenant acknowledges an arrearage on Tenant's account in the amount of \$10,878.21 ("Arrearage"); and

WHEREAS, a dispute has arisen between the parties regarding alleged water intrusion causing the discontinued operation of two escalators at the Premises; and

WHEREAS, as consideration for this Third Amendment, Tenant has agreed to grant Landlord a license for access to the loading dock that is a part of the Premises; and

WHEREAS, Landlord and Tenant desire to amend the Lease upon the terms, conditions, covenants and agreements set forth in this Third Amendment; and

WHEREAS, the Lease, the First Amendment, the Assignment, the Second Amendment to Lease, and the Third Amendment shall all hereinafter be collectively referred to as the "Lease".

#### WITNESSETH:

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid by each party to the other, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties agree as follows.

1. Recitals Incorporated. The recitals contained above are true to the best of the parties' knowledge and are incorporated by reference herein.

2. Defined Terms. Any term used herein that is defined in the Lease shall have the same meaning as specified in the Lease unless otherwise specifically provided herein.

3. Premises. The parties agree to amend the Lease to reflect the correct address for the Premises as 5520 Randolph Road, Rockville, MD 20852. All references to the Premises in the Lease shall hereinafter refer to the corrected address above.

4. Amendment to Section 10.02. Section 10.02 of the Lease is hereby amended and restated in its entirety as follows:

"Saving and excepting the repairs for which Landlord is responsible under Sections 10.01, this Section 10.02, and 20.01 of this Lease, Tenant shall keep the Premises, the elevator and escalator serving the Premises, and all systems, equipment and facilities inclusive of the heating, ventilating and air-conditioning system and interior electrical and plumbing systems located upon and serving exclusively the Premises in good condition and repair (reasonable wear and tear excepted), and shall make all replacements required to maintain said status of repair. Tenant shall also keep in good condition the common areas within twenty (20) feet of the wall in which the Premises rear service door is located. Upon Tenant's completion of the Work (as hereinafter defined), Tenant's maintenance and repair obligations with respect to the elevator and escalator serving the Premises shall expressly exclude damages to the extent caused by Landlord's failure to maintain the roof, exterior walls and structural floor of the Premises (excluding any damages caused to those portions of the Premises that were caused by Tenant), and Landlord shall be responsible for all necessary repairs of such damages at its sole cost and expense. Provided, however that Tenant shall provide Landlord with prompt written notice of any damage to the roof, exterior walls and structural floor of the Premises and shall allow Landlord a reasonable time period to remedy such damage. If Tenant does not provide Landlord written notice of said damage within five (5) days of Tenant's actual knowledge of said damage, Landlord shall not be responsible for any repairs to the elevator and escalator serving the Premises, and all systems, equipment and facilities inclusive of the heating, ventilating and air conditioning system and interior electrical and plumbing systems located upon and serving exclusively the Premises."

5. Elevator Repairs. Within thirty (30) days of execution of this Third Amendment, Tenant shall provide evidence to Landlord of the certification by Montgomery County, Maryland of the recently repaired freight elevator. For the remainder of the Lease Term, and any extension thereto, Tenant shall properly maintain the elevator in compliance with Section 10.02 of the Lease, as hereby amended, and shall maintain proper certification of the freight elevator and provide a copy of same to Landlord within thirty (30) days of receipt.

6. Escalator Repairs. Tenant shall enter into a contract with a duly licensed and insured contractor experienced in escalator repairs (the "Contractor") for the repair work necessary to bring both escalators at the Premises to full and complete operation (the "Work"), at Tenant's cost and expense except as provided in Paragraph 8 below and shall complete the Work within five (5) weeks of Tenant's execution of this Amendment, subject to day-for-day delays for circumstances beyond Tenant's reasonable control. The Work shall be substantially similar to the scope of work contemplated in the Work Order created by ThyssenKrupp dated September 9, 2016. **TIME IS OF THE ESSENCE.**

7. Maintenance Contract. Tenant shall enter into a valid maintenance contract(s) for all escalators and elevators at the Premises (the "Contract") prior to the completion of the Work and shall maintain the Contract for the remainder of the Lease Term, and any applicable extensions thereto, at Tenant's sole cost and expense. Tenant shall provide Landlord with a copy of the Contract within thirty (30) days of execution, and, for the remainder of the Lease Term, provide a copy thereof within thirty (30) days after receipt of written demand from Landlord, but in no event more than once per Lease Year.

8. Payment. Tenant shall be solely responsible for the full payment to Contractor for the Work. However, provided Tenant is not in default hereunder, after receipt of written notice of default from Landlord and failure to cure within five (5) business days, Landlord shall reimburse Tenant for one-half of the total cost of the Work, up to the maximum amount of \$25,521.00 ("Landlord's Payment") within thirty (30) days of Landlord's receipt of (i) an executed lien waiver from the Contractor for the Work on a commercially reasonable form to be mutually agreed upon between the parties and (ii) a paid invoice/receipt reflecting the final total cost of the Work. Landlord's Payment represents the only sum Landlord shall pay to Tenant for the Work.

9. Repairs by Tenant. Tenant acknowledges its continuing obligation pursuant to Section 10.02 of the Lease, as amended hereby.

10. Repairs by Landlord. Landlord acknowledges its continuing obligation pursuant to Section 10.01 of the Lease.

11. Arrearage. Within five (5) business days of execution of this Third Amendment, Tenant shall remit payment to Landlord in the amount of \$10,878.21 via certified check, money order, or wire transfer to satisfy the Arrearage. Tenant shall timely and fully remit payment for all other rent, additional rent, and other charges that accrue under the Lease as and when due.

12. Release and Covenant Not to Sue. Except for the obligations set forth in this Third Amendment, including, without limitation, the timely completion of the Work by Tenant as outlined in Paragraph 6 of this Third Amendment and payment of Landlord's Payment by Landlord as outlined in Paragraph 8 of this Third Amendment, each party hereby releases and discharges the other party of and from all other debts, obligations, claims, demands, judgments or causes of action of any kind whatsoever, known or unknown, in tort, contract, by statute or on any other basis, for equitable relief, compensatory, punitive or other damages, expenses (including attorneys' fees), reimbursements, or costs of any kind arising out of, resulting from, or relating to the alleged water intrusion into the Premises and/or the discontinued operation of the elevators and escalators, through the effective date of this Third Amendment. Each party represents that it has not filed any lawsuits against the other party with any court. Each party hereby covenants and agrees not to bring, file or allow to be brought or filed on its behalf any lawsuit, complaint, action or claim in any federal, state or local court or agency against the other party at any time hereafter pertaining to the matters released above.

13. Intentionally omitted.

14. License. As consideration for Landlord's execution of this Third Amendment, Tenant hereby grants Landlord and its assigns an irrevocable and unlimited license for access to and use of the loading dock (the "License") that is considered a part of the Premises. The License shall be for the remainder of the Lease Term and any extension thereto. The License shall only grant Landlord access to and use of the loading dock and shall no way alter the size of the Premises, or any other term of the Lease. Landlord shall have no limitation on its use or occupancy of the loading dock and may unilaterally allow other tenants at the Shopping Center, or third parties, access to and use of the loading dock through Landlord's License, provided that Landlord's or any third party's use of the loading dock shall not interfere with Tenant's use of the Premises. If Landlord or any third party's use of the loading dock shall interfere with Tenant's use of the Premises, Tenant shall provide written notice of said disruption to its business and allow Landlord sufficient time to remedy the interference either through modification of the loading dock (as detailed below) or through modification of the hours that Landlord or third party operates said loading dock. Tenant further agrees that Landlord and its assigns may access and use the loading dock pursuant to the License granted hereby, without charge to Tenant or diminution of the rent payable under the Lease, and without being deemed guilty of a trespass, breach of quiet enjoyment, an eviction (actual or constructive), or a nuisance, disturbance, or interruption of the business of Tenant or of Tenant's use or occupancy of the Premises. Additionally, if any modifications to the loading dock are necessary to initiate and maintain Landlord's License, Landlord shall make such modifications at Landlord's sole cost and expense, provided that such modifications and use of the loading dock as modified shall not interfere with Tenant's use of the Premises.

15. Representations and Warranties. Landlord and Tenant represent, warrant and covenant to each other that, as of its execution of this Third Amendment, each of the following shall be true and correct:

(a) No party other than Tenant had any right to, or interest in, the Lease or the Premises, whether as a secured party, subtenant, assignee or otherwise other than Landlord. There is no claim, protest, appeal, litigation or proceeding pending or threatened which involves the Lease or the Premises.

(b) To the best of Landlord's and Tenant's knowledge, there is no basis for any claim against Tenant, Landlord or the Premises arising out of, or in any way relating to, the Lease.

(c) Landlord and Tenant, have the full right, power and authority to execute, deliver and perform the obligations under this Third Amendment:

16. Condition of Premises. The Premises are delivered AS-IS, but the Tenant represents and warrants that Tenant will complete the Work in compliance this Third Amendment.

17. OFAC Certification. Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

18. Confidentiality. Landlord and Tenant agree that, as a condition of this Third Amendment, the existence, terms and provisions of this Third Amendment shall be kept completely confidential and shall not be disclosed unless compelled by law (except the respective parties' attorneys, financial advisors, and officers or directors). In responding to any other inquiries about this dispute, the Landlord and Tenant will respond merely that the dispute has been resolved to all parties' satisfaction.

19. Notices. The Lease is hereby amended to reflect that all notices required hereunder by either party to the other shall be sent by recognized overnight courier with receipt therefor (such as Federal Express) or by certified mail. Notices to Landlord shall hereafter be sent to Washington Real Estate Investment Trust ("WashREIT"), 1775 Eye Street NW, Suite 1000, Washington, DC 20006, Attention: Asset Manager - Retail. Notices to Tenant shall be at the following address:

GBG, LLC  
4001 Maple Avenue, Suite 200  
Dallas, Texas 75219  
Attn: Real Estate/Accounting Department

With a copy to:  
E Smith Realty Partners  
16000 North Dallas Parkway, Suite 550 N  
Dallas, Texas 75248  
Attention: Lease Administration

20. Entire Agreement/Guaranty. The Lease and this Third Amendment (including any and all exhibits, addenda and/or riders attached to this Third Amendment, each of which is hereby made a part of this Third Amendment with full force and effect as is set forth herein)

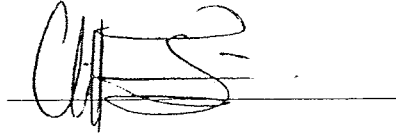
contain the entire agreement of the parties in regard to the Premises and this Third Amendment. Except as amended hereby, all of the terms and provisions of the Lease shall be and remain in full force and effect. Guarantor acknowledges and agrees that the Guaranty is and will remain in full force and effect and hereby ratifies and affirms its guaranty of Tenant's obligations under the Lease as provided for therein.

21. Condition. This agreement will not be binding upon any party until this document has been executed by all parties thereto.

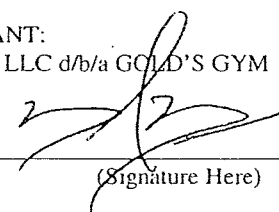
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have executed under seal and delivered this Third Amendment under seal on the date first above written.

Witness/Attest:




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

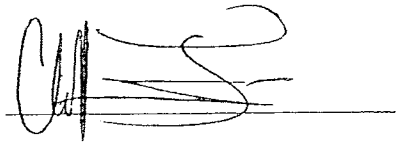
By:  (Seal)  
(Signature Here)

Name: Brandon Bean

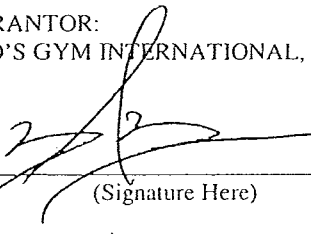
Title: C.E.O.

Fed Tax ID Number: 

Witness/Attest:



GUARANTOR:  
GOLD'S GYM INTERNATIONAL,  
INC.

By:  (Seal)  
(Signature Here)

Name: Brandon Bean

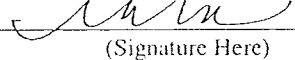
Title: C.E.O.

Fed Tax ID Number: 

Witness/Attest:



LANDLORD:  
WASHINGTON REAL ESTATE  
INVESTMENT TRUST

By:  (Seal)  
(Signature Here)

Name: Mandi Wedin  
Title: Vice President, Asset Management



## SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is entered into this 20<sup>th</sup> day of January, 2015 by and between Washington Real Estate Investment Trust (successor in interest to WREIT Associates Limited Partnership) ("Landlord") and GBG Inc., a Virginia corporation, d/b/a Gold's Gym (successor in interest to Gold's Holding Corp., Delaware corporation) ("Tenant") and Gold's Gym International, Inc., a Delaware corporation ("Guarantor").

### RECITALS:

WHEREAS, Landlord and Tenant are parties to a Shopping Center Lease dated October 15, 2004 ("Lease") whereby Tenant leased certain premises deemed to contain approximately 29,035 square feet of gross leasable area (said premises being hereinafter called the "Premises"), located at 5620 Randolph Road in the shopping center known as Montrose Shopping Center (hereinafter called the "Shopping Center"); and

WHEREAS, Guarantor executed that certain Guaranty dated October 6, 2004 ("Guaranty") whereby Guarantor guaranteed unto Landlord the prompt, faithful and complete performance and observance by Tenant of all of the terms, covenants and conditions of the Lease; and

WHEREAS, the Lease was first amended on May 2, 2011 ("First Amendment") whereby, among other things, Prohibited Uses and Restricted Uses under the Lease were amended such that neither included a supermarket or food store; and

WHEREAS, pursuant to the Assignment and Assumption of Lease dated March 26, 2014 ("Assignment") (i) the Lease was assigned from Gold's Holding Corp. to GBG Inc., and (ii) Guarantor reaffirmed its obligations under the Guaranty; and

WHEREAS, the Lease expires on January 31, 2015; and

WHEREAS, Tenant desires to extend the Term of the Lease for seven (7) years and four (4) months and Landlord is willing to extend the Term of the Lease for such period which shall be called the "Extended Term"; and

WHEREAS, Landlord and Tenant desire to amend the Lease upon the terms, conditions, covenants and agreements set forth in this Second Amendment; and

WHEREAS, the Lease, the First Amendment, the Assignment, and the Second Amendment shall all hereinafter be collectively referred to as the "Lease".

### WITNESSETH:

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid by each party to the other, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties agree as follows.

1. Recitals Incorporated. The recitals contained above are true to the best of the parties' knowledge and are incorporated by reference herein.

2. Defined Terms. Any term used herein that is defined in the Lease shall have the same meaning as specified in the Lease unless otherwise specifically provided herein.

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3. Term. The extended term shall be for seven (7) years and four (4) months ("Extended Term"). The Extended Term shall commence February 1, 2015 ("Extended Term Commencement Date") and shall expire on May 31, 2022 ("Extended Term Expiration Date"). The Extended Term and the original Term may be collectively referred to in the Lease as "Lease Term".

4. Minimum Rent. Tenant agrees to pay during the Extended Term hereof a minimum rent without deduction, set off, abatement, demand or counterclaim (except as otherwise provided in the Lease) in the amount of Three Hundred Nineteen Thousand Three Hundred Eighty-Five and 00/100 Dollars (\$319,385.00) payable in equal monthly installments of Twenty-Six Thousand Six Hundred Fifteen and 42/100 Dollars (\$26,615.42) (hereinafter called "Minimum Rent").

5. Security Deposit. Landlord and Tenant acknowledge that Landlord is holding a security deposit in the amount of ~~Two Thousand Five Hundred Ten and 00/100 Dollars (\$2,510.00)~~. Zero

6. Exclusive. The following shall be added to the end of the last sentence of Paragraph 6 of Exhibit F of the Lease:

"; provided however, Landlord shall be permitted to lease space in the Shopping Center to any tenant of no more than 4,000 square feet offering Pilates, yoga, or a barre concept, but specifically excluding a spinning concept."

7. Landlord's Termination Option. The following Article XXXI is hereby added to the Lease:

ARTICLE XXXI. Landlord's Termination Option.

31.01. Notwithstanding anything to the contrary contained in the Lease, Landlord shall have the right to terminate the Lease ("Landlord's Termination"), in the event Landlord obtains a signed letter of intent for the Premises ("Offer LOI"), provided Landlord gives Tenant not less than one hundred twenty (120) days prior written notice in accordance with the Notice provision of the Lease ("Termination Notice"). The Termination Notice shall specify the effective date of the termination ("Termination Date"). Landlord's Termination may be exercised at any time during the Term (including any renewal or extensions thereof) notwithstanding that the Termination Date is prior to the Extended Term Expiration Date. Tenant hereby understands and acknowledges the foregoing provision, and further agrees Landlord shall have no liability to Tenant on account of Landlord's Termination. In the event Landlord exercises Landlord's Termination this Lease shall cease and terminate as of the Termination Date in the Termination Notice as if said date were the Extended Term Expiration Date and the Minimum Rent shall be apportioned as of the Termination Date.

31.02 Notwithstanding the foregoing, Tenant shall have the right of first refusal ("Right of First Refusal") in the event Landlord obtains an Offer LOI for the Premises and elects to terminate the Lease. Landlord shall submit to Tenant the Offer LOI along with the Termination Notice. On or before the fifth (5th) business day following Tenant's receipt of the Termination Notice, Tenant shall have the right to send Landlord a notice ("Right of First Refusal Notice") stating that Tenant elects to lease the Premises upon the terms and conditions set forth in the Offer LOI ("Offer LOI Terms").

(a) If Tenant timely exercises the Right of First Refusal, Landlord and Tenant will promptly enter into an amendment to the Lease upon the Offer

LOI Terms. If for any reason, Tenant fails to timely exercise the Right of First Refusal, or if Tenant properly exercises the Right of First Refusal but thereafter for any reason does not timely enter into the amendment, Landlord shall be free to terminate the Lease and lease the Premises to another tenant on the Offer LOI Terms.

(b) In the event there exists an Event of Default under this Lease on the date of Tenant's First Refusal Right Notice, and such Event of Default has continued beyond all applicable notice and cure periods under the Lease, then, at Landlord's option Tenant's Right of First Refusal shall lapse and be of no further force or effect and Landlord may freely lease the Premises to any other person or entity on such terms and conditions as Landlord in its sole discretion may determine.

(c) Tenant's rights under this Article may be exercised only by Tenant if the Premises is intended for Tenant's own use in accordance with Section 1.01(c) of the Lease, and shall not be exercised by any other transferee, mortgagee, subtenant or other assignee of Tenant, except for a Permitted Transferee.

(d) Notwithstanding anything in this Article to the contrary, Landlord shall not be obligated to provide the Offer LOI and Tenant shall have no rights hereunder, when less than twelve (12) months remain in the Extended Term.

(e) After receiving Tenant's First Refusal Notice, Landlord shall prepare and submit to Tenant an amendment to this Lease amending the Lease in accordance with the Offer LOI Terms. In the event Tenant fails to execute such amendment within ten (10) days of Tenant's receipt of such amendment, then at Landlord's option, Tenant's Right of First Refusal as provided in this Article may be null and void and of no further force or effect and Landlord shall have the right to terminate the Lease and lease the Premises or any portion thereof upon such terms and conditions as Landlord in its sole discretion may determine.

31.03. Provided that Tenant has not leased the Premises in accordance with the terms of the Offer LOI, on the Termination Date Tenant shall, without notice, quit and surrender the Premises to Landlord in accordance with the provisions of the Lease, including but not limited to Section 30.12 of the Lease. TIME IS OF THE ESSENCE. Tenant hereby waives any requirement of a thirty (30) days' notice to quit the Premises and any and all other notices to quit. Any holding over by Tenant after the Termination Date shall be an unlawful detainer and Tenant shall be subject to immediate eviction. Tenant acknowledges and agrees that under no circumstances may Tenant hold over in the Premises after Termination Date unless Tenant obtains Landlord's prior written consent to do so. Tenant further acknowledges and agrees that if Tenant does hold over after the Termination Date without obtaining Landlord's prior written consent, (i) any notice and cure period otherwise granted to Tenant under the Lease before Landlord may exercise its rights and remedies thereunder shall be null and void; (ii) Tenant shall pay Landlord a holdover fee of two (2) times the Minimum Rent then in effect, pro-rated on a daily basis, per day for each day Tenant holds over past the Termination Date set forth in Landlord's Notice ("Daily Holdover Use and Occupancy Fee"); (iii) Landlord may accept the Daily Holdover Use and Occupancy Fee and concurrently commence legal proceedings to regain possession of the Premises and/or pursue any and all other rights and remedies available to Landlord under the Lease and/or the law; (iv) in addition to any other rights and remedies provided to Landlord under the Lease and/or law (including pursuant to Article XXIV of the Lease),

Save Date 1/7/2015 1:51:00 PM

Create Date 1/7/2015 11:51:00 AM

\\RELEASE DOCUMENTS\RETAIL\Montrose Center\Gold's Gym\Second Amendment Extension Rev 3 010715.doc

Tenant shall indemnify and hold Landlord harmless from and against any and all loss, liability, damages and expenses (including without limitation, consequential damages, reasonable attorneys' fees, the costs of investigation and settlement of any claims) sustained or incurred by Landlord on account of or resulting from such failure to vacate."

8. Tenant's Termination Option. The following Article XXXII is hereby added to the Lease:

"ARTICLE XXXII. Tenant's Termination Option.

32.01 If Tenant's trailing twelve (12) month club level EBITDA is less than Zero and 00/100 Dollars (\$0.00) (after factoring in a capital expenditure reserve of five percent (5%) of total club revenues), then Tenant shall have the right to terminate this Lease. The right to terminate this Lease shall be exercised by written notice to Landlord, accompanied by Tenant's profit and loss statement, and the termination of the Lease shall be effective one hundred twenty (120) after receipt by Landlord of such notice. The right herein granted to Tenant shall be null and void if there is an Event of Default by Tenant (that extends beyond all applicable notice and cure periods under the Lease) under the terms and conditions of this Lease at the date of Tenant's notice, or if Tenant has not been open and operating in accordance with this Lease, including without limitation, its Permitted Use, for the aforesaid twelve (12) month period, subject however to any closures permitted by Section 7.02 of the Lease. Notwithstanding anything in herein to the contrary, Landlord shall have the right to audit, at Landlord's sole cost and expense and using an independent and neutral third party auditor, Tenant's records to verify Tenant's aforesaid profit and loss statement. If such audit determines that Tenant's trailing twelve (12) month club level EBITDA is equal to or greater than Zero and 00/100 Dollars (\$0.00) (after factoring in a capital expenditure reserve of five percent (5%) of total club revenues), then Tenant's right to terminate this Lease shall be null and void and the Lease shall continue in effect for the remainder of the Term."

9. No Option. Should the Lease or any Amendments or Addenda provide Tenant renewal options or rights, termination options or rights, or expansion options or rights, other than as provided in this Second Amendment, such options or rights shall be of no further force and effect.

10. As Is. The Premises are delivered AS-IS.

11. Broker. Landlord recognizes KLN Retail as the sole Broker procuring this Second Amendment and shall pay said Broker a commission therefor pursuant to a separate agreement between said Broker and Landlord. Landlord and Tenant each represent and warrant to one another that except as set forth herein neither of them has employed any broker, agent or finder in carrying on the negotiations relating to this First Amendment. Landlord shall indemnify and hold Tenant harmless, and Tenant shall indemnify and hold Landlord harmless, from and against any claim or claims for brokerage or other commissions arising from or out of any breach of the foregoing representation and warranty by the respective indemnitors.

12. OFAC Certification: Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any

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and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing certification.

13. Notice: The Lease is hereby amended to reflect that all notices required hereunder by either party to the other shall be sent by recognized overnight courier with receipt therefor (such as Federal Express) or by certified mail. Notices to Landlord shall hereafter be sent to Washington Real Estate Investment Trust ("WRIT"), 6110 Executive Boulevard, Suite 800, Rockville Maryland 20852, Attention: Asset Manager. Notices to Tenant and/or Guarantor shall be at the following addresses: 4001 Maple Avenue, Suite 200, Dallas, Texas 75219, Attention: Real Estate and Legal Department, with a copy to CASE Commercial Real Estate Partners, 14785 Preston Road, Suite 750, Dallas, Texas 75254, Attention: Lease Administration.

14. Amendment. Except as amended hereby, all of the terms and provisions of the Lease shall be and remain in full force and effect.

15. Binding Effect. This agreement will not be binding upon any party until this document has been executed by all parties thereto.

[Signatures on following page]

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IN WITNESS WHEREOF, Landlord and Tenant have executed under seal and delivered this Second Amendment under seal on the date first above written.

Witness/Attest:

Lauren Kelly

TENANT:  
GBG INC.

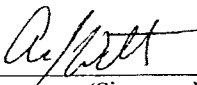
By:  (Seal)  
(Signature Here)


Name: Araran Watkins  
Title: President  
Soc Sec Number:  
Fed Tax ID Number: 

Witness/Attest:

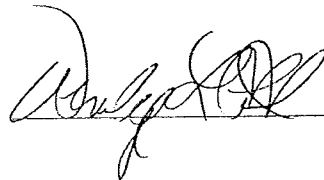
Lauren Kelly

GUARANTOR:  
GOLD'S GYM INTERNATIONAL,  
INC.

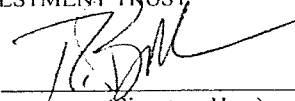
By:  (Seal)  
(Signature Here)

Name: Araran Watkins  
Title: President  
Soc Sec Number:  
Fed Tax ID Number: 

Witness/Attest:



LANDLORD:  
WASHINGTON REAL ESTATE  
INVESTMENT TRUST

By:  (Seal)  
(Signature Here)

Name: Thomas Barke  
Title: EVP

## **ASSIGNMENT AND ASSUMPTION OF LEASE**

**THIS ASSIGNMENT AND ASSUMPTION OF LEASE** (the "**Assignment**") is entered into by and among Gold's Holding Corp., a Delaware corporation ("**Assignor**"), GBG Inc., a Virginia corporation ("**Assignee**"), and Gold's Gym International, Inc., a Delaware corporation ("**Guarantor**"), on this 26<sup>th</sup> day of March, 2014 to be effective for all purposes as of January 1, 2014 (the "**Effective Date**"). Any capitalized term not otherwise defined herein shall have the meaning ascribed thereto in the Lease (as hereinafter defined).

### **WITNESSETH:**

**WHEREAS**, Assignor and Washington Real Estate Investment Trust ("**Landlord**") are parties to that certain Lease Agreement dated October 15, 2004, as amended (the "**Lease**"), pursuant to which Landlord did lease to Assignor, and Assignor did lease from Landlord, the Premises (as defined in the Lease), which Premises are located in Rockville, Maryland;

**WHEREAS**, Guarantor executed that certain Guaranty dated October 6, 2004 (the "**Guaranty**") pursuant to which Guarantor guaranteed unto Landlord the prompt, faithful and complete performance and observance by Assignor of all of the terms, covenants and conditions of the Lease to be performed by Assignor;

**WHEREAS**, Assignor desires to assign all of its right, title and interest in, under and to the Lease to Assignee, and Assignee desires to assume all of Assignor's obligations under the Lease from and after the date hereof in accordance with the terms and conditions contained herein; and

**WHEREAS**, as an inducement to Landlord consenting to this Assignment, Guarantor desires to reaffirm its obligations under the Guaranty;

**NOW, THEREFORE**, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally and equitably bound, do hereby agree as follows:

1. **Assignment and Assumption of Lease.**

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

(b) Assignee hereby accepts the foregoing assignment and assumes and agrees to pay, perform and discharge, as and when due, all of the obligations of

Assignor under the Lease, accruing on or after the Effective Date.

(c) Assignee agrees to be bound by and subject to all of the terms, covenants and conditions of the Lease as now in effect or hereafter amended by the mutual agreement of Assignee and Landlord including, without limitation, the obligation to pay the rent and other amounts provided for under the Lease, the covenant to use the Premises for only the purposes specifically permitted under the Lease, unless otherwise approved by Landlord, and the covenant against further assignment.

(d) Assignor agrees to remain fully liable on a joint and several basis with Assignee with respect to the various covenants, duties and obligations of the tenant under the Lease, and nothing contained herein shall release Assignor from its obligations under the Lease.

2. Affirmation of Guaranty. Guarantor acknowledges that the Guaranty is and will remain in full force and effect at all times during the Lease in accordance with its terms and this Assignment shall have no effect on Guarantor's liability under said Guaranty.

3. Miscellaneous.

(a) This Assignment is made without any covenant, warranty or representation by Assignor except as otherwise provided in this Assignment.

(b) This Assignment shall be governed by and construed in accordance with the laws of the state in which the Premises is located, without giving effect to the conflicts of law or choice of law provisions thereof.

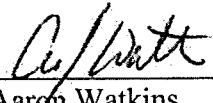
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**IN WITNESS WHEREOF**, this Assignment has been executed on the date and year first above written.


**ASSIGNOR:**

**Gold's Holding Corp.,**  
a Delaware corporation

By:   
Name: Aaron Watkins  
Title: President


**ASSIGNEE:**

**GBG Inc.,** a Virginia corporation

By:   
Name: Aaron Watkins  
Title: President

**GUARANTOR:**

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

By:   
Name: Aaron Watkins  
Title: President

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is entered into this 2<sup>nd</sup> day of May, 2011 by and between Washington Real Estate Investment Trust (successor in interest to CDT Associates Limited Partnership) ("Landlord") and Gold's Holding Corp. d/b/a Gold's Gym ("Tenant").

### RECITALS:

WHEREAS, Landlord and Tenant are parties to a Shopping Center Lease dated October 15, 2004 ("Lease") whereby Tenant leased certain premises deemed to contain approximately 29,035 square feet of gross leasable area (said premises being hereinafter called the "Premises"), located at 5620 Randolph Road in the shopping center known as Montrose Shopping Center (hereinafter called the "Shopping Center"); and

WHEREAS, the Lease expires on January 31, 2015; and

WHEREAS, Landlord desires to amend the Lease to exclude supermarkets from Tenant's Restricted Uses of the Shopping Center and Tenant is willing to do so under the terms and conditions contained herein; and

WHEREAS, the Lease and this First Amendment shall all hereinafter be collectively referred to as the "Lease".

### WITNESSETH:

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid by each party to the other, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties agree as follows.

1. Recitals Incorporated. The recitals contained above are true to the best of the parties' knowledge and are incorporated by reference herein.

2. Defined Terms. Any term used herein that is defined in the Lease shall have the same meaning as specified in the Lease unless otherwise specifically provided herein.

3. Prohibited Uses. Effective on the date first above written ("First Effective Date"), item (x) shall be deleted in its entirety from the first sentence of Paragraph 6, Exhibit F of the Lease.

4. Restricted Uses. The first paragraph of Exhibit G shall be deleted in its entirety and the following substituted in lieu thereof:

"Neither the Premises nor any part thereof shall be used or occupied as or for a store that sells drugs which require prescriptions or the presence of a pharmacist or which sells cosmetics, health and beauty aids, patent medicines, or home health-care and related products, or convalescent-type appliances and devices, including wheelchairs, walkers, diagnostic equipment, hospital-type beds, aspirators, and respiratory equipment (as its primary use), nor shall the Premises be used to operate a photo finishing business."

5. Amendment. For the avoidance of doubt, notwithstanding anything in the Lease to the contrary, a supermarket or food store, as those terms are traditionally defined, shall not be a Restricted or Prohibited Use at the Shopping Center, and shall be specifically permitted under the Lease upon full execution of this First Amendment.

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6. Abatement. Notwithstanding anything in the Lease to the contrary, Landlord agrees to abate the Minimum Rent due for the calendar month of November, 2010.

7. Signage. Landlord and Tenant acknowledge and agree that Tenant has certain exterior signage at the Shopping Center pursuant to Article 12.04 of the Lease. Notwithstanding anything in the Lease to the contrary, Landlord agrees that Tenant shall be permitted to paint the background of such exterior signage as depicted on Exhibit E-2 attached hereto, subject to Section 12.03 (Alterations) of the Lease.

8. Broker. Landlord and Tenant each represent and warrant to one another that except as set forth herein neither of them has employed any broker, agent or finder in carrying on the negotiations relating to this First Amendment. Landlord shall indemnify and hold Tenant harmless, and Tenant shall indemnify and hold Landlord harmless, from and against any claim or claims for brokerage or other commissions arising from or out of any breach of the foregoing representation and warranty by the respective indemnitors.

9. OFAC Certification: Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

10. Notice: The Lease is hereby amended to reflect that all notices required hereunder by either party to the other shall be sent by recognized overnight courier with receipt therefor (such as Federal Express) or by certified mail. Notices to Landlord shall hereafter be sent to Washington Real Estate Investment Trust ("WRIT"), 6110 Executive Boulevard, Suite 800, Rockville Maryland 20852, Attention: Asset Manager. Notices to Tenant shall be at the Premises. Tenant hereby elects domicile at the Premises for the purpose of all notices, writs of summons, or other legal documents, or process, in suit, action, or proceeding which Landlord may undertake under this Lease.

11. Amendment. Except as amended hereby, all of the terms and provisions of the Lease shall be and remain in full force and effect.

12. Binding Effect. This agreement will not be binding upon any party until this document has been executed by all parties thereto.

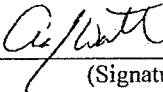
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IN WITNESS WHEREOF, Landlord and Tenant have executed under seal and delivered this First Amendment under seal on the date first above written.

Witness/Attest:

Athena Sampson

TENANT:  
GOLD'S HOLDING CORP. d/b/a  
Gold's Gym

By:  (Seal)  
(Signature Here)

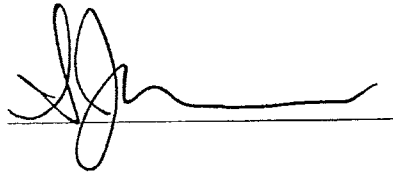
Name: Aaron Watkins

Title: CEO

Soc Sec Number:

Fed Tax ID Number: 

Witness/Attest:



**Steven J. Krupinski**  
**Director of Asset Management, Retail**

LANDLORD:  
WASHINGTON REAL ESTATE  
INVESTMENT TRUST

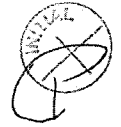
By:  (Seal)  
(Signature Here)

Name: George F. McKenzie

Title: President and Chief

Executive Officer

**Michael S. Pankstius**  
**SVP-Real Estate**



AW

EXHIBIT E 2

LEASE

between

CDT ASSOCIATES LIMITED PARTNERSHIP  
Landlord

and

GOLD'S HOLDING CORP., a Delaware corporation, d/b/a  
Gold's Gym  
Tenant

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STANDARD LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of the 15<sup>th</sup> day of October, 2004, by and between CDT ASSOCIATES LIMITED PARTNERSHIP having an office c/o Ronald Cohen Management Company, 2701 Tower Oaks Boulevard, Suite 200, Rockville, Maryland 20852 (hereinafter called "Landlord"), and GOLD'S HOLDING CORP., a Delaware corporation, d/b/a Gold's Gym, having an office c/o Real Estate Department, 2924 Telestar Court, Falls Church, Virginia 22042 (hereinafter called "Tenant"),

WITNESSETH:

That in consideration of the rents, covenants, and agreements herein contained, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the store premises (hereinafter called the "Premises") defined in Section 1.01. This Lease is made upon the following terms, covenants, and conditions:

ARTICLE I

Section 1.01. Fundamental Lease Provisions.

Certain fundamental lease provisions are presented in this section in a summary form solely to facilitate convenient reference by the parties hereto:

- (a) Premises: Landlord leases to Tenant and Tenant leases from Landlord, for the Term (as defined) and upon the terms and conditions set forth in this Lease, the Premises, which for the purposes of this Lease shall contain approximately Twenty Nine Thousand Thirty-Five (29,035) square feet and is located at 5620 Randolph Road in the Montrose Shopping Center (the "Shopping Center" or "Center") in Rockville (Montgomery County), Maryland. The Shopping Center and the Premises are depicted on Exhibit A.

After Notice of Possession, Tenant shall have a right to retain an architect or other professional qualified to measure retail space to measure gross leasable area the Premises. Such measurement shall be from the exterior faces of the exterior walls or store front and/or the center line of any common walls, without any reduction, whatsoever for any columns, stairs, shafts, or other equipment. If Tenant determines that the measurement of the Premises is different than 29,035 square feet, Tenant shall provide Landlord written notice ("Tenant's Measurement Notice") within thirty (30) days after the Notice of Possession date. If Landlord and Tenant cannot mutually agree about the size of the Premises within thirty (30) days after Tenant's Measurement Notice, the dispute shall be resolved by an independent architect or engineer to be mutually agreeable to Landlord and Tenant, the cost of whose service shall be shared equally by Landlord and Tenant. If the leasable area of the Premises is determined to be more or less than 29,035 square feet, within ten (10) business days after such determination is made, Landlord and Tenant shall execute an appropriate amendment to this Lease, changing the size of the Premises, Minimum Rent, and Tenant's Pro Rata Share of Landlord's Operating Costs, Taxes, and all other charges based on the size of the Premises. Time is of the essence. If Tenant fails to notify Landlord of any objections to the measurement of the Premises within thirty (30) days after Notice of Possession, the Premises shall be conclusively deemed to be 29,035 square feet, or such other measurement as may be determined by Landlord's architect.

(b) Term: The Term of this Lease shall be for ten (10) Lease Years commencing on the Rental Commencement Date (as defined), unless sooner terminated pursuant to the provisions of this Lease. See Exhibit F, Paragraph 1 for Tenant's option(s) to extend the Term.

(c) Permitted Use: For use as a full service professional health and fitness club, which shall include, gymnasiums, sauna, whirlpools, aerobics and/or floor exercise, racquetball courts, free weights, exercise machinery and equipment, child nursery facilities limited to those customers visiting or engaged in activities at the Premises, massage performed by a professionally licensed masseuse, physical and rehabilitative therapy, tanning, personal training, basketball courts, pilates, yoga and other meditative activities, and such other amenities as may be found from time to time in a modern retail fitness facility, and as an incidental use thereto the sale of gym/fitness related products typically found in substantially all Gold's Gym locations in the Washington D.C. metropolitan area including, but not limited to, vitamins, nutritional supplements, equipment and apparel and juice/snack bar facility; all subject to Exhibit G, and for no other purpose.

(d) Tenant's Trade Name: Gold's Gym (See Section 7.03).

(e) Minimum Rent:

<u>Lease Year</u>	<u>Monthly</u>	<u>Annually</u>	<u>Per Sq. Ft.</u>
Lease Years 1-5	\$36,293.75	\$435,525.00*	\$15.00
Lease Years 6-10	\$40,649.00	\$487,788.00	\$16.80

\*Notwithstanding the foregoing, Tenant shall not be required to pay Minimum Rent for the first one hundred eighty (180) days of the Term (the "Minimum Rent Abatement Period"). Notwithstanding anything contained herein, it is acknowledged by Landlord and Tenant that this abatement of Minimum Rent is being granted in consideration of Tenant's entering into this Lease for a Term of Ten (10) Lease Years.

(f) Intentionally Deleted.

(g) Initial Monthly Operating Charge: \$2,540.56, subject to adjustment pursuant to this Lease. (See Section 8.03).

(h) Initial Monthly Real Estate Tax Contribution: \$3,871.13, subject to adjustment pursuant to this Lease. (See Section 17.02).

(i) Radius Restriction: One and one-half (1.5) miles (See Section 15.01).

(j) Intentionally Deleted.

(k) Intentionally Deleted.

(l) Intentionally Deleted.

(m) Intentionally Deleted.

(n) Guarantor: Gold's Gym International, Inc.

Address:

Real Estate Department  
2924 Telestar Court  
Falls Church, Virginia 22042

Federal ID Number: 54-1953610

- (o) Broker: JBG Rosenfeld Retail and KLNB (See Section 30.10)
- (p) Fixturing Period: Ninety (90) calendar days after Notice of Possession (as defined).
- (q) Estimated Delivery Date: Five (5) business days after the date of full execution and delivery of this Lease.
- (r) Store Plans: Tenant shall provide Landlord with two (2) copies of store plans as described in Section 2.02 within forty five (45) days of the execution of this Lease.
- (s) Sign Plans: Tenant shall provide Landlord with four (4) copies of sign plans as described in Section 12.04(a) herein, within thirty (30) days of the execution of this Lease.

#### Section 1.02 Important Dates and Additional Definitions

(a) Additional Rent. All payments of money from Tenant to Landlord required to be paid under this Lease other than Minimum Rent.

(b) Date of Lease. The date set forth on the first grammatical paragraph on the first page of this Lease. Except as otherwise set forth herein to the contrary, on such date, all rights and obligations of the parties under this Lease shall commence.

(c) Expiration Date. The last day of the Term as the same may be extended as provided herein.

(d) Fixturing Period. The number of days specified in Section 1.01(p) above, commencing with the Notice of Possession, within which Tenant is obligated to fixture and equip the Premises in accordance with the plans approved by Landlord in accordance with this Lease (the "Tenant's Plans").

(e) Lease Interest Rate. "Lease Interest Rate" as used herein means an annual rate of interest equal to the lesser of (i) the maximum rate of interest permitted in the state of Maryland, or (ii) at the prime rate from time to time published in the Wall Street Journal (or, if the Wall Street Journal is no longer being published, then another similar financial publication) plus two percent (2%). Interest shall be calculated on the basis of a 365-day year, actual days elapsed, from the date any cost or expense is incurred until the amount owing is fully paid.

(f) Lease Year. The first Lease Year shall begin on the Rental Commencement Date and shall end twelve (12) full calendar months thereafter. Thereafter, each Lease Year shall commence on the day following the expiration of the preceding

Lease Year and shall end at the expiration of twelve (12) calendar months thereafter or, if earlier, the Expiration Date.

(g) Intentionally Deleted.

(h) Mortgage: Any mortgage, deed of trust, security interest or title retention interest affecting the Shopping Center.

(i) Mortgagee: The holder of any note or obligation secured by a mortgage, deed of trust, security interest or title retention interest affecting the Shopping Center, including, without limitation, lessors under ground leases, sale-leasebacks and lease-leasebacks.

(j) Notice of Possession. The last to occur of (i) the date of Landlord's notice to Tenant that the Premises is ready for Tenant's use and that Landlord has substantially completed the work listed on Exhibit C (the "Landlord's Work") and (ii) the date Tenant obtains or waives its right to obtain "Permits" pursuant to Exhibit F. On such date, the utilities shall become Tenant's sole responsibility and the Fixturing Period (as defined) begins.

(k) Person: An individual, firm, partnership, association, corporation, or any other entity.

(l) Pro Rata Share. Tenant's Pro Rata Share shall be a fraction, the numerator of which shall be the gross leasable area of the Premises (as determined pursuant to 1.01(a)) and the denominator of which shall be the gross leasable area of the Shopping Center; provided, however, if any tenant of the Shopping Center pays taxes pursuant to a separate tax assessment of its premises, maintains its own parcel or insures its own building, the amount of such taxes, maintenance charges or insurance shall be excluded from the calculation of Tenant's Pro Rata Share of Taxes or Landlord's Operating Costs and such tenant's premises shall be deducted in computing the square feet of gross leasable area in the Shopping Center for purposes of computing Tenant's Pro Rata Share of such item.

(m) Rent. All amounts required to be paid by Tenant under this Lease, including, without limitation, Minimum Rent and Additional Rent.

(n) Rental Commencement Date. The next day after the last day of the Fixturing Period shall be the commencement date of Tenant's obligations to pay monthly Minimum Rent, Monthly Operating Charges, Monthly Insurance Charges, Monthly Real Estate Tax Charges, subject, however, to the Minimum Rent abatement set forth in Section 1.1(e).

#### Section 1.03. References and Conflicts.

References in Section 1.01 are intended to designate some of the other places in this Lease where additional provisions applicable to the particular Fundamental Lease Provisions appear. These references are for convenience only and shall not be deemed all inclusive. Each reference in this Lease to any of the Fundamental Lease Provisions contained in Section 1.01 shall be construed to incorporate all of the terms provided for under such provisions and all provisions of this Lease applicable thereto. If there is any conflict between any of the Fundamental Lease Provisions set forth in Section 1.01 and other provisions of this Lease, the latter shall control.

ARTICLE II  
CONSTRUCTION OF THE PREMISES

Section 2.01. Acceptance of Premises.

Tenant accepts the Premises in its present, "as is" condition, except as may be expressly set forth in Exhibit B. In addition, Landlord agrees that within sixty (60) days after full execution and delivery of this Lease (and not as a condition to delivery of the Premises to Tenant), Landlord shall cause the escalator and elevator in the Premises to be in good working order; provided, however that within thirty (30) days after the date of full execution and delivery of this Lease, Landlord may deliver to Tenant Landlord's reasonable estimate of the cost of any work required to cause the elevator and escalator to be in good working order (the "Elevator Estimate"), and Tenant by written notice delivered to Landlord within five (5) days after receipt of the Elevator Estimate, elect to perform such work to the elevator and escalator. If Tenant makes such election, upon receipt of paid invoices for such work and unconditional lien waivers from any contractors or suppliers performing such work, Landlord agrees to reimburse Tenant for such work to the elevator and escalator, not to exceed the Elevator Estimate. Tenant expressly acknowledges that Landlord makes no representations or warranties regarding the suitability of the Premises for Tenant's business. Except as set forth in Exhibit B, Tenant shall, at its expense, perform all work which is necessary to prepare the Premises for the conduct of business by Tenant in the manner contemplated by this Lease. All such construction by Tenant shall be at Tenant's sole cost and expense and shall be performed in a good and workmanlike manner free of clear of mechanic's and materialmen's liens. All Landlord's Work as set forth in Exhibit B, shall be at Landlord's sole cost and expense and shall be performed in a good and workmanlike manner free and clear of mechanic's and materialmen's liens. Landlord hereby covenants the following, to the best of Landlord's knowledge, as of the date of Notice of Possession: (i) all applicable utilities shall be available to the Premises for Tenant's connections in sufficient capacity for Tenant's requirements set forth in Exhibit B; (ii) that the building in which the Premises is located is free of structural defects; and (iii) there are no zoning restrictions of record that preclude Tenant's operation for the Permitted Use set forth in Section 1.01(c).

For purposes of this Lease, Tenant improvements shall not be deemed completed until all work thereon has been completed in accordance with the approved Tenant's Plans and the Landlord shall have received from Tenant's architect, if any, and the Tenant's contractor, written certification that all sums owing to them, if any, in connection with the completion of the Tenant Improvements have been paid by the Tenant.

Subject to the provisions of Section 12.03, all improvements permanently affixed and incorporated by Tenant in the Premises (other than trade fixtures), including, but not limited to, floor covering, air-conditioning equipment and duct work, plumbing and electrical wiring and equipment shall be considered permanent improvements to the Premises and shall be the property of the Landlord at the expiration of the Term.

Section 2.02. Tenant's Work.

Pursuant to Section 1.01(r), Tenant shall submit to Landlord its store layout plans and specifications, showing in reasonable detail any and all interior and/or exterior alterations or improvements that Tenant proposes to make to the Premises (the "Tenant's Plans"). Landlord's approval of Tenant's Plans shall not be unreasonably withheld, conditioned or delayed. Tenant's Plans shall be prepared by an architect registered in the state where the Shopping Center is located if required by law or if necessary for Tenant to receive the necessary governmental permits to do Tenant's work. The fees for Tenant's architect shall be paid for by Tenant. If Tenant's Plans are returned to Tenant with modifications, the same shall be revised by Tenant and resubmitted to Landlord for approval within five (5) days of their receipt by Tenant. Landlord shall identify in writing and with particularity, any objections it may have to Tenant's Plans. This process shall continue until Tenant's Plans are approved. Tenant shall furnish, a minimum of four (4) such copies for approval. If Tenant shall fail to deliver the Tenant's Plans to Landlord within the number of days specified in 1.01(r), such failure shall constitute a material event of default under this Lease. Tenant shall endeavor to complete Tenant's Work prior to the expiration of the Fixturing Period, but in no event shall Tenant's Work be completed later than one hundred eighty (180) days after the expiration of the Fixturing Period.

Notwithstanding anything in this Section to the contrary, Landlord shall, within fifteen (15) days after written receipt of Tenant's Plans, provide Tenant with a written response (i.e., approval or disapproval) to Tenant's Plans. In the event Landlord fails to provide a written response to Tenant within such fifteen (15) day period, then Tenant shall send Landlord a written reminder notice with the following notation (in bold face and capitalized): **FAILURE TO RESPOND TO TENANT'S WRITTEN REQUEST FOR APPROVAL WITH RESPECT TO TENANT'S PLANS, WITHIN TEN (10) DAYS OF RECEIPT HEREOF SHALL CONSTITUTE LANDLORD'S APPROVAL THEREOF.** If Landlord fails to provide a written response to Tenant within such ten (10) day period following such reminder notice, then Landlord shall be deemed to have approved Tenant's Plans.

Tenant or Tenant's contractors shall obtain, pay for, and maintain, during the continuance of construction and fixturing work within the Premises the following insurance and in the amounts as set forth below:

(a) Workmen's Compensation, Employer's Liability Insurance with limits of not less than \$100,000 and as required by state law and any insurance required by any Employee Benefit Acts or other applicable statutes as will protect the general contractor and subcontractors from any and all liability under the aforementioned acts.

(b) Commercial General Liability Insurance (including Contractor's Protective Liability) in an amount not less than \$1,000,000 per person and \$2,000,000 per occurrence whether involving personal injury liability (or death resulting therefrom) or property damage liability or a combination thereof with the minimum aggregate limit of \$250,000. Such insurance shall provide for explosion and collapse coverage and contractual liability coverage and shall insure the general contractor and/or subcontractors against any and all claims for personal injury, including death resulting therefrom and damage to the property of others and arising from his operations under his contract and whether



such operations are performed by the general contractor, subcontractors, or any of their subcontractors, or by anyone directly or indirectly employed by any of them.

(c) Comprehensive Automobile Liability Insurance, including the ownership, maintenance, and operation of any automotive equipment, owned, hired, and non-owned in the following amounts:

Bodily injury, each person	\$ 500,000.00
Bodily injury, each occurrence	\$1,000,000.00
Property damage liability	\$ 100,000.00

Such insurance shall insure the general contractor and/or subcontractors against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others arising from operations under his contract and whether such operations are performed by the general contractor, subcontractors, or any of their subcontractors, or by anyone directly or indirectly employed by any of them.

(d) Protective liability Insurance in such amounts as will insure Tenant against any and all liability to third parties for damage because of bodily injury liability (or death resulting therefrom) and property damage liability of others or a combination thereof which may arise from performance of the Tenant's Work and any other liability for damages which the general contractor and/or subcontractors are required to insure under any provisions herein. Said insurance shall be provided in minimum amounts as follows:

Bodily injury, each person	\$1,000,000.00
Bodily injury, each occurrence	\$2,000,000.00
Property damage, each occurrence	\$ 250,000.00
Property damage, aggregate	\$ 500,000.00

(e) Builder's Risk Insurance pursuant to completed Value Form "All Physical Loss" Builder's Risk policy covering the Tenant's Work as it relates to the building.

All insurance policies shall name Landlord as an additional insured. Certificates of Insurance shall provide that no change or cancellation of such insurance coverage shall be undertaken without thirty (30) days prior written notice to Landlord. All insurance policies shall contain an express waiver of any right of subrogation by the insurance company against Landlord and Landlord's managing agent. Tenant shall deliver the necessary insurance certificates to Landlord prior to commencing work and Tenant will not permit its contractor(s) to commence any work until all required insurance has been obtained and certified copies of policies have been delivered to Landlord.

(f) All of Tenant's Work shall be performed by bondable contractors that are licensed in the State of Maryland. Prior to commencing Tenant's Work, Tenant's general contractor and superintendent shall meet with Landlord's general contractor and property manager to discuss coordinating such construction. Tenant's contractors shall comply with any reasonable construction guidelines provided by Landlord concerning dumpster placement, contractor parking and noise during the course of Tenant's Work.

#### Section 2.03. Easement for Pipes.

Provided that such do not materially interfere with the operation of Tenant's business within the Premises or harm Tenant's improvements, Tenant shall permit Landlord or its designee to install, use, maintain, repair, and replace pipes, cables, conduits, plumbing, vents, wires, and other equipment in, to, through, and under the Premises, as to the extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper operation and maintenance of the building in which the Premises are located or any other present or future portion of the Shopping Center. All such work shall be done, so far as reasonably practicable, in such manner as to avoid material interference with Tenant's use of the Premises or the operation of Tenant's business within the Premises. Subject to the waiver provisions contained in Section 16.03, Landlord shall repair any and all damage to the Premises (including, without limitation, the Tenant's Work) caused in whole or in part by the installation, use, maintenance, repair and/or replacement activities conducted by or on behalf of Landlord pursuant to this Section 2.03.

#### Section 2.04. Failure of Delivery.

If Tenant is unable to obtain possession of the Premises on or before the Estimated Delivery Date due to any act or condition beyond Landlord's reasonable control, such as the failure of any existing tenant to vacate the Premises (or any part thereof), Landlord shall not be liable for any loss, damage or cost resulting therefrom, and this Lease shall not be affected thereby in any way, except that any deadlines for the performance of Tenant's Work shall be extended accordingly; provided, however, that if the Premises are not available for Tenant's occupancy within ninety (90) days after the Estimated Delivery Date, Landlord or Tenant may terminate this Lease by giving the other party written notice thereof within ten (10) days after the lapse of said ninety (90)-day period; provided, however, if Landlord is able to deliver the Premises to Tenant within thirty (30) days after receipt of Tenant's termination notice hereunder, this Lease shall continue in full force and effect as if such termination notice had never been given. Landlord shall use commercially reasonable efforts to ensure that the Premises are delivered to Tenant as soon as possible in accordance with the provisions of this Lease. Landlord shall exercise its termination right hereunder, if at all, in good faith (i.e., Landlord shall not use the termination right granted hereunder solely as a method to secure a lease for the Premises with another prospective tenant that Landlord deems more favorable).

### ARTICLE III TERM

#### Section 3.01. Term, Rental Commencement Date.

The Term of this Lease shall commence on the Rental Commencement Date and shall end at midnight on the Expiration Date without the necessity of any notice from either party to the other to terminate the same. Tenant hereby waives notice to vacate the Premises and agrees that Landlord shall be entitled to the benefit of all provisions of law respecting summary recovery of possession from a tenant holding over to the same extent as if any statutory notice had been given. Tenant's obligations with respect to the payment of Rent and all other

obligations of Tenant hereunder shall survive the expiration or earlier termination of this Lease. If requested by Landlord, Tenant hereby agrees to execute, within thirty (30) days after the Rental Commencement Date, an agreement, in the form attached hereto as Exhibit C (the "Agreement Specifying Term of Lease"), confirming the Rental Commencement Date and stating, among other things, that this Lease is in full force and effect to the extent true. If Tenant shall fail to execute the Agreement Specifying Term of Lease within ten (10) days after receipt of such agreement from Landlord, the Rental Commencement Date shall be conclusive.

#### Section 3.02. Failure to Open.

In the event that Tenant fails to open the Premises for business fully fixtured, stocked, and staffed within one hundred eight (180) days after the Rental Commencement Date of the Term, subject to Section 30.13 of this Lease, such failure shall be deemed an event of default under this Lease.

#### Section 3.03. Entry Prior to Substantial Completion and Prior to Term.

Prior to the date of the delivery of the Premises to Tenant, Tenant shall request the right to have access to the Premises, without payment of Rent, for the purpose of doing Tenant's work and installing its store fixtures and stock of merchandise in the Premises, provided such activities shall not interfere with the completion of Landlord's work, and provided that before doing so, Tenant furnishes Landlord with the commercial general liability insurance coverage required by Section 16.02 hereof and that during such period, the Premises shall be deemed to be in the possession of Tenant, and Tenant shall be responsible for any loss or damage thereto or to its personal property to the same extent Tenant would be responsible therefor during the Term of this Lease; provided, however, subject to the waiver provisions contained in Section 16.03, that in no event shall Tenant be responsible for any loss or damage resulting in whole or in part from the gross negligence or willful misconduct of Landlord and/or its agents, employees or contractors.

### ARTICLE IV

#### QUIET ENJOYMENT, SUBORDINATION, ATTORNMEN AND ESTOPPEL CERTIFICATE

##### Section 4.01. Quiet Enjoyment.

So long as Tenant is not in default beyond any applicable notice and cure period, Tenant shall have the peaceful and quiet use of the Premises, subject to the terms, covenants, and conditions of this Lease without interference by Landlord or anyone lawfully claiming rights in the Premises by, through, or under Landlord.

##### Section 4.02. Mortgage Subordination and Seniority.

This Lease is subject and subordinate to the lien, provisions, operation and effect of all mortgages, deeds of trust, ground leases or other security instruments which may now or hereafter encumber the Shopping Center, provided, however, that Landlord obtains a non-disturbance agreement pursuant to Section 4.03 below. The holder of any mortgage or deed of trust now existing or

hereafter placed upon the Shopping Center shall have the right to elect, at any time, whether this Lease shall be subordinate to the operation and effect of such mortgage or deed or trust or superior thereto, to declare this Lease to be superior to the lien, provisions, operation and effect of such mortgage, and Tenant shall execute, acknowledge and deliver all documents reasonably required by such holder in confirmation thereof. This Section 4.02 shall be inoperative as to the holder of any mortgage or deed of trust with whom Tenant enters into an attornment agreement pursuant to Section 4.03(a)(iii).

Section 4.03. Acceptance of the Premises, Rental Commencement Date, Attornment, and Estoppel Certificates.

(a) When the Rental Commencement Date commences (or earlier as to item (iii) below, if requested by Landlord's construction or permanent mortgagee) in writing, Tenant shall promptly: (i) enter into a written and acknowledged agreement with Landlord stipulating the commencement date of the Term; (ii) acknowledge in writing (and in form reasonably satisfactory to the holder of the permanent mortgage on the Premises) that Tenant has accepted the Premises, except that such acceptance may provide that it is not to constitute a waiver of Landlord's obligation to complete punch-list items (if any); and (iii) enter into a written agreement with Landlord's permanent (and/or construction) mortgagee reasonably acceptable to Tenant and such mortgagee, under which Tenant will agree to attorn to such mortgagee or to a purchaser at foreclosure sale in the event of a mortgage foreclosure, provided that such purchaser shall agree in writing not to disturb Tenant's leasehold interest and shall not require any modifications of Tenant's rights and obligations under this Lease. Landlord shall obtain a fully executed subordination, non-disturbance and attornment agreement reasonably acceptable to Tenant and Landlord's current mortgagee within one hundred eighty (180) days after full execution and delivery of this Lease.

(b) Within thirty (30) days after a written request from time to time made by Landlord or Tenant (which in no event shall be more than twice during any twelve (12) month period), the non-requesting party shall deliver to the requesting party a signed and acknowledged statement in writing setting forth: (i) that this Lease is unmodified, in full force and effect, free of existing defaults of Landlord and free of defenses against enforceability (or, if there have been modifications or defaults, or if Tenant claims defenses against enforceability hereof, then stating the modifications, defaults, and/or defenses), (ii) the dates to which Rent has been paid, and the amount of any advance rentals paid, (iii) the commencement and expiration dates of the original Term, (iv) that neither party has any outstanding claims against the other party (or if there are any claims, then stating the nature and amount of such claims), and (v) the status of any other obligation of either party under or with respect to this Lease, it being intended that any such statement may be relied upon by any purchaser or mortgagee of Landlord's interest in the Premises, or any prospective purchaser or mortgagee, or any commercial lender providing financing for Tenant.

#### ARTICLE V RENT

Section 5.01. Minimum Rent.

Tenant shall pay Landlord a Minimum Rent at the annual rate specified in Section 1.01(e) and as set forth in Exhibit F, Paragraph 1, payable, in advance,

in twelve (12) equal monthly installments, on or before the first day of each calendar month except as otherwise provided herein, without demand, deduction, abatement, or set off of any kind whatsoever during the Term hereof, except as otherwise provided in this Lease. Subject to the one hundred eighty (180) day abatement of Minimum Rent set forth in Section 1.01(e), if the Term of this Lease commences on a day other than the first day of a calendar month, the Rent for the period from the Rental Commencement date to the first (1st) day of the first full calendar month of the Term shall be pro rated (proportionately as the number of days remaining in such month bears to the total number of days in such month) and shall be due and payable on or before the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) full calendar month following the Rental Commencement Date, in addition to the Rent due for such full calendar month.

Section 5.02. Intentionally Deleted.

Section 5.03. Payment.

All Rent payable by Tenant to Landlord under this Lease shall be paid and delivered to Landlord at P.O. Box 85080, Richmond, Virginia 23285-4280, or at such other address as Landlord may hereafter designate in writing to Tenant in accordance with the notice provisions set forth herein. All Rent shall be paid without prior demand and without any setoff, abatement, or deduction of any kind whatsoever. Any payment by Tenant of a lesser amount of Minimum Rent or Additional Rent than is then due shall be applied to such category of arrearage as Landlord may designate irrespective of any contrary designation by Tenant and to the oldest, most recent, or other portion of the sums due as Landlord may determine, and Landlord's acceptance of any such partial payment shall not be deemed an accord and satisfaction and shall be without prejudice to Landlord's right to pursue any other remedies.

In the event any payment of Rent in this Lease is not received by the Landlord by the tenth (10<sup>th</sup>) day of the month in which said payment is due, then Tenant agrees to pay to Landlord, upon demand, a late charge of One Hundred Fifty Dollars (\$150.00) per month for each month that such installment remains unpaid, and, in addition, such unpaid installment shall bear interest at the Lease Interest Rate from the date such installment became due and payable to the date of payment thereof by Tenant; provided however, that nothing herein contained shall be construed or implemented in such a manner as to allow Landlord to charge or receive interest in excess of the maximum legal rate then allowed by law. Such late charge and interest shall constitute Additional Rent hereunder due and payable within ten (10) days of Landlord's demand therefor. The provisions of this paragraph are cumulative and shall in no way restrict the other remedies available to Landlord in the event of Tenant's default under this Lease.

If during the Term Landlord receives three (3) or more checks from Tenant which are returned by Tenant's bank without honoring, Tenant agrees that all checks for Rent thereafter shall be bank certified and that Landlord shall not be required to accept checks except in such form. In addition to any bank service charges resulting from dishonored checks, which shall be borne by Tenant, Tenant shall pay to Landlord Fifty Dollars (\$50.00) on the occasion of each dishonored check as an administrative fee (the same being Additional Rent) compensating Landlord for the additional expense involved in processing such check.

Section 5.04. Intentionally Deleted.

Section 5.05. Net Lease.

It is mutually intended and understood that the Minimum Rent is a "net" rent to Landlord, and that Tenant's Pro Rata Share of all Taxes (except Landlord's personal income taxes and any similar taxes on rentals and other taxes expressly excluded by this Lease), Landlord's Operating Costs, and other charges, assessments and expenses attributable to the Premises and the Shopping Center shall be paid by Tenant in addition to said Minimum Rent, as hereinafter provided.

ARTICLE VI  
INTENTIONALLY DELETED

ARTICLE VII  
PERMITTED USE AND CONTINUED OCCUPANCY

Section 7.01. Permitted Use.

(a) The Premises shall be used and occupied during the Term hereof solely for the Permitted Use specified in Section 1.01(c) hereof and none other.

(b) Special Restrictions. Without any intention to diminish the generality of Sections 1.01(c) and 7.01(a), but in order to specify particular uses and practices which, if engaged in by Tenant, would be in violation of other leases in, or recorded agreements pertaining to the Shopping Center or of exclusive use privileges which Landlord has, will, or may desire to grant, or which constitute business or practices which Landlord may desire to prohibit or control, Tenant shall not, at any time during the Term: (1) maintain or permit any or amusement game machines on the Premises (except to the extent same are integrated into exercise equipment or used in child care); (2) sell any additional merchandise or conduct any business or perform any additional service on the Premises which would violate or be in conflict with any restrictive use covenant or exclusive use privilege at any time binding upon Landlord, as listed on Exhibit G or as may be provided in writing by Landlord to Tenant in writing from time to time, subject to Tenant's Exclusive Use set forth in Exhibit F, Paragraph 5, but this item (2) shall not be deemed to preclude the use allowed under Sections 1.01(c) and 7.01(a) hereof, or (3) use the Premises for any of the restricted uses specified in Exhibit G attached hereto and made a part hereof. Tenant shall bear all risks of any violation of any provision of this Section 7.01(b) and shall defend, indemnify, and save Landlord harmless from all damages and expenses (including counsel fees) resulting from any such violation; provided however, that Tenant shall first have been given written notice of such violation and a reasonable time period in which to cure such violation.

(c) Intentionally Deleted.

(d) Pest Extermination. Notwithstanding anything to the contrary contained herein, Tenant shall institute a regular and periodic pest

extermination program for the Premises and shall provide Landlord with copies of extermination contracts. Further, such contracts shall implement an integrated pest management program in order to reduce the need for pesticides by eliminating conditions that provide attractive habitats. In the event that pesticides are needed, Tenant shall ensure that they are applied only to targeted locations with minimum treatment of exposed surfaces. Pesticides must be stored and used in strict conformance with manufacturer's instructions and EPA labels. If requested in writing Tenant must provide Landlord with copy of EPA labels and Material Safety Data Sheets for any hazardous chemicals used and/or stored on premises.

Section 7.02. Continuous Occupancy.

(a) At the commencement of the Term of this Lease, Tenant shall occupy the Premises and shall use commercially reasonable efforts to promptly open for business and shall open no later than the one hundred eightieth (180<sup>th</sup>) day following the Rent Commencement Date, at which time the Premises shall be fully fixtured, fully stocked, and appropriately staffed. Notwithstanding anything in this Lease to the contrary, Tenant shall have the right to close for business on any of the following days: (i) New Year's Day; (ii) Easter Sunday; (iii) Thanksgiving Day; (iv) Christmas Day; (v) July 4<sup>th</sup>; (vi) Memorial Day; (v) Labor Day; and (vi) and such other nationally recognized holidays as may be observed by Tenant in a majority of its facilities operating under Tenant Trade Name in the Washington D.C. metropolitan area.

Landlord recognizes that the Premises may be closed during certain normal hours of operation on a very infrequent and incidental basis for (i) such reasons as are set forth in Section 30.13 of this Lease, (ii) inventory control (not to exceed a total of twenty (20) days in any Lease Year), (iii) necessary repairs, (iv) severe inclement weather, (v) renovations (not to exceed a total of ninety (90) days every five (5) Lease Years). A closing for one of the aforementioned reasons shall not be considered an event of default under the Lease, provided that Tenant has notified Landlord in advance of such closing whenever reasonably possible under the circumstances. Any day during the Term in which Tenant has not been open for business to the public continuously during the entire hours of operating for the Shopping Center shall be deemed a "closing" for the purpose of calculating the foregoing limitation.

(b) Throughout the term, Tenant shall continuously conduct in the Premises, with an adequate stock of merchandise necessary for the Permitted Use and full staff of personnel, the business permitted under Section 7.01(a) on all business days and during such hours as shall be determined by Landlord for the operation of the Shopping Center. Tenant acknowledges that its obligation to continuously and actively conduct business in the Premises in the manner prescribed in this Section 7.02(b) is for the purpose of enhancing the leasability of retail floor space in the Shopping Center, and Tenant acknowledges that failure on its part to comply with the provisions of this Section 7.02(b) would cause Landlord substantial damages. Nothing in this Section 7.02(b) shall be construed as a limitation upon Landlord's right to obtain specific performance of Tenant's obligations to continuously conduct business in the manner herein specified or to recover any other provable monetary damages.

Section 7.03. Permitted Name.

Tenant shall conduct business on the Premises under the name specified in Section 1.01(d) of this Lease. Notwithstanding the foregoing, Tenant may, without Landlord's consent, change the Tenant's Trade Name as specified in Section 1.01(d) of the Lease, so long as (a) concurrently therewith the trade name of substantially all other similar stores owned, operated or controlled by Tenant and its affiliates shall likewise be changed to the same trade name, or (b) such change in trade name is in conjunction with an assignment or subletting permitted pursuant to Article IX of this Lease; and (i) such trade name does not conflict with the trade name of any other tenant in the Shopping Center, and (ii) Tenant pays the cost of all necessary signage changes throughout the Building. Tenant agrees to provide Landlord at least thirty (30) days' prior written notice of the name change and to submit to Landlord for approval plans and specifications for such sign(s) prior to the installation of the new sign(s).

ARTICLE VIII  
COMMON AREAS

Section 8.01. Tenant's Right to Use Common Areas.

(a) Tenant and its agents, employees, customers and invitees are, except as otherwise specifically provided in this Lease, authorized during the Term to use the Common Areas for their respective intended purposes in common with other persons and on a non-exclusive basis. Landlord agrees to maintain and operate, or cause to be maintained and operated, the Common Areas in a manner consistent with similar shopping centers located in Rockville, Maryland. In this Lease, "Common Areas" mean all areas, facilities, and improvements provided, from time to time, in the Shopping Center (except those within any store premises) for the mutual convenience or use of tenants or other occupants of the Shopping Center, their respective agents, employees, customers and invitees, and shall include, if provided, but not be limited to, parking areas and facilities, including, without limitation, any parking deck, roadways, entrances, sidewalks, walkways, stairways, service corridors, truckways, ramps, loading docks, delivery areas, landscaped areas, package pickup stations, public restrooms and comfort stations, access and interior roads, retaining walls, bus stops, and lighting facilities, roof, signage, and building facades.

(b) Employee Parking. Tenant and its Premises employees shall have the right, in common with others, to park vehicles in the areas that Landlord reasonably designates as employee parking areas and in no other areas, and may use the other vehicle areas for ingress and egress only. Tenant shall promptly furnish to Landlord, on written request, license numbers of vehicles used by Tenant and its employees. If any employee of Tenant parks a vehicle in an area other than that designated for parking of employees, then upon the second (2<sup>nd</sup>) and each subsequent such violation occurring in any twelve (12) consecutive month period, Tenant shall pay Landlord TWENTY DOLLARS (\$20) per day or partial day for each vehicle so parked, and Landlord shall have the right to remove such vehicle to the designated employee parking area at Tenant's expense. Landlord shall use commercially reasonable efforts to orally communicate any parking violations hereunder to Tenant's on-site



manager or other person in charge prior to towing any vehicles pursuant to this subsection (b).

(c) Control of Parking Areas. In order to preserve the parking areas for the use by patrons of the Shopping Center, Landlord may exact parking charges (by meters or otherwise) provided that provision is made for free parking ticket validation for all Tenant's customers, employees, licensees, concessionaires or other invitees; may close temporarily all or any portion of the common areas as may be required for proper maintenance and/or repair or to avoid dedication to public use, and take such other action as it deems advisable in its business judgment in order to secure or improve the convenience and use thereof by the tenants of the Shopping Center and their customers. Subject to the limitations and conditions expressly set forth in this Lease, Landlord may, from time to time, change the location, layout, and arrangement of the parking areas, driveways and other common areas and erect buildings, or other temporary or permanent structures or improvements thereon, provided that Landlord maintains sufficient automobile parking facilities for the Shopping Center to comply with applicable governmental requirements, and does not deprive Tenant of permanent access to the Premises. Landlord covenants that as of the date of this Lease, the Shopping Center is in compliance with the minimum parking requirements of all applicable governmental authorities.

Notwithstanding anything to the contrary contained herein, Landlord shall not, in exercising its right under this Section 8.01(c) reduce the number of parking spaces in the Shopping Center below that which is required by the applicable governmental authorities as of the date of this Lease. The foregoing provisions of this paragraph shall not apply in instances where access and/or visibility is temporarily affected as a result of repairs, remodeling, renovation or other construction to the Shopping Center. Furthermore, Landlord shall use its good faith efforts to minimize any interference with Tenant's business operations in the Premises during any such remodeling or renovation of the Shopping Center.

(d) Intentionally Deleted.

(e) No Public Use. Nothing herein contained shall be deemed to be a dedication of the common areas for public use, it being Landlord's intention that the common areas may be used only by Tenant and the other permitted users mentioned in this Section 8.01, and then only for the particular facilities and limited purposes specified as to each user.

(f) New Construction. If during the Term, Landlord elects to construct a building or buildings within the Shopping Center in excess of one (1) story, which building(s) permanently, materially and adversely affects Tenant's second floor visibility from Randolph Road, Landlord shall use good faith, commercially reasonable efforts to develop a plan to accommodate Tenant within such new building(s) and to offer Tenant the right to relocate, at Landlord's sole cost and expense, to alternative space, fronting Randolph Road, within such building(s), having substantially similar square footage, store frontage, depth, and functional utility (taking into account the Permitted Use) as the Premises, and which shall not be unreasonably irregularly shaped (the "Relocation Premises"). Tenant shall reasonably cooperate with Landlord in the development of such plan accommodating Tenant within the new building(s). Provided Landlord has used commercially reasonable efforts to develop such plan to accommodate Tenant within the new building(s), then within thirty (30)

days following receipt of Landlord's notice offering the Relocation Premises (or Landlord's notice advising that despite Landlord's good faith, commercially reasonable efforts, Landlord cannot develop such building(s) in a manner that will accommodate Tenant's requirements), Tenant shall have the right to elect one of the following alternatives upon notice to Landlord: (i) remain in the Premises; (ii) relocate to the Relocation Premises (if applicable); or (iii) terminate its Lease.

(i) If Tenant elects to remain in the Premises or fails to respond to Landlord's notice, then this Lease shall continue in full force and effect, and Tenant's right to relocate or terminate pursuant to this subsection 8.01(f) shall be irrevocably waived. Time is of the essence.

(ii) If Tenant elects to relocate to the Relocation Premises, Landlord shall relocate Tenant to the Relocation Premises at Landlord's sole cost and expense, including Tenant's reasonable actual direct and indirect out-of-pocket costs related to such relocation, and the parties shall execute an amendment or new lease reflecting the terms and conditions of such relocation; provided, however, Tenant shall continue to pay Minimum Rent at the same per square foot rate as provided in this Lease for any period occurring during the Term of this Lease, including the First Extension Period and Second Extension Period, as applicable, unless otherwise mutually agreed by the parties in writing. Landlord shall use commercially reasonable efforts to minimize any down-time due to such relocation, and such down-time shall not exceed more than five (5) business days. Landlord shall not require Tenant to cease operations and relocate to the Relocation Premises until such time as the Relocation Premises are substantially ready for Tenant's use and occupancy. All Rent shall be abated during any period of relocation pursuant to this subsection (f) in which Tenant cannot reasonably operate for the Permitted Use.

(iii) If Tenant elects to terminate this Lease, such termination shall be effective within sixty (60) days after notice from Landlord (but in no event shall such termination be effective prior to the date which is one hundred eighty (180) days after the date of Landlord's receipt of Tenant's termination notice hereunder), or such later date as mutually agreed to by the parties in writing (without being deemed to obligate either party to so agree to a later date). Tenant shall continue to pay Rent under this Lease until such termination. Within thirty (30) days after the effective date of such termination, Landlord shall pay to Tenant an amount equal to six (6) months' Minimum Rent due under this Lease at the then-current rate.

#### Section 8.02. Maintenance of Common Areas.

Landlord shall, subject to Section 8.03, provide illumination of the common areas for the tenants of the Shopping Center from dusk until dawn, subject to applicable governmental laws, rules and regulations, and further subject to Section 30.13, and shall keep the Common Areas in reasonably good condition and repair; and Landlord shall substantially clear ice and snow from the sidewalks, access points, parking, drive aisles and vehicle areas to permit substantial use thereof for the intended purpose with reasonable diligence under the circumstances.

Section 8.03. Payment of Landlord's Operating Costs. Tenant agrees to pay Landlord, as Additional Rent, Tenant's Pro Rata Share of Landlord's Operating Costs (as defined in Section 8.04 below) in equal monthly installments,

without offset, notice or demand, said payments to be based on Landlord's commercially reasonable estimate (from time to time) of Landlord's Operating Costs for each calendar year. As of the date of this Lease, Tenant's monthly Pro Rata Share of Landlord's Operating Costs is equal to the Monthly Operating Charge, which shall be the initial charge payable by Tenant for Landlord's Operating Costs each month. If Landlord at any time reasonably determines that the amount of Landlord's Operating Costs actually being paid or incurred by Landlord exceeds the estimate upon which Tenant's Pro Rata Share of Landlord's Operating Costs was computed, then Tenant, following written request from Landlord, shall commence to pay with the next monthly installment of Minimum Rent due, an amount sufficient to result in Tenant's paying its full Pro Rata Share of Landlord's Operating Costs as computed on the basis of Landlord's revised estimate of Landlord's Operating Costs. Within one hundred fifty (150) days following the end of each calendar year or as soon thereafter as possible, Landlord shall furnish Tenant with a statement of the actual amount of Tenant's Pro Rata Share of Landlord's Operating Costs for such period together with such substantiating documentation as Tenant may reasonably request. If the total amount paid by Tenant for any calendar year shall be less than the actual amount due from Tenant for such calendar year as shown on such statement, Tenant shall pay Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within ten (10) days after the furnishing of each such statement, and if the total amount paid by Tenant hereunder for any such calendar year shall exceed the actual amount due from Tenant for such calendar year, such excess shall, provided Tenant is not then in breach of any of the terms hereof, be credited against the next installment due under this Section 8.03, except for the final calendar year of the Term for which any excess shall, provided Tenant is not then in breach of any of the terms hereof, be promptly refunded to Tenant, it being understood, acknowledged and agreed, however, that if Tenant is then or thereafter indebted to Landlord in any amount for any reason whatsoever, Landlord may deduct such amount owed from such overpayment. Landlord's failure to provide the statement called for above in this Section 8.03 shall not release or relieve Tenant of Tenant's obligations under this Section 8.03 or elsewhere in this Lease; provided, however, if Landlord fails to deliver such statement to Tenant on or before the date on which such annual statement must be delivered, Tenant may send a written notice requesting said statement to Landlord and if Landlord fails to send the applicable statement to Tenant within thirty (30) days after Landlord's receipt of such notice, then Tenant may elect to suspend the monthly payment of Landlord's Operating Costs until Landlord delivers the statement to Tenant; it being understood, acknowledged and agreed, however, that once Tenant receives such statement, Tenant shall pay all such suspended amounts to Landlord and shall thereupon and thereafter pay monthly installments of Landlord's Operating Costs as and when due pursuant to this Section 8.03.

Section 8.04 Definition of Landlord's Operating Costs. Except as set forth herein to the contrary, the term "Landlord's Operating Costs" means all expenses actually incurred by Landlord in managing, maintaining, repairing, replacing, improving, operating and insuring the Common Areas, all facilities of the Shopping Center and all improvements within the Shopping Center, including all insurance required to be maintained by Landlord under this Lease, without limitation, and an amount equal to fifteen percent (15%) of the Landlord's Operating Costs for overhead and administrative costs (exclusive of Landlord's taxes and insurance costs). Landlord hereby represents that the initial monthly Landlord's Operating Costs Charge includes the fifteen percent (15%) overhead and administrative expense contemplated by the provisions of

this Section for the first year. To the extent that allocation of maintenance costs between the Shopping Center and other common areas may be necessary in order to determine Tenant's Pro Rata of Landlord's Operating Costs under the Lease, Landlord's allocation shall be deemed to be conclusive.

Notwithstanding the foregoing, the following items shall be specifically excluded from Landlord's Operating Costs:

- (a) Advertising and promotional expenditures;
- (b) Any costs for which Landlord is reimbursed by insurance proceeds or condemnation awards;
- (c) Any costs relating exclusively to a tenant in particular as contrasted to tenants in general, such as build-out allowances, rent concessions and brokerage commissions;
- (d) Costs, including permit, license and inspection fees, incurred in renovating, improving, decorating, painting or re-decorating vacant tenant space or space of other tenants in the Shopping Center;
- (e) Any costs for which Landlord is reimbursed by tenant(s) of the Shopping Center (other than as part of such other tenant's proportionate share of Landlord's Operating Costs);
- (f) Any costs and expenses incurred by Landlord that are considered capital repairs, under generally accepted accounting principles, but such capital repairs shall be depreciated or amortized according to generally accepted accounting principles over their useful life for federal income tax purposes (but not more than seven (7) years) with the annual depreciation or amortization being included in Landlord's Operating Costs;
- (g) The cost of any work or alterations performed by Landlord for any other tenant in the Shopping Center in connection with preparing space for such other tenant's occupancy;
- (h) Any penalties incurred as a result of Landlord's late payment of any bill and any debt loss, rent loss or reserves for bad debt or rent loss;
- (i) Charges for depreciation for items other than those incurred by Landlord in performance of its obligations in connection with the maintenance and repair of the Common Areas and amortized as aforesaid;
- (j) Rents under any ground lease or any other underlying lease wherein Landlord is the lessee;
- (k) Costs and expenses, fees or other compensation paid to property management firms for management of the Shopping Center (except to the extent any portion of the fifteen percent (15%) overhead and administrative fee hereinabove set forth is used to offset said management fees);
- (l) Compensation paid to employees above the grade of property manager;
- (m) Costs of repairs or maintenance caused or necessitated by the negligence of Landlord, its agents, contractors or employees or due to defects

in initial construction of the Shopping Center occurring within the first twelve (12) months after construction;

(n) Costs of structural additions or structural improvements to be made to the Shopping Center of the kind to be considered to be "capital improvements" under generally accepted accounting principles (provided, however, that the cost of any capitalized repair or replacement or improvement incurred by Landlord in performance of its obligations under this Lease shall be amortized over the useful life of the repair or replacement or improvement in accordance with generally accepted accounting principles (but not more than seven (7) years) and the annual amortization cost shall be included in the Landlord's Operating Costs);

(o) Costs and expenses associated with the cleanup of any hazardous waste substances required by law to be removed or neutralized;

(p) Professional fees incurred by Landlord in the preparation of leases or in disputes with tenants of the Shopping Center or other third party disputes;

(q) Any expense for repairs or maintenance which are covered by warranties, to the extent such maintenance and repairs are made at no cost to Landlord;

(r) Interest on debt or amortization payments, or increases in interest or debt, on any mortgages and rental under any ground or underlying lease or changes in deeds of trust or any other debt for borrowed money in connection with the purchase, refinancing or original construction of the Shopping Center;

(s) Charitable or political contribution; and

(t) Any costs, premiums and deductibles of any insurance obtained or maintained by Landlord, except for the commercial general liability and property insurance to be maintained on the Shopping Center pursuant to this Lease.

Provided that Tenant has made all payments that have been invoiced by Landlord and is not otherwise in default beyond the expiration of any applicable notice and cure period, Tenant shall have the right to audit the books, records and computations of Landlord relative to Landlord's Operating Costs, provided: (i) Tenant gives Landlord thirty (30) days' prior written notice of its intent to audit; (ii) the audit occurs during Landlord's normal business hours and in Landlord's principal offices; (iii) Tenant may only audit said records and books once during each calendar year; (iv) Tenant may only conduct the audit of a calendar year's books and records within six (6) months after receipt of the final statement for the item in question for such calendar year; (v) the auditor shall not be compensated on a contingency basis; (vi) Tenant provides Landlord a copy of the auditor's report; and (vii) the auditor agrees to execute a confidentiality agreement with respect to such audit. All of the information obtained through said audit as well as any compromise, settlement, or adjustment reached between Landlord and Tenant relative to the results of the audit shall be held in strict confidence by Tenant and Tenant's officers, agents and employees and shall not be revealed in any manner to any person except upon the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion, or if required pursuant to any litigation between Landlord and Tenant materially related to

the facts disclosed by such audit, or if otherwise required by law. Landlord shall have all rights allowed by law or equity if Tenant, its officer, agents or employees and/or auditor violate the terms of this provision, including without limitation, the right to terminate Tenant's future right to audit pursuant to this Section.

Landlord may contest Tenant's audit results by giving Tenant written notice of protest within thirty (30) days following Landlord's receipt of the audit report. If Landlord's accountant and Tenant's accountant cannot mutually agree as to Tenant's share of Landlord's Operating Costs due within thirty (30) days after Tenant's receipt of Landlord's notice of protest, Landlord's accountant and Tenant's accountant shall jointly choose a third independent Certified Public Accountant, whose determination shall be binding upon the parties hereto. If the accountants fail to agree upon the third accountant, the parties agree to proceed forthwith to arbitrate the issue in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The cost of the third accountant or the cost of arbitration shall be borne equally by the parties.

#### Section 8.05. Controlled Parking.

If at any time during the Term Landlord shall in its reasonable opinion determine (or Tenant shall advise Landlord) that the parking areas of the Shopping Center are being used by persons who are neither tenants, owners or occupants of the Shopping Center nor their respective customers, employees, invitees or agents ("Non-Permitted Users"), then Landlord shall use commercially reasonable efforts to prevent the use of the parking areas of the Shopping Center by such Non-Permitted Users. In order to preserve the parking areas of the Shopping Center for the use of the Shopping Center's tenants, owners and occupants and their respective customers, employees, invitees or agents, Landlord may, upon thirty (30) days prior written notice to Tenant, exact reasonable parking charges (by parking meters or otherwise) from such Non-Permitted Users provided that the Shopping Center's tenants, owners and occupants and their respective customers, employees, invitees and agents shall at all times during the Lease Term have free parking privileges in the parking areas of the Shopping Center. In addition, subject to the limitations and conditions expressly set forth in this Lease, including those set forth in Section 8.01(c), Landlord may take such other action as it deems reasonably advisable in its reasonable business judgment in order to secure or improve the convenience and use of the parking areas of the Shopping Center by the tenants, owners and occupants of the Shopping Center and their respective customers, employees, invitees and agents (including without limitation, posting tow away signs). The reasonable and competitive costs incurred by Landlord in operating any such parking validation system shall be included in the Operating Costs provided further that all revenues thereby obtained (after first being applied to the reasonable cost of the installation of the parking meters and/or other equipment necessary to give effect to this provision) shall be used to reduce the Operating Costs.

#### Section 8.06. Changes and Additions to Shopping Center.

Subject to the limitations and conditions expressly set forth in this Lease, including those set forth in Section 8.01(c) and 8.01(f), Landlord hereby reserves the right at any time and from time to time to (a) construct other buildings or improvements in the Common Areas, make alterations thereof

or additions thereto, build additional stories on any such building or buildings and build adjoining same; (b) make changes or revisions in the Common Areas and convey portions of the Shopping Center to others for the purpose of construction thereon other buildings or improvements, including additions thereto and alterations thereof.

**ARTICLE IX  
ASSIGNMENT AND SUBLETTING**

**Section 9.01. Restrictions on Assignment.**

(a) Except as otherwise expressly set forth in this Lease, Tenant shall not assign this Lease or sublease all or any part of the Premises, nor permit other persons to occupy or conduct business in said Premises, or any part thereof, nor grant any license, concession, management contract or franchise for all or any part of the Premises without the prior written consent of Landlord which consent shall not be unreasonably withheld, conditioned or delayed in the event of a proposed assignment or subletting subject to Section 9.01(d) below. Any assignment by operation of law, attachment or assignment for the benefit of creditors shall, at Landlord's option, be inoperative. Following an assignment or other transfer (other than a Permitted Transfer), if Tenant is a corporation, any transfer of any of Tenant's issued and outstanding capital stock, or any issuance of additional capital stock, as a result of which the majority of the issued and outstanding capital stock of Tenant is held by a corporation, firm, or person or persons who do not hold a majority of the issued and outstanding capital stock of Tenant on the date hereof, shall be deemed a prohibited assignment under this Section 9.01. Notwithstanding anything in this Lease to the contrary, a transfer of the ownership interests of the named Tenant of this Lease or any Permitted Transferee of such Tenant shall not constitute an assignment or subletting requiring Landlord's consent so long as Tenant also owns and operates at least five (5) other stores operating under the same trade name both before and after such transfer. Tenant shall not sell or convey its capital stock or other equity interest in a manner intended to circumvent Landlord's rights pursuant to this Section (e.g. a step transaction in which this Lease is assigned to a wholly owned subsidiary whose only asset is this Lease, followed by a sale of such subsidiary's stock to a third party). Further notwithstanding the foregoing, if Tenant is a partnership, any transfer of any interest in the partnership or any other change in the composition of the partnership which results in a change in the management of Tenant from the person or persons managing the partnership on the date hereof, shall be deemed a prohibited assignment under this Section 9.01. Notwithstanding the foregoing, a transfer of the ownership interests of Tenant shall not constitute an assignment or subletting requiring Landlord's consent if Tenant is a public corporation whose stock has been registered pursuant to the applicable Securities and Exchange Act, or if the transfer occurs in the course of a public offering conducted in accordance with the applicable Securities and Exchange Act.

(b) If at any time during the Term Tenant desires to assign this Lease or sublet all or any part of the Premises, then, in connection with Tenant's request to Landlord for Landlord's consent thereto, Tenant shall give written notice to Landlord of the proposed assignee or subtenant and of the terms of the proposed assignment or sublease. Tenant shall also provide Landlord

simultaneously with such request, the most recent financial statement or other evidence of financial responsibility and a current business experience resume and such other information as Landlord shall reasonably request of such proposed assignee or subtenant.

(c) Landlord acknowledges that Tenant shall have the right to enter into license, subleasing or concession agreements with third parties to provide various of the services, amenities and incidental products that are part of the Permitted Use. All such arrangements shall be subordinate and subject to the terms, conditions and provisions of this Lease, and Tenant shall promptly provide to Landlord the identity of such licensee(s) and the nature of the service or product to be provided. Additionally, such agreements shall not provide for separate entrances, separate storefronts or separate signage to be installed upon the Premises.

(d) Landlord and Tenant expressly agree that some of the reasonableness factors that may be considered by Landlord in determining whether to consent to a proposed assignment or sublet include, but are not limited to, (i) the compatibility or appropriateness of such proposed assignee or subtenant with the desired overall tenant mix for the Shopping Center, (ii) the business experience and reputation of such proposed assignee or subtenant (and the partners, officers and principals thereof), (iii) the financial capability or creditworthiness of such proposed assignee or subtenant (and the partners, officers and principals thereof), and (iv) the express agreement and ability of such proposed assignee or subtenant to comply with the terms of this Lease.

(e) Tenant may assign this Lease or sublet the entire Premises without Landlord's consent, provided Tenant gives Landlord written notice thereof, within thirty (30) days after the effective date in the following circumstances:

(i) the sublessee or assignee is an affiliate or an entity which may, as a result of a reorganization, merger or consolidation, succeed to the entire business carried on by Tenant; or

(ii) the assignment or subletting is part of a chain-wide assignment or sale of all of Tenant's (and its affiliates') stores in the Washington, D.C. metropolitan area, and the assignee or sublessee has a net worth sufficient to operate a business of such nature;

and provided that:

(1) the assignment or subletting consists of all of Tenant's leasehold interest or of the entire Premises, as the case may be, and in the case of an assignment, shall transfer to the assignee all of Tenant's rights in, and interest under, this Lease; and

(2) at the time of such assignment or subletting, this Lease is in full force and effect without any breach or default thereunder on the part of the Tenant; and

(3) the assignee or sublessee shall (1) assume, by written recordable instrument, in form and content reasonably satisfactory to Landlord, the due performance of all of Tenant's obligations under the Lease after the effective date of such assignment and assumption, including any



accrued obligations as of the time of the assignment or subletting, and (2) agree to perform and observe all of Tenant's representations, warranties, and duties under this Lease after the effective date of such assignment and assumption; and

(4) a copy of the assignment or sublease and the original assumption agreement, both in form and content reasonably satisfactory to Landlord and fully executed and acknowledged by the assignee or sublessee, and, in the event the assignee or sublessee is a corporation, a certified copy of a properly executed corporate resolution authorizing such assumption agreement, shall have been delivered to Landlord within ten (10) days prior to the effective date of such assignment or subletting; and

(5) such assignment or subletting shall be upon and subject to all the provisions, terms, covenants and conditions of this Lease including the requirement to use the Premises only for the Permitted Use; and

(6) the assignee, sublessee or transferee or its parent, subsidiaries or affiliates shall not be subject to any bankruptcy or insolvency proceedings at the time of such sale.

The term "affiliate(s)" shall mean a corporation which directly or indirectly controls or is controlled by, or is under common control with Tenant. For this purpose, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

An assignment or subletting pursuant to this Section 9.01(e) shall be referred to as a "Permitted Transfer" and the transferee pursuant to such Permitted Transfer shall be referred to as a "Permitted Transferee".

Section 9.02. No Waiver.

If Landlord at any time consents in writing to any assignment or sublease as defined in and prohibited by Section 9.01, in addition to any other consideration that may pass between the parties in connection therewith, Tenant and any such assignee or sublessee shall be deemed to have covenanted not to make any further assignment or sublease contrary to the provisions of Section 9.01, and such covenant shall be deemed to have been made as of the date of such consent and shall take effect prospectively from the date thereof.

#### ARTICLE X REPAIRS

Section 10.01. Repairs by Landlord.

Subject to delays which are caused by labor disputes, inability to obtain materials or labor on reasonable terms, delays excusable under Section 30.13, or any cause whatsoever not due to the fault of Landlord (including Tenant's failure to furnish information as hereinafter provided), Landlord shall make all necessary repairs to the roof and necessary structural repairs to the exterior walls and structural floor of the Premises, provided that Tenant gives Landlord written notice of the necessity for such repairs and

that the need for such repairs is not due to any act or omission of Tenant, its agents, servants or contractors. Tenant shall pay to Landlord, as Additional Rent, all costs and expenses incurred by Landlord in performing the repairs which are the responsibility of Tenant plus fifteen percent (15%) for overhead within ten (10) days after receipt of a bill therefor from Landlord.

Subject to reimbursement pursuant to Section 8.03 and 8.04, Landlord shall make repairs to the roof and the outer walls (excluding doors, windows, glass, ceiling, mechanical, electrical and plumbing equipment of Tenant's Premises. See Section 24.04 regarding Tenant's self-help rights in the event of Landlord's failure to perform its obligations hereunder.

#### Section 10.02. Repairs by Tenant.

Saving and excepting the repairs for which Landlord is responsible under Sections 10.01 and 20.01 of this Lease, Tenant shall keep the Premises, the elevator and escalator serving the Premises, and all systems, equipment and facilities inclusive of the heating, ventilating and air-conditioning system and interior electrical and plumbing systems located upon and serving exclusively the Premises in good condition and repair (reasonable wear and tear excepted), and shall make all replacements required to maintain said status of repair. Tenant shall also keep in good condition the common areas within twenty (20) feet of the wall in which the Premises rear service door is located.

#### Section 10.03. Quality of Work and Warranties.

All repairs and replacements made by the parties shall be equal in quality to the original construction (reasonable wear and tear excepted). Landlord shall assign to Tenant the benefits of all warranties, if any, received from contractors in connection with the original construction of Landlord's Work in the Premises.

#### Section 10.04. HVAC Maintenance Contract.

Tenant shall, during the entire Term of this Lease, obtain and keep in full force and effect, at Tenant's sole expense, a full-service maintenance and repair contract with respect to the heating and air-conditioning ("HVAC") units and related equipment serving exclusively the Premises. Such service contract shall be with a reputable contractor subject to Landlord's reasonable approval. Tenant shall provide Landlord with a copy of the initial service contract and all subsequent renewals or replacements thereof. Tenant agrees to notify Landlord whenever major repairs or replacements to the above systems are required.

Notwithstanding the foregoing, Tenant employees may perform such maintenance and repairs to the HVAC units, in lieu of Tenant entering into a third-party HVAC maintenance contract, as long as: (i) such employee maintenance is part of an established maintenance program utilized in substantially all Tenant's (and its affiliates') locations in the Washington D.C. metropolitan area, with regular preventive maintenance being performed as reasonably necessary, but in no event less than two (2) times per calendar year; (ii) the employees performing such repairs and maintenance regularly perform such repairs and maintenance as part of their duties; (iii) the

employees performing such maintenance are adequately trained and equipped to perform such repairs and maintenance; and (iv) Tenant shall provide Landlord with written repair and maintenance records upon Landlord's written request therefor.

#### ARTICLE XI UTILITIES

##### Section 11.01. Payment for Utilities.

Beginning with the earlier of (i) the date that Tenant enters the Premises pursuant to Section 3.03, or (ii) the date the Premises are delivered to Tenant in accordance with this Lease, Tenant shall pay, when due or when billed by Landlord, all utility charges (as defined below), all charges for sewer service furnished to the Premises, a proportionate share of sewer meter and fire service charges for the Shopping Center, and all charges for water, which will be charged to Tenant by Landlord through the use of a water submeter. Tenant, upon the occurrence of (i) or (ii) above, shall promptly have all utility services billed to it in its name. If neither a water nor sewer meter is furnished, Tenant shall pay Landlord a proportionate share of the Shopping Center's water and sewer bills, based on the ratio of the Premises floor area to all leased floor area in the Shopping Center. Utility charges includes, but is not limited to, all consumption charges for all utility service furnished to the Premises, including, but without limitation, heat, air-conditioning, gas, electricity, and telephone service.

Landlord shall not be liable to Tenant for damages because of any interruptions in utility services, and Tenant shall not be entitled to claim a constructive eviction or abatement of Rent due to such interruption; but Landlord shall proceed with reasonable diligence to restore such service to the extent that it is within Landlord's reasonable control to do so.

Notwithstanding anything in this Lease to the contrary, in the event that restoration of any interruption of utility services is not the sole responsibility of the public utility service company or the Tenant, Landlord, at Tenant's cost and expense, shall use commercially reasonable efforts to assist Tenant in obtaining the restoration of such service after interruption, but Landlord shall not be responsible to Tenant for any interruption. If such interruption is caused by the negligence or willful misconduct of Landlord, its agents or employees, and Tenant is precluded from being open for business within the Premises for a period of three (3) consecutive business days, then, in addition to Tenant's remedies at law or in equity, Tenant's Rent shall abate commencing after such three (3) consecutive business day period and until the earlier of the date on which such utility service is restored or the date the Tenant reopens for business.

#### ARTICLE XII TENANT'S OPERATIONS, ALTERATIONS, SIGNS AND LAW COMPLIANCE

##### Section 12.01. Rules and Regulations.

Tenant shall at all times comply with the rules and regulations set forth on Exhibit D hereto, and with any additions thereto and modifications

thereof adopted from time to time by Landlord, and each such rule or regulation shall be deemed as a covenant of this Lease to be performed and observed by Tenant. Landlord agrees that it will not unreasonably discriminate in the application of rules and regulations. Notwithstanding the foregoing to the contrary, in no event shall Tenant be required to comply with any additional rule unless and until Tenant has received a copy of same in accordance with the notice provisions set forth in this Lease.

#### Section 12.02. Garbage Collection Service.

Landlord shall permit Tenant to provide its own garbage or trash collection service at the Premises including the location of a dumpster in the Shopping Center in an area reasonably designated by Landlord. The cost of any such service shall be borne solely by Tenant. Tenant covenants and agrees to indemnify and hold harmless Landlord, its agents, employees, officers and contractors from and against all claims, and all costs, expenses, judgments, actions, and liabilities incurred or arising or in connection with (including reasonable attorneys' fees), including any action or proceeding brought thereon, arising from or as a result of (a) any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person, alleged to have occurred relating to the dumpster or the provision of its own trash collection services.

#### Section 12.03. Alterations.

Tenant shall not make any alterations, additions, or improvements to the storefront or exterior of the Premises or any alterations, additions, or improvements affecting structural or support elements of or in the building of which the Premises are a part, or affecting, any utility system servicing the Premises or other parts of the Shopping Center. Except as expressly set forth below, any alterations, additions, or improvements by Tenant must be approved by Landlord (which approval may be given or withheld in Landlord's sole and absolute discretion with respect to the structure or exterior of the building of which the Premises is a part of or Tenant's storefront (but excluding Tenant's signage) and shall not be unreasonably withheld, conditioned or delayed with respect to interior, non-structural alterations), and shall immediately become the property of Landlord and remain upon the Premises at the end of the Term unless at the time of Landlord's approval, or when Landlord first has notice of such alterations, Landlord notifies Tenant to restore the Premises to its original condition (reasonable wear and tear excepted), in which event Tenant shall comply with such requirements prior to the expiration of the Term. Notwithstanding the foregoing, Tenant shall not be required to remove Tenant's or Landlord's initial alterations and additions to the Premises approved by Landlord as part of Tenant's initial build-out, provided, however, if Tenant installs any alterations and/or additions during the Term subsequent to the installation of Tenant's initial alterations and additions, Tenant shall request, in writing at the time Tenant seeks consent to such alterations and additions, that a decision be made by Landlord regarding the removal of such alterations or improvements upon the expiration date of the Term, and Landlord shall notify Tenant whether such alterations or improvements must be removed prior to the expiration date or if they may remain upon the Premises. Tenant shall not cut or drill into, or secure any fixtures, apparatus, or equipment of any kind to any part of the Premises without Landlord's prior written consent; and if Tenant shall in any way cut through or pierce the roof or exterior walls of the Premises, the Landlord's repair obligations respecting the roof or exterior walls (as the case may be) under Section 10.01 hereof shall thereupon terminate. Before undertaking any

alterations permitted hereunder or consented to by Landlord hereunder, Tenant shall submit plans to Landlord as to the work involved and shall obtain and furnish to Landlord an endorsement to the public liability insurance policy required to be carried by Tenant under Section 16.02 hereof to cover liabilities incurred in connection with any work undertaken by Tenant. Notwithstanding the foregoing, the following items remain the property of Tenant during the Term and shall be removable by Tenant from time to time and shall be removed at the expiration of the Term: (i) moveable aerobics flooring; (ii) bolted lockers; (iii) bolted cabinetry; (iv) specialty lighting; (v) signage; (vi) any "branding" items that include Tenant's trademarked indicia; (vii) reception desks; and (viii) counter/display cabinetry provided, Tenant shall repair any damage to the Premises caused by the removal thereof at Tenant's sole cost and expense.

Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to make non-structural interior alterations, repairs or replacements in and to the Premises without first obtaining Landlord's prior written consent or approval, but with prior notice to Landlord, provided (i) such interior alterations, repairs or replacements neither require any structural alteration nor impose any greater-load on any structural portion of the Premises or on the utility or mechanical system serving the Premises, (ii) such interior repairs or replacements are in accordance with Tenant's originally approved plans and are in conformance with Tenant's then current design criteria, (iii) the cost of such interior alteration, repair or replacement shall not exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00) in any Lease Year, and (iv) Tenant agrees to indemnify and hold harmless Landlord from and against all claims, actions, liability and damage sustained by Landlord as a result of any such work by Tenant, its agents, employees or contractors. Tenant shall comply with all laws in making any alterations, repairs or replacements. If Tenant is required to file plans as a condition to doing such work, Tenant shall provide Landlord with a copy of the plans for informational purposes.

#### Section 12.04. Signs.

(a) Tenant shall purchase and install on the exterior of the Premises and shall be permitted to install such signage up to the maximum allowable signage size permitted by law (provided that the signage installed by Tenant does not adversely impact Landlord's or any other tenant in the Shopping Center's right to install additional signage) on the front of the Premises. Installation of Tenant's sign shall be made only by a sign company reasonably designated or approved in advance by Landlord and will be completed on the earlier of the date on which Tenant opens for business or within thirty (30) days after the date of commencement of the Term of this Lease. The signage shall conform to Landlord's sign criteria attached to this Lease as Exhibit E, and shall be subject to Landlord's prior written approval of Tenant's sign plans, not to be unreasonably withheld, conditioned or delayed. Landlord hereby approves of Tenant's sign manufacturer (Sign Tech International), provided, however, Tenant's sign installation contractor shall be subject to Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Tenant shall provide Landlord with four (4) copies of sign plans in the number of days set forth in Section 1.01(s). Tenant shall maintain, repair, and replace the sign (if reasonably needed) during the Term of this Lease. If Landlord elects to redevelop or renovate the Shopping Center, and as a result thereof, Tenant is required by law to conform to Shopping Center standard signage (despite Landlord's commercially reasonable efforts to retain Tenant's right to use its corporate standard

signage and to retain substantially the same Tenant sign prominence), Tenant's signage shall be replaced with such Shopping Center standard signage at Landlord's sole cost and expense. Tenant shall remove its exterior sign(s) from the Premises upon surrender at the end of the Term at Tenant's sole cost and expense, and Tenant shall repair any damage caused to the exterior of the Premises as the result of such removal. Notwithstanding anything in this Section to the contrary, but subject to all applicable laws and Tenant's obligation to obtain all necessary approvals and permits, Tenant shall have the right to install the sign depicted on Exhibit E-1. See Exhibit F, Paragraph 2, regarding Tenant's Pylon Sign rights.

(b) Tenant shall not, without Landlord's prior written consent, which consent may be granted or withheld in its sole discretion, place, suffer to be placed, or maintain any sign, billboard, marquee, awning, placard, lettering, advertising matter, or other thing of any kind, whether permanent or temporary, on the exterior of the Premises, or in or on any glass window, window showcase, or door of the Premises. In the event of any violation of this Section 12.04 by Tenant, Landlord may take such action as it deems appropriate to abate such violation, and Tenant shall pay to Landlord all expenses incurred by Landlord in connection therewith.

Notwithstanding anything in the foregoing to the contrary, Tenant may install professionally made promotional signs (including neon signage) which Tenant and its affiliates use in a majority of stores within the Washington D.C. metropolitan area in the interior portion of the window and the interior of the Premises, without Landlord's prior written approval, provided that such signs are permitted by applicable state and/or county codes and ordinances. The foregoing signage rights are for the named Tenant hereunder and any successors or assigns of the named Tenant pursuant to a Permitted Transfer.

#### Section 12.05. Compliance with Laws and Insurance Requirements.

Tenant shall promptly comply with all applicable laws, rules, regulations, requirements, and recommendations of governmental bodies and public authorities and of the local board of fire underwriters rating bureau or other fire insurance rating organization for the area in which the Premises are situated and of the Landlord's insurers, pertaining to the Premises or the use and occupancy thereof, or to fire preventive, warning and extinguishing apparatus. Tenant shall not do or suffer to be done or keep or suffer to be kept anything in or about the Premises which will contravene any of Landlord's insurance policies on the Shopping Center or any part thereof (including, without limitation, fire, casualty, liability, boiler and Rent insurance) or which will prevent Landlord from obtaining such policies in companies reasonably acceptable to Landlord, or which will impair Landlord's rights to collect on any insurance policy; and if anything done, omitted to be done, or suffered to be done by Tenant (including, without limitation, failure to occupy the Premises) or kept, or suffered by Tenant to be kept in or about the Premises shall cause the rating of any such insurance on the Premises or any other part of the Shopping Center to be increased above the rate applicable to the least hazardous type of retail occupancy legally permitted in the Shopping Center or shall cause any policy of Landlord's to be canceled or result in the disturbance of an insurance recovery, then Tenant will pay the increase in premium promptly upon Landlord's demand, or indemnify Landlord for any loss at the extent that insurance proceeds are insufficient to fully cover such loss, as the case may be.

Notwithstanding the foregoing, Landlord shall, at its own cost and expense, comply with all governmental laws, rules, orders, ordinances and regulations now in force, or which may hereafter be in force, applicable to the structural portions of the Premises and the Common Areas; provided, however, Landlord shall not be required to comply with any such governmental laws, rules, orders, ordinances for which it would otherwise be responsible, if the same have been imposed or are applicable as a result of Tenant's negligence, Tenant's particular use of the Premises, Tenant's failure to make repairs required of Tenant hereunder, or which are imposed as a result of alterations or improvements made by Tenant, or as a result of Tenant's failure to comply with any of its obligations under this Lease and in such event Tenant shall comply with such governmental laws, rules, orders, ordinances.

#### ARTICLE XIII

##### MECHANIC'S LIENS AND OTHER LIENS

###### Section 13.01. Mechanic's and Materialmen's Liens.

If any mechanic's or other lien is filed against any part of the Shopping Center by reason of any labor, material or service furnished or alleged to have been furnished to Tenant or for any change, alteration, addition, or repair to the Premises made by Tenant, Tenant shall cause such lien to be released of record by payment, bond, or otherwise as allowed by law, at Tenant's expense, within thirty (30) days after receiving written notice of the filing thereof; and Tenant shall, at its expense, defend any proceeding for the enforcement of any such lien, discharge any judgment thereon and save Landlord harmless from all losses and expenses resulting therefrom, including counsel fees and other expenses actually incurred by Landlord if it elects to defend or participate in the defense of such proceeding.

###### Section 13.02. Other Liens.

Tenant shall not permit the Premises to be subjected to any statutory lien by reason of any act or omission on the part of Tenant or any of its approved concessionaires, licensees, or subtenants or their respective agents, servants, employees, or contractors; and in the event that any such lien attaches to the Premises or the Shopping Center, Tenant shall discharge the same promptly by payment, bond, or otherwise as allowed by law, at its own expense, within thirty (30) days after receiving written notice of the filing thereof.

#### ARTICLE XIV

##### ROOF, WALLS AND INTERIOR

###### Section 14.01. Use of Roof and Walls by Landlord.

Subject to the limitations and conditions expressly set forth in this Lease, Landlord reserves the exclusive rights to the use of all or any part of the roof of the Premises, air space thereabove, and the rear and side walls of the Premises, for support or other purposes; provided, however, in no event shall Landlord add floors above the Premises or place any signs or advertising of other particular tenants of the Shopping Center on the exterior walls or the roof of the Premises, except that Landlord may erect one other tenant's sign on the exterior walls of the Premises subject to Tenant's consent not to be unreasonably withheld, conditioned or delayed, Tenant hereby consenting to

the installation of a tenant's signage within the sign box of the existing Today's Man sign on the exterior walls of the Premises.

See Exhibit F, Section 4 for Tenant's right to install a Satellite Dish.

#### **ARTICLE XV RADIUS RESTRICTION**

##### **Section 15.01. Other Stores.**

Tenant covenants for itself, and for any subsidiary corporation or any stockholder (if Tenant is a corporation), and for every partner in Tenant (if Tenant is a partnership) that so long as this Lease is in force and effect, or until the fixed termination date under Section 3.01 in case of premature termination of this Lease by Landlord due to default by the Tenant, neither Tenant nor any such affiliate, subsidiary or partner shall, within the radius of the Shopping Center specified in Section 1.01(h) of this Lease directly or indirectly own, lease (as landlord or tenant), open and/or operate a business of the type permitted to be conducted on the Premises under Section 7.01(a) that operates under the same trade name as Tenant. In the event of a breach of the provisions of this Section 15.01 by Tenant, then as Landlord's sole and exclusive remedy, Landlord may increase Tenant's annual Minimum Rent payable under this Lease by \$2.00 per square foot during such period that Tenant is in breach of this Section 15.01. The foregoing restriction shall not apply to any business existing as of the date of this Lease, nor to any business acquired by Tenant or its affiliated entities from and after the date of this Lease, nor to any business with which or into which Tenant is merged or consolidated from and after the date hereof, it being the intention of the parties that the operation of a competitive store within the radius as a result of an acquisition or merger shall not result in a violation of this Section 15.01. Notwithstanding anything contained in this Section 15.01 to the contrary; provided Tenant has not exercised or has not expressly waived an applicable option to extend the Term, the provisions of this Section 15.01 shall be inapplicable during the final Lease Year of the Term, including the final Lease Year of the First Extension Period and the final Lease Year of the Second Extension Period, as applicable.

#### **ARTICLE XVI PUBLIC LIABILITY AND INSURANCE**

##### **Section 16.01. Intentionally Deleted.**

##### **Section 16.02. Indemnity, Tenant's Insurance.**

(a) Indemnity. Tenant shall indemnify, and save Landlord, its agents, contractors, and employees (collectively "Landlord Parties") harmless from and against any and all claims, actions, demands, damages, liability and expenses (including counsel fees) of injury to the property of others and injury or death or persons, which is caused by or arises out of or in connection with Tenant's use or occupancy of the Premises or the common areas, or any thing, matter, or condition of, on or pertaining to the Premises, or any act or



omission of Tenant, its agents, employees, servants, or contractors, or out of breach by Tenant of any term, covenant, or condition of this Lease to be performed or observed by Tenant. Any such cost, damage, claim, liability or expense incurred by the Landlord Parties for which Tenant is obligated to reimburse Landlord hereunder shall be due and payable within thirty (30) days after notice to Tenant that payment is due, together with interest thereon at the Lease Interest Rate.

Landlord shall indemnify, defend and hold Tenant and Tenant's agents, employees and contractors (collectively, the "Tenant Parties") harmless from and against all third party liabilities, obligations, damages, judgments, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees, which may be imposed upon, incurred by, or asserted against any of the Tenant Parties by third parties arising, directly or indirectly, out of or in connection with the acts or negligence of Landlord, its agents, contractors, and employees. If any action or proceeding is brought against any of the Tenant Parties by reason of any of the foregoing, Landlord shall reimburse to the Tenant Parties the cost of defending such action or proceeding or, upon written request from the Tenant Parties and at Landlord's sole cost and expense, resist and defend such action and proceeding by counsel chosen by Landlord's insurance company. Any such cost, damage, claim, liability or expense incurred by Tenant Parties for which Landlord is obligated to reimburse Tenant Parties hereunder shall be due and payable within thirty (30) days after notice to Landlord that payment is due, together with interest thereon at the Lease Interest Rate.

(b) Liability Insurance. Throughout the Term of this Lease, Tenant shall, at its expense, maintain commercial general liability insurance, automobile liability insurance, boiler liability insurance (if applicable to the Premises), and sprinkler damage liability insurance, covering personal injury and property damage occurring on the Premises, which shall include Landlord and Tenant as named insureds, and shall include contractual indemnity coverage for Tenant's liability under Section 16.02(a). Such policy shall have minimum liability limits of Two Million Dollars (\$2,000,000) for bodily injury or death of one person, Three Million Dollars (\$3,000,000) for injury or death of more than one person in any one accident, and One Hundred Thousand Dollars (\$100,000) for property damage for each accident; and all such policies shall be written on an occurrence basis. The minimum limitations above set forth shall, at Landlord's option, be increased on every fifth anniversary of the commencement date of the Term by twenty percent (20%) of the limitations then applicable under the provisions of this Section 16.02(b).

(c) Plate Glass Insurance. Throughout the Term Tenant shall, at its expense, maintain plate glass insurance for the full replacement value of all of the plate glass in the Premises. Notwithstanding the foregoing, Tenant may self-insure for plate glass damage.

(d) Rental Value Insurance. Throughout the Term Tenant shall, at its expense, maintain rental value and/or business interruption insurance in amounts not less than the Minimum Rent and Additional Rent required to be paid hereunder for a period of not less than ninety (90) days.

(e) Property Damage Insurance. Tenant shall carry causes of loss special form insurance, including sprinkler damage, vandalism and malicious mischief, for the full replacement value of those parts of the Premises and the facilities therein which were originally constructed and/or installed by

Tenant or at Tenant's expense, and on all other leasehold improvements made by Tenant, or at Tenant's expense as well as Tenant's inventory and merchandise.

All such insurance shall include Landlord and/or, at Landlord's option any holder of a deed of trust or mortgage upon the Premises, as named insureds. In the event of termination of this Lease for any reason, said insurance policy and the right to all proceeds thereunder shall belong to Landlord.

(f) Carrier Rating. All insurance required under this Lease shall be written with insurance companies licensed to do business in the state in which the Shopping Center is located and rated by Best's Manual A as to general policy holders rating, and Class XII or higher as to financial rating, and shall contain an endorsement requiring thirty (30) days, prior written notice to Landlord of any modification, cancellation, or surrender.

(g) Delivery of Policies. Prior to beginning of the Term, Tenant shall deliver to Landlord the original insurance policies required to be carried under this Article and Articles XVIII and XX bearing a notation by the insurer or its agent that the premium is paid or is otherwise current; and renewal certificates of each such policy shall be delivered to Landlord at least thirty (30) days prior to the expiration of any policy term bearing a notation that the renewal premium has been paid or is otherwise current. The insurance required to be carried by Tenant under this Section 16.02 may be carried under a policy known as a "blanket policy", but Tenant shall furnish to Landlord a copy of the certificate of such policy, which certificate shall reflect any endorsements thereto required by this Article, and evidence of Landlord's coverage under such policy. All such policies shall also contain a provision that the Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for loss occasioned to it, its servants, agents and employees by reason of the negligence of the Tenant.

Section 16.03. Waiver of Subrogation. Each party releases and waives on behalf of itself and on behalf of the insurers of such party's property, any and all claims and any rights of subrogation of any such insurer against the other party, its employees and agents for loss (other than loss or damage resulting from the willful act of such other party, its employees and agents) sustained from any peril to property that is covered under a standard all-risk or Special Form - Causes of Loss policy, or any peril that is required to be insured against herein, whether or not such insurance is actually in force, or from any peril to property actually insured against, though not required to be under this Lease. All insurance policies of Landlord and Tenant required by this Lease shall contain a clause or endorsement pursuant to which the insurance companies waive subrogation and consent to a waiver of right of recovery. Upon the request of either party, the non-requesting party shall provide copies of any applicable insurance certificates reflecting such waiver of subrogation.

ARTICLE XVII  
TAXES AND ASSESSMENTS

Section 17.01. Taxes.

Except as otherwise set forth herein, for the purpose of this Lease, the term "Taxes" shall include all taxes attributable to land or improvements now or hereafter included within or made to the Shopping Center or attributable to the present or future installation thereon or therein of fixtures, machinery or equipment, and all real estate taxes, assessments, water and sewer rents and other governmental impositions and charges of every kind and nature whatsoever, non-recurring as well as recurring, special or extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the Term of this Lease be levied, assessed or imposed, or become due and payable or become liens upon, or arise in connection with, the use, occupancy, or possession of, or any interests in, the Shopping Center or any part thereof, or any land, buildings, or other improvements thereof. Furthermore, any reasonable costs and reasonable expenses incurred by Landlord (including, without limitation, attorney's fees, expert fees and appraisal costs) in contesting the amount of any taxes or tax assessment or in otherwise attempting to lower or eliminate any taxes, tax assessment, or tax rate shall, in the year incurred, be included within the term Taxes for such year. Taxes shall specifically exclude any franchise, corporation, income or profit tax or capital levy that is or may be imposed upon Landlord; any inheritance, estate, succession, sale, transfer, or gift tax; any other capital expenditure relating to construction of improvements on any part of the Premises or Shopping Center the net effect of which is to fund or finance or perform construction or other projects for or on behalf of Landlord, whether or not the same are paid for or financed by Landlord or others through any assessment, special assessment district or other program authorized by law; and any penalties imposed upon Landlord for late payment of Taxes.

Section 17.02. Payment of Taxes.

Tenant covenants and agrees to deposit monthly, in advance, with Landlord on the first day of each calendar month throughout the Term an amount equal to one-twelfth (1/12th) of the actual or Landlord's estimate of Tenant's Pro Rata Share of the annual Taxes for the next succeeding tax fiscal year. The first installment for the calendar month in which the Term commences shall be due and payable by Tenant on the Rental Commencement Date, and the next installment shall be paid on the first day of the next ensuing calendar month.

Any underpayment of Tenant's Pro Rata Share not covered by the accumulation of monthly deposits shall be paid by Tenant within fifteen (15) days of Landlord's demand in writing, and delivery of substantiating documentation, and at Landlord's election, any overpayment shall be credited against Rent installments next coming due or refunded to Tenant within ninety (90) days following the expiration of each tax year. Any interest earned on the escrow deposits payable hereunder shall be and remain the property of Landlord. Tenant shall, on or before the Rental Commencement Date, reimburse Landlord for Tenant's Pro Rata Share of the then current tax fiscal year's taxes, if previously paid by Landlord covering the period from the Rental Commencement

Date through the end of the then current tax fiscal year together with an amount sufficient to bring current its real estate tax escrow fund as aforesaid. Landlord shall, within fifteen (15) days after expiration of the Term, refund to Tenant that portion of Tenant's tax payments allocable to the period after expiration of the Term. Tenant's Pro Rata Share of Taxes shall be equitably adjusted for and with respect to the first and last partial tax years (if any) of the term hereof, and a tentative computation shall be made on the basis of the previous year's Taxes payable by the Tenant, with a final adjustment to be made between the Landlord and the Tenant promptly after all bills and computations are available for such period.

Section 17.03. Licenses and Permits.

Tenant shall be responsible for obtaining all licenses and permits respecting Tenant's use and occupancy of the Premises, and shall pay all minor privilege charges, occupancy permit fees, license fees, or other charges or taxes which are imposed on or with respect to the Premises or the use and occupancy thereof by Tenant.

Section 17.04. Taxes on Rentals and Other Sums Payable by Tenant.

Tenant shall pay Landlord, in addition to and along with the rental otherwise payable hereunder, a sum equal to the aggregate of any municipal, city, county, state, or federal excise, sales, use or privilege taxes levied or imposed or hereafter levied or imposed, during the Term hereof or any extension or renewal hereof, against or on account of the amounts payable hereunder or the receipts thereof by Landlord (except state, federal or any other income taxes imposed or levied against Landlord), if such taxes are imposed as a substitution for all or a portion of Taxes assessed upon the Shopping Center, which shall be paid monthly with the installments of Rental as hereinabove provided. In addition, Tenant shall be responsible for any tax on Rent whether or not the same is in addition to or in substitution of any existing taxes.

Section 17.05. Personal Property Taxes.

Tenant shall pay, prior to delinquency, all taxes levied upon fixtures, furnishings, equipment and all other personal property belonging to Tenant and placed on the Premises by the Tenant. In the event any or all of the Tenant's fixtures, furnishings, equipment, and other personal property shall be assessed and taxed with the Landlord's real property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property together with copies of substantiating documentation.

Section 17.06 Right to Contest Taxes.

Not more than one (1) time every three years, Tenant shall have the right to request that Landlord appeal any increase in Taxes. Tenant shall only request an appeal of an increase in Taxes if Tenant shall have a reasonable basis for undertaking such contest. As used in the immediately preceding sentence, a "reasonable basis" shall include, without limitation, evidence suggesting that the applicable governmental authority has overvalued

the Premises and/or the Shopping Center. The parties agree that it would be unreasonable for Tenant to request a contest if credible evidence reveals that the Premises and/or the Shopping Center are undervalued at the time of the proposed contest. If Landlord is successful in such tax appeal, Landlord shall credit to Tenant its Pro Rata Share of such reduction in Taxes, provided, however, if Taxes are increased as a result of Landlord's contest thereof, Tenant shall pay the Pro Rata Share of such increase in Taxes.

#### ARTICLE XVIII TENANT'S PROPERTY

##### Section 18.01. Trade Fixtures.

(a) All owned trade fixtures and equipment (called "Fixtures" in this Article) installed by Tenant in the Premises shall be new at the time of installation and shall be owned, leased, or financed in the name of Tenant only. Promptly upon Landlord's written request (but in no event more than twice during any twelve (12) month period), Tenant shall furnish Landlord with evidence of the nature of its interest in such Fixtures. Throughout the Term, such Fixtures shall be maintained by Tenant in an attractive condition and in good repair, and shall remain the property of Tenant during the Term of this Lease if Tenant is not then in default under this Lease, and shall be removed by Tenant at the end of the Term upon Landlord's demand; and upon removal Tenant shall repair any damage to the Premises caused by installation or removal of such Fixtures and any wear and tear caused by the presence or use of such Fixtures.

(b) Landlord acknowledges that Tenant may finance some or all of the equipment, signs, furnishings to be used by Tenant at the Premises. In consideration of the execution of this Lease, Landlord agrees that notwithstanding anything in this Lease to the contrary, it will subordinate its lien on such property to any institutional lender requiring such items as collateral and will execute a subordination agreement in substantially the same form as the attached Exhibit I.

(c) Intentionally Deleted.

##### Section 18.02. Negligence of Landlord and Acts of Other Tenants.

(a) Tenant shall carry causes of loss special form insurance on its trade fixtures, merchandise, and other personal property in the Premises for their full replacement value and the provisions of Section 16.02(e) and (f) shall apply with respect to such insurance. Landlord shall not be liable to Tenant for any damage to any such property or to any property required to be insured by Tenant pursuant to Section 20.01 from any cause, unless (i) such damage is caused by an occurrence which is not an insured hazard under the causes of loss special form insurance which is available for insuring such property of Tenant at the time of the loss; it being understood that it is not the intention of the parties that Landlord be relieved from liability to Tenant for negligence contrary to any statute or public policy of the State in which the Shopping Center is located, but rather that Tenant avail itself of available insurance coverage without subjecting Landlord to liability for losses that could have been insured, and without subjecting Landlord to subrogation claims of any insurer.

(b) Landlord shall not be liable to Tenant for damages to Tenant's property due to the negligence or intentional acts of any other tenant in the Shopping Center or to any condition existing on or emanating from the premises of any other tenant which is caused by such tenant or its agents or contractors, nor shall Tenant be entitled to an abatement of Rent or to claim an actual or constructive eviction, whole or partial, permanent or temporary, by reason of any such condition on or emanating from such other tenant's premises.

**ARTICLE XIX**  
**LANDLORD'S ENTRY ON PREMISES**

**Section 19.01. Landlord's Entry.**

Subject to the limitations and conditions expressly set forth in this Lease, and upon three (3) days' oral notice to Tenant's manager on duty (except in the event of an emergency when Landlord can enter at any time without notice), Landlord and its representatives may enter the Premises at any time to inspect the Premises, to enforce the provisions of this Lease, to make repairs required of it hereunder, if any, to rectify defaults of Tenant pursuant to the rights granted to Landlord under Section 24.01, to make repairs to other Premises in the Shopping Center, to check the temperature in the Premises, and to repair any utility lines or system or systems servicing other parts of the Shopping Center, or to rectify any condition in the Premises adversely affecting other occupants of the Shopping Center. Notwithstanding the foregoing, Landlord shall provide Tenant with at least five (5) days prior notice to Tenant prior to exercising its rights hereunder, if such exercise of rights would materially, adversely affect Tenant's reception area, lockers or changing rooms (except in the event of an emergency when Landlord can enter at any time without notice). Subject to the limitations and conditions expressly set forth in the Lease, Landlord may bring upon the Premises all things necessary to perform any work done in the Premises pursuant to this Section 19.01. If the Premises shall not be open for business at any time Landlord deems it reasonably necessary to enter therein, Landlord may enter the Premises by means of a master key, or by force, and Tenant hereby waives all claims against Landlord or its agents, which may arise by reason of any such entry. Nothing herein contained shall be deemed or construed to impose upon Landlord any obligation or responsibility whatsoever for the care, maintenance, or repair of the Premises, except as otherwise specifically provided in this Lease. Any work performed by Landlord hereunder shall be completed expeditiously, subject to delays excusable under Section 10.01. Tenant shall permit Landlord, at any time within one hundred eighty (180) days prior to the expiration of this Lease, to place upon the Premises any usual or ordinary "For Lease" signs and during such one hundred eighty (180) day period Landlord or Landlord's agents, may, during normal business hours, enter upon the Premises and exhibit same to prospective tenants, mortgagees, or purchasers. Notwithstanding the foregoing, any entry on the Premises by Landlord and/or its representatives shall be conducted to the extent practicable, in a manner so as to minimize interference with Tenant's business operations within the Premises and Landlord shall use commercially efforts to ensure that any entry on the Premises by Landlord or its representatives is concluded as soon as practicable.

**ARTICLE XX  
FIRE AND OTHER CASUALTY**

**Section 20.01. Fire and Casualty.**

If the Premises shall be damaged or destroyed by fire, or other casualty included in the causes of loss special form insurance endorsement to fire insurance policies used in the State in which the Shopping Center is located, Landlord shall, with reasonable diligence, but subject to delays in adjusting the insurance loss and excusable delays under Section 10.01, repair the damage to (or replace) those parts of the Premises and the facilities therein which were originally constructed and/or installed by Landlord at its expense. If Landlord makes any such repairs or replacements because of damage arising out of any casualty (or if damage arising out of any casualty is limited to those parts of the Premises and the facilities therein which were originally constructed and/or installed by Tenant or at Tenant's expense and/or other leasehold improvements made by Tenant on the Premises), then Tenant shall, with reasonable diligence, repair the damage to (or replace) those parts of the Premises and the facilities therein which were originally constructed and/or installed by Tenant or at Tenant's expense, and all other leasehold improvements made by Tenant on the Premises. Notwithstanding the foregoing, if as a result of any casualty the Premises are substantially destroyed, or the building in which the Premises are located is substantially destroyed or damaged (irrespective of damage to the Premises), then Landlord may, by written notice to Tenant within six (6) months after such occurrence, elect to terminate this Lease, in which event this Lease shall terminate on the date specified in such notice, and all obligations of the parties hereunder shall be adjusted as of such date. Except as otherwise provided in this Section 20.01, this Lease shall not terminate as a result of any damage or destruction to the Premises. Notwithstanding the foregoing, in no event shall Landlord have the right to terminate this Lease unless it terminates the leases of all other tenants in the building in which the Premises is located. If there are any unexercised options to extend this Lease, Tenant shall have the right to nullify Landlord's election to terminate this Lease by providing notice to Landlord within ten (10) days after receipt of Landlord's notice to terminate of its election to exercise such option.

If this Lease is not terminated by Landlord, and Landlord does not either: (i) obtain a building permit for any repairs, rebuilding or restoration required hereunder within six (6) months after the date of such damage or destruction; or (ii) complete such repairs, rebuilding or restoration within twelve (12) months after the date of such damage or destruction (subject, however, to force majeure), then in either event Landlord or Tenant may, at any time thereafter, cancel and terminate this Lease by sending thirty (30) days' written notice thereof to the other, except, however, Tenant's notice of cancellation to Landlord shall not be effective if Landlord, within said thirty (30) day period, shall obtain such permit or complete the repairs, rebuilding or restoration as aforesaid, as the case may be.

Landlord shall maintain causes of loss special form insurance throughout the Term of this Lease in an amount equal to one hundred percent (100%) of the replacement value of the Shopping Center, exclusive of foundations and

footings. Tenant hereby waives any right of recovery from Landlord and Landlord's officers and employees, and Landlord hereby waives any right of recovery from Tenant, Tenant's officers or employees, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the causes of loss special form insurance policy with extended coverage endorsement, and additionally, the parties shall give their respective insurance carriers notices of this waiver and obtain a subrogation waiver endorsement from each carrier. Tenant agrees to pay Landlord Tenant's Pro Rata Share of the cost of said insurance in the proportion in which the floor area of the Premises bears to the gross leasable floor area of all of the premises in the Shopping Center covered by said insurance. The amount requested to be paid hereunder shall be paid within ten (10) days after written demand is sent by Landlord to Tenant. Notwithstanding the foregoing, Landlord, at its option, shall have the right to estimate the amount of Tenant's Pro Rata Share of the cost of said insurance and to collect and impound from Tenant on a monthly, quarterly, or such other basis as Landlord may, in its discretion, determine the amount of Tenant's estimated Pro Rata Share of such cost. Within ninety (90) days after payment of the premium for said insurance, Landlord shall provide Tenant with a reconciliation of Tenant's impound account.

During the entire Term of this Lease, Landlord shall maintain property damage and commercial general liability insurance against claims for personal injury, death, or property damage occurring on the Common Areas and such other insurance which it deems reasonably necessary for the operation of the Shopping Center, including rental value insurance. The limits of liability of such insurance shall be in such amounts as Landlord shall determine. Landlord shall have the option to include such insurance in so-called "Blanket Policies" or such policies which Landlord maintains to cover such items, howsoever denominated. Tenant shall pay to Landlord, as Additional Rent, Tenant's Pro Rata Share of the cost of all such insurance maintained by Landlord. Tenant's Pro Rata Share shall be determined by the ratio that the floor area of the Premises bears to the total leased floor area of the buildings in the Shopping Center. The amounts payable hereunder shall be paid by Tenant to Landlord within ten (10) business days after written demand is sent by Landlord to Tenant. Notwithstanding the foregoing, Landlord shall, at its option, have the right to include the cost of the commercial general liability insurance and property damage insurance on the Common Areas and any other insurance maintained by Landlord as part of the Operating Costs, and to collect and impound such cost as therein provided, or bill Tenant separately for such cost.

With respect to any destruction (including any destruction necessary in order to make repairs required by any declaration of any authorized public authority) which Landlord is obligated to repair or may elect to repair under the terms of this Lease, Tenant waives any statutory or other right Tenant may have to cancel this Lease as a result of such destruction. During the period that Tenant is deprived of the use of the damaged portion of the Premises, Tenant shall be required to pay Rent adjusted in the manner described below to cover only that part of the Premises that Tenant is able to occupy, and the Rent for such space shall be that portion of the total Rent which the amount of the gross leasable area of the Premises remaining that can be occupied by Tenant bears to the total gross leasable area of the Premises. Notwithstanding anything contained in this Article XX to the contrary, if as the result of a casualty, Tenant, in Tenant's good faith, reasonable judgment, cannot operate for the Permitted Use, then Tenant's Rent shall fully abate



until the earlier of: (i) the date Landlord substantially completes its restoration work required hereunder; or (ii) the date Tenant reopens for business. If after restoration following any destruction, the square footage of the Premises is different from the square footage set forth in, or determined pursuant to, Section 1.01(a), the Rent shall be equitably adjusted to reflect such change in square footage.

#### ARTICLE XXI EMINENT DOMAIN

##### Section 21.01. Effect of Total or Partial Condemnation.

If the Premises are condemned in whole or part under the power of eminent domain, this Lease shall terminate as to the part condemned on the date title or possession vests in the condemning authority, whichever is first.

##### Section 21.02. Partial Condemnation Procedure.

If any condemning authority notifies Landlord of a proposed condemnation of more than twenty-five percent (25%) of the floor area of the Premises (or any other area of the Shopping Center that, in Tenant's good faith, reasonable judgment, materially precludes Tenant's operations within the Premises for the Permitted Use) or twenty-five percent (25%) of the parking area of the Shopping Center, Landlord shall give Tenant written notice of the proposed condemnation together with whatever plats and data are furnished to Landlord by the condemnor concerning the extent of the proposed condemnation of the Premises. Tenant shall have fifteen (15) days after the date of such notice in which to elect to cancel this Lease effective upon consummation of the condemnation. If Tenant gives Landlord written notice of such election within said fifteen (15) days, and if the proposed condemnation is consummated, then this Lease shall terminate entirely on the same date that this Lease terminates as to the condemned portion of the Premises under Section 21.01. If Tenant does not make a timely election to cancel this Lease, and the condemnation is consummated, then Landlord shall, subject to the excusable delays under Section 10.01, restore the remaining Premises as a complete architectural unit; and the Minimum Rent hereunder shall thereafter be reduced proportionately to the reduction in the gross leasable area of the Premises. During the period that Tenant is deprived of the use of any portion of the Premises as the result of a condemnation, Tenant shall be required to pay Rent adjusted in the manner described below to cover only that part of the Premises that Tenant is able to occupy, and the Rent for such space shall be that portion of the total Rent which the amount of the gross leasable area of the Premises remaining that can be occupied by Tenant bears to the total gross leasable area of the Premises.

##### Section 21.03. Other Condemnation in the Shopping Center.

If more than twenty-five percent (25%) of the gross leasable area of the building in which the Premises are located or of other buildings in the

Shopping Center are condemned under the power of eminent domain, or if the nature, location, or extent of any proposed condemnation affecting the Shopping Center is such that Landlord elects in good faith to demolish all or substantially all of the Shopping Center or the building in which the Premises are located, then Landlord may terminate this Lease by giving written notice of termination to Tenant within ninety (90) days after the date of such condemnation, and this Lease shall terminate on the date specified in such notice. Notwithstanding the foregoing, in no event shall Landlord have the right to terminate this Lease unless it terminates the leases of all other tenants in the building in which the Premises is located.

Notwithstanding the foregoing, in the event more than thirty percent (30%) of the rentable square footage of the Premises is the subject of a Taking and such partial Taking materially interferes with Tenant's ability to perform its business, then Tenant shall have the right to terminate this Lease upon written notice delivered to Landlord within thirty (30) days of such partial Taking. Further notwithstanding anything contained in this Article XXI to the contrary, if as the result of a taking for which this Lease is not terminated, Tenant, in Tenant's good faith, reasonable judgment, cannot operate for the Permitted Use, then Tenant's Rent shall fully abate until the earlier of: (i) the date Landlord substantially completes its restoration work (if any) required hereunder; or (ii) the date Tenant reopens for business. If after restoration following any condemnation of the Premises, the square footage of the Premises is different from the square footage set forth in, or determined pursuant to, Section 1.01(a), the Rent shall be equitably adjusted to reflect such change in square footage.

#### Section 21.04. Condemnation Awards.

In the event of any condemnation of all or part of the Premises or the Shopping Center, Tenant shall not be entitled to share in any part of the condemnation award (including consequential damages) for the taking, either for its leasehold estate or for its rights to use any of the common areas of the Shopping Center, whether or not this Lease is terminated under the provision of this Article XXI by reason of such condemnation. Tenant shall, however, be entitled to retain any separate award obtained from the condemning authority for moving expenses, loss of movable trade fixtures, and the cost of unamortized leasehold improvements in excess of the unamortized Construction Allowance, both determined on a straight line basis in accordance with generally accepted accounting practices, and loss of business, to the extent compensable without diminution of Landlord's award.

#### Section 21.05. Condemnation After Discontinuance of Business.

All rights of Tenant under this Article XXI to cancel this Lease or to receive reductions of Rent, and to claim the benefits of Section 21.01 as to a partial condemnation, shall be operative only if Tenant is not in default of its obligation to continuously conduct business under Section 7.02 on the date Landlord notifies Tenant of any proposed condemnation.

#### Section 21.06. Definitions.

As used herein the terms "condemned" and "condemnation" include sale by Landlord to a condemning authority under threat of condemnation. Landlord

shall have the power and authority to convey the entire fee simple title in all or any part of the Premises or the Shopping Center to the condemning authority without Tenant's joinder, and any such conveyance by Landlord alone shall be deemed free and clear of any leasehold or other interest by Tenant therein, and any condemning authority shall be entitled to rely upon the provisions of this sentence in accepting a deed from Landlord alone. As used herein, the term "condemnation award" includes the proceeds of any sale by Landlord to a condemning authority under threat of condemnation.

ARTICLE XXII  
INTENTIONALLY DELETED

ARTICLE XXIII  
BANKRUPTCY OR INSOLVENCY

Section 23.01. Tenant's Interest Not Transferable.

Neither Tenant's interest in this Lease, nor any estate hereby created in Tenant nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided pursuant to the Bankruptcy Code.

Section 23.02. Termination.

In the event the interest or estate created in Tenant hereby shall be taken in execution or by other process of law, or if any guarantor of the Tenant's obligations under this Lease or its or their executors, administrators, or assigns, if any, shall be adjudicated insolvent or bankrupt pursuant to the provisions of any State Act or the Bankruptcy Code or if Tenant is adjudicated insolvent by a court of competent jurisdiction other than the United States Bankruptcy Court, or if a receiver or trustee of the property of Tenant shall be appointed by reason of the insolvency or inability of Tenant or said guarantor to pay its debts, or if any assignment shall be made of the property of Tenant or any guarantor, for the benefit of creditors, then and in any such events, this Lease and all rights of Tenant hereunder shall automatically cease and terminate with the same force and effect as though the date of such event were the date originally set forth herein and fixed for the expiration of the Term, and Tenant shall vacate and surrender the Premises, but shall remain liable as herein provided.

Section 23.03. Tenant's Obligation to Avoid Creditors' Proceedings.

To the extent permissible by applicable law, Tenant or any guarantor aforesaid shall not cause or give cause for the appointment of a trustee or receiver of the assets of Tenant or such guarantor and shall not make any assignment for the benefit of creditors, or become or be adjudicated insolvent. The allowance of any petition under any insolvency law except under the Bankruptcy Code or the appointment of a trustee or receiver of Tenant or any guarantor or of the assets of either of them, shall be conclusive evidence that Tenant caused, or gave cause therefor, unless such allowance of the Petition, or the appointment of a trustee or receiver, is vacated within sixty (60) days after such allowance or appointment. Any act described in this Section 23.03 shall be deemed a material breach of Tenant's

obligations hereunder, and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or at law or in equity.

Section 23.04. Rights and Obligations under the Bankruptcy Code.

(a) Upon the filing of a petition by or against Tenant under the Bankruptcy Code, Tenant, as debtor and as debtor in possession, and any trustee who may be appointed agree to the extent permissible by applicable law, as follows: (1) to perform each and every obligation of Tenant under this Lease, including, but not limited to, the manner of conduct of Tenant's business as provided in Article VII of this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; and (2) to pay monthly, in advance, on the first day of each month as reasonable compensation for use and occupancy of the Premises an amount equal to all Minimum Rent and Additional Rent otherwise due pursuant to this Lease; and (3) to reject or assume this Lease within sixty (60) days of the filing of such petition under Chapter 7 of the Bankruptcy Code or within 120 days (or such shorter time as Landlord, in its sole discretion, may deem reasonable so long as notice of such period is given) of the filing of a petition under any other Chapter; and (4) to give Landlord at least 45 days prior written notice of any proceeding relating to any assumption of this Lease; and (5) to give at least 30 days prior written notice of any abandonment of the Premises, any such abandonment to be deemed a rejection of this Lease; and (6) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; and (7) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (8) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

(b) No default of this Lease by Tenant, either prior to or subsequent to the filing of such a petition, shall be deemed to have been waived unless expressly done so in writing by Landlord.

(c) It is understood and agreed that this is a lease of real property in a shopping center as such lease is described in Section 365(b) of the Bankruptcy Code.

(d) Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment are the following: (1) the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than thirty (30) days of assumption and/or assignment; and (2) the deposit of an additional sum equal to three (3) month's Rent to be held as a security deposit; and (4) the use of the Premises as set forth in Section 7.01 of this Lease and the quality and/or lines of merchandise of any goods or services required to be offered for sale remaining unchanged; and (5) the reorganized debtor or assignee of such debtor in possession or of Tenant's trustee demonstration in writing that it has sufficient background, including, but not limited to, substantial retailing experience in shopping centers of comparable size and financial ability to operate a retail establishment out of the Premises in the manner contemplated in this Lease and meeting all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; and (6) the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and (7) the Premises, at all time, remaining a single store and no

physical changes of any kind being made to the Premises unless in compliance with the applicable provisions of this Lease.

**ARTICLE XXIV  
DEFAULT AND REMEDIES**

**Section 24.01. Abatement of Tenant's Defaults.**

If Tenant fails to maintain any insurance required to be maintained by it under this Lease, or fails to furnish evidence of insurance renewals at the times in this Lease required, or allows such insurance to lapse or be canceled, Landlord may obtain such insurance for Tenant if Tenant fails to provide evidence of maintenance of the same within five (5) business days after receipt of Landlord's written demand therefor. If Tenant defaults in the performance or observance of any non-monetary term, covenant or condition to be performed or observed by it under this Lease, and such default continues for more than thirty (30) days after written notice thereof, Landlord may take action to rectify such default on Tenant's behalf immediately and without such notice if immediate action is reasonably believed to be required in order to avoid injury or damage to other persons or property (including Landlord's property) provided, however, that Landlord shall not take any such action if the nonmonetary default cannot reasonably be cured within such thirty (30) day period and Tenant has, during such thirty (30) day period, commenced to cure the default and thereafter diligently pursues such cure to completion. Landlord may enter the Premises to rectify such defaults upon reasonable oral notice to Tenant or Tenant's manager on duty (except in the event of an emergency, in which case no such notice shall be necessary). All money advanced and reasonable costs and expenses actually incurred by Landlord in rectifying any default (including Landlord's reasonable legal fees) together with interest thereon at the Lease Interest Rate.

**Section 24.02. Distraint and Default Rent.**

If any payments of Rent are in arrears for more than five (5) days after written notice of such arrearage is given by Landlord; (a) Landlord may distraint therefor, and shall be entitled to the benefit of distraint; and (b) beginning on the 6th day of arrearage, Tenant shall be liable to Landlord for payment of Additional Rent (herein called "arrearage rent" for purpose of this Section 24.02) equal to a flat five percent (5%) of such arrearage for the first thirty (30) days thereof, and an annual rate of fifteen percent (15%) of such arrearage thereafter. Any payments by Tenant to Landlord made after the accrual of arrearage rent may be applied by Landlord to such arrearage rent irrespective of the obligation for which Tenant may earmark such payment.

**Section 24.03. Termination and/or Reletting for Default; Liquidated Damages.**

If Tenant defaults in the payment of Rent payable under this Lease, and such default continues for more than ten (10) days after written notice thereof; or if Tenant defaults in the performance or observance of any term, covenant, or condition to be performed by it hereunder which may be performed merely by the payment of money and such default continues for more than ten (10) days after written notice thereof; or if Tenant shall allow any insurance policy required to be maintained by Tenant under this Lease, to be canceled and does not cause such insurance to be replaced and furnish Landlord with evidence of such replacement within ten (10) days after written notice of such

lapse or cancellation from Landlord, its mortgagee, or the insurer, or if Tenant defaults in the performance or observance of any other term, covenant or condition of this Lease on its part to be performed or observed and does not commence to rectify such default within thirty (30) days after written notice thereof or does not thereafter diligently complete the rectification thereof; or if Tenant vacates or abandons the Premises; or if any guarantor of this Lease breaches any covenant of its Guaranty agreement; then, in any of such events, Landlord may, at its option, (i) terminate this Lease and re-enter the Premises without application to or process of law, or (ii) re-enter the Premises in the aforesaid manner without terminating this Lease, and assume custody and control thereof for the purpose of protecting the Premises and/or for reletting the Premises as agent for Tenant, and such agency shall be deemed as a power coupled with an interest and shall be irrevocable; and in either such event Landlord shall be entitled to the benefit of all provisions of the public general laws of the State in which the Shopping Center is located and the public local laws and ordinances of the locality in which the Premises are located respecting the summary eviction of tenants in default or tenants holding over, or respecting proceedings in forcible entry and detainer. Notwithstanding the foregoing, Section 30.06 shall apply, and:

(a) Tenant shall remain liable for any Rent and damages which may be due or sustained prior thereto, and shall pay Landlord for all reasonable costs and expenses actually incurred by Landlord, including, but not limited to, attorneys' and brokers' fees and expenses, paid or incurred by Landlord in connection with: (i) obtaining possession of the Premises; (ii) removal and storage of Tenant's or other occupant's property; (iii) care, maintenance and repair of the Premises while vacant; (iv) reletting the whole or any part of the Premises; and (v) repairing, altering, renovating, partitioning, enlarging, remodeling, or otherwise putting the Premises, either separately or as part of larger premises, into condition acceptable to, and reasonably necessary to obtain new tenants.

(b) In the event this Lease is terminated pursuant to clause (i) above, Tenant shall further be liable to Landlord for the monthly Rent payable by Tenant hereunder, which shall be payable when due, less the rent, if any, received by Landlord from others to whom the Premises may be rented on such terms and conditions and at such rentals as Landlord, in its commercially reasonable discretion, shall deem proper.

(c) The obligations of Tenant under Section 15.01 hereof shall survive termination of this Lease, or re-entry by Landlord without termination, pursuant to this Section 24.03 until the fixed termination date fixed by Section 3.01, and shall be binding upon Tenant until such date.

(d) Intentionally Deleted.

(e) Notwithstanding any of the terms and provisions herein contained to the contrary, Landlord and Tenant shall each have the duty and obligation to use reasonable good faith efforts to mitigate any and all damages that may or shall be caused or suffered by virtue of the other's defaults under, or violation of, any of the terms and provisions of this Lease; provided, however, Landlord does not necessarily agree to lease the Premises at its then fair market value in the event it enters into a new lease agreement but may relet the Premises at a minimum annual rent, taxes and other charges consistent with the prevailing economic conditions to a tenant which is acceptable to Landlord based upon the following criteria: (a) the proposed

tenant shall have a net worth equal to or greater than \$5,000,000; (b) the proposed tenant will be obligated to use the Premises for either the same use as Tenant or another use which in Landlord's reasonable judgment is in accordance with a proper mix of uses for the Shopping Center and (c) the proposed tenant shall agree to enter into a lease agreement with Landlord which contains terms, covenants and conditions at least as favorable to Landlord as those set forth in this Lease. The foregoing, however, shall in no way obligate Landlord to relet the Premises in preference to other vacant space in the Shopping Center. The burden of proof as to the reasonableness of a party's efforts shall be borne by the defaulting party in any litigation between the parties.

Section 24.04. Landlord Default. If Landlord shall breach, or fail to perform or observe, any agreement or condition in this Lease contained on Landlord's part to be performed or observed, and if Landlord shall not cure such breach or failure within thirty (30) days after Landlord's receipt of written notice from Tenant specifying such breach or failure (or, if such breach or failure shall reasonably take more than thirty (30) days to cure, and Landlord shall not have commenced to cure within the thirty (30) days and diligently prosecuted the cure to completion), Tenant may, at Tenant's option, cure such breach or failure for the account of Landlord and any reasonable amount paid or incurred by Tenant in so doing shall be deemed paid or incurred for the account of Landlord and Landlord agrees to reimburse Tenant therefor; provided, however, Tenant may cure any such breach or failure as aforesaid prior to the expiration of said waiting period if an emergency situation exists and the immediate curing of such breach or failure is necessary to protect the Premises, property located therein, or persons from imminent injury or damage. Landlord agrees to pay Tenant the reasonable amount paid or incurred by Tenant within thirty (30) days from the date Landlord receives copies of invoices from Tenant detailing such work performed by Tenant. Tenant shall have no right to deduct or withhold from its Rent any amount owed by Landlord under this Section. Notwithstanding anything to the contrary in the foregoing, Tenant's right to cure Landlord's breaches or failures shall be limited to the performance of Landlord's maintenance and repair obligations under this Lease which directly relate to the Premises. In no event shall Tenant have the right to exercise its right to cure in regard to the Common Areas, or other tenant premises in the Shopping Center.

ARTICLE XXV  
CUMULATIVE REMEDIES AND GOVERNING LAW

Section 25.01. Remedies Cumulative.

Mention in this Lease of any specific right or remedy shall not preclude either party from exercising any other right or remedy available at law or in equity; and the failure of a party to insist in any one or more instances upon a strict or prompt performance of any obligation of the other party under this Lease or to exercise any option, right, or remedy herein contained or available at law or equity shall not be construed as a waiver or relinquishment thereof, unless expressly waived in writing by such party. The waiver by either party of any breach of this Lease shall not constitute a waiver of the covenant, term, or condition breached or of any subsequent breach of the same or any other covenant, term, or condition of this Lease; and the acceptance by Landlord of Rent during the continuance of any breach of this Lease by Tenant shall not constitute a waiver of such breach. Whenever any provision of this Lease requires Landlord's consent to any act or conduct of Tenant, such provision shall be construed to mean Landlord's written consent; and knowledge of, or acquiescence by Landlord in any such act or conduct shall not be deemed a waiver of the requirement for written consent. Exercise by Landlord, or the beginning of the exercise by Landlord, of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity by statute or otherwise shall not be construed as an election of remedies so as to preclude the simultaneous or subsequent exercise by Landlord of any other right or remedy for such breach. If either party refers any default under this Lease to an attorney or if either party obtains a judgment against the other arising out of any default by the other party under this Lease, then the defaulting party shall pay the prevailing party in any legal proceedings all reasonable counsel fees and other costs incurred by the prevailing party with respect to such default.

Section 25.02. Governing Law and Jurisdiction.

This Lease shall be construed under the laws of the State in which the Shopping Center is located. The parties acknowledge that this Lease has been drafted, negotiated, made, delivered, and consummated in the State in which the Shopping Center is located. The parties hereto hereby waive any objection to the venue of any action filed by the other in any state or federal court of the State in which the Shopping Center is located, and waive any claim of forum non convenience or for transfer of any such action to any other court.

Section 25.03. No Trial by Jury; Counterclaims.

Landlord and Tenant hereby mutually waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other with respect to any matter arising out of or in any way connected with this Lease or the use and occupancy of the Premises. Tenant also agrees to waive any and all counterclaims Tenant may have in any suit for possession by Landlord; it being understood that the subject of any such counterclaim may be asserted by Tenant but only in a separate action brought by Tenant against Landlord.



ARTICLE XXVI  
RECORDING: NO REDEMPTION OR MERGER

Section 26.01. Recording.

It is agreed that neither Tenant nor Landlord shall record this Lease and/or its Exhibits. Any violation of this clause shall be deemed a material event of default on the part of the party recording this Lease, and Landlord shall have the right to cancel this Lease and take those steps necessary to remove the Lease and/or its Exhibits from any records. In the event of this action on the part of the non-recording party, the recording party agrees to bear any and all costs and expenses in connection therewith, including, but not limited to, the non-recording party's reasonable attorneys' fees. Notwithstanding the foregoing, if either party desires to record a memorandum of lease, or any amended memorandum of lease, such party shall do so at its own cost and expense with the cooperation of the other party.

Section 26.02. Waiver of Redemption.

Upon the second occurrence of a default beyond any applicable notice and cure period, Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

ARTICLE XXVII  
NOTICES

Section 27.01. Notices.

All notices from either party to the other under this Lease shall be sent by telegram, overnight courier service, or by registered or certified mail, return receipt requested, or hand-delivered with signed receipt. Whenever in this Lease reference is made to a notice to be given, such notice shall be deemed to be given when mailed, wired, or hand-delivered as set forth above, to the proper notice address of the party to be notified. Notices to Landlord shall be addressed to it at:

Ronald Cohen Management  
2701 Tower Oaks Boulevard  
Suite 200  
Rockville, Maryland 20852

Notices to Tenant shall be sent to:

Gold's Gym International, Inc.  
2924 Telestar Court, Falls Church, VA 22042  
Attn: Real Estate Dept.

with copies to:

Palm Beach Realty Partners, Inc.  
214 Brazilian Ave., Ste 200  
Palm Beach, FL 33480

AND

Law Offices of J. Bradley Greenblum  
505 W. 15<sup>th</sup> Street  
Austin, TX 78701

With a copy of any default notices sent to Guarantor at the address set forth in Section 1.01(n) above.

Either party may, from time to time, designate a different address for receiving notices, by giving the other party notice of the change of address in the manner above specified.

#### ARTICLE XXVIII TENANT'S OPERATIONS

##### Section 28.01. Tenant Covenants.

In regard to use and occupancy of the Premises and common facilities, Tenant will, at its expense: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean; (b) keep all exterior store surfaces of the Premises clean; (c) use commercially reasonable efforts to replace within 24 hours any cracked or broken glass of the Premises with glass of like kind and quality; (d) maintain the Premises in a clean, orderly, and sanitary condition and free of insects, rodents, vermin, and other pests; (e) place any garbage, trash, rubbish, and refuse in containers and facilities reasonably approved by Landlord; (g) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises provided however, that nothing in this Lease shall be deemed to prohibit reasonable noise, vibrations and odors typically emitted from gyms and health club facilities so long as Tenant has complied with the reasonable requirements of Landlord for such noise, vibration and odor reductions as part of the approval of Tenant's Plans pursuant to the provisions of Section 2.01 or any other plans pursuant to the provisions of Section 12.03; (h) comply with all laws, ordinances, rules, and regulations of governmental authorities and all recommendations of the Fire Underwriters Rating Bureau now or hereafter in effect and applicable for Tenant's business operations within the Premises; (i) light the show windows of the Premises and exterior signs and turn the same off to the extent reasonably required by Landlord; and (j) conduct its business in all respects in a dignified manner in accordance with high standards of gym operation consistent with the quality of operation of the Shopping Center as reasonably determined by Landlord and to provide an appropriate mercantile quality within the entire Shopping Center.

## Section 28.02. Negative Covenants.

In regard to use and occupancy of the Premises and common facilities, Tenant will not: (a) place or maintain any merchandise, trash, refuse, or other articles in any vestibule or entry of the Premises, on the footwalks or corridors adjacent thereto or elsewhere on the exterior of the Premises so as to obstruct any driveway, footwalk, parking area, mall, or any other common facility; (b) subject to Section 28.01, use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Shopping Center which is in any manner audible or visible outside of the Premises, provided, however, Landlord acknowledges that Tenant may have television monitors installed within the Premises for the benefit of its customers within the Premises that may, as an incident thereof, be visible from the exterior of the Premises, and the same shall not be deemed a violation of this Section 28.02; (c) permit accumulations of garbage, trash, rubbish, or other refuse within or without the Premises; (d) cause or permit objectionable odors to emanate or be dispelled from the Premises (those odors typically found in first-class health club and/or fitness facilities not being deemed a violation of this Section 28.02); (e) solicit business in the parking or other common facilities; (f) distribute handbills or other advertising matter to, in, or upon any automobiles parked in the parking areas or in any other common facility; (g) permit the parking of delivery vehicles so as to interfere with the use of any driveway, footwalk, parking area, or other common facility in the Shopping Center; (h) intentionally delete; (i) conduct or permit to be conducted any auction, fire, going out of business, bankruptcy, or other similar type of sale in or connected with the Premises; (k) use or permit the use of any portion of the floor which exceeds the floor load which the floor was designated to carry or which is allowed by law.

## Section 28.03. Community Standards.

Tenant acknowledges that it is Landlord's intent that the Shopping Center be operated in a manner which is consistent with the highest standards of decency and morals prevailing in the community which it serves. Toward that end, Tenant agrees that it will not sell, distribute, display, or offer for sale any item which, in Landlord's commercially reasonable judgment is inconsistent with the quality of operation of the Shopping Center or may tend to injure or detract from the moral character or image of the Shopping Center within such community. Without limiting the generality of the foregoing, Tenant will not sell, distribute, display, or offer for sale (i) any roach clip, water pipe, bong, coke, coke spoon, cigarette paper, hypodermic syringe, or other paraphernalia commonly used in the use or ingestion of illicit drugs, or (ii) any pornographic, lewd, or "adult only" newspaper, book, magazine, picture, representation, or merchandise of any kind.

## ARTICLE XXIX ENVIRONMENTAL MATTERS

Section 29.01. This Article shall not preempt, limit or otherwise lessen any covenant, burden or obligation of the Tenant under any other Article or provision of this Lease.

Section 29.02.

(a) As used in this Article, the term "Hazardous Substance" means:

(1) Any substance designated as being hazardous pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act;

(2) Any element, compound, mixture, solution or substance designated as being hazardous pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act;

(3) Any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act;

(4) Any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act;

(5) Any hazardous air pollutant listed under Section 112 of the Clean Air Act;

(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act; and

(7) Except, for cleaning and other chemicals typically utilized in the ordinary course of Tenant's business operations, any substance, waste or other material considered hazardous, dangerous or toxic under any state or local laws, codes, ordinances or regulations.

The term "Hazardous Substance" also includes petroleum and petroleum products, including crude oil or any fraction thereof, which is not specifically listed or designated as a hazardous substance under subsections (1)-(7) of this Section, as well as natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel and mixtures of natural gas and such synthetic gas.

(b) As used in this Article, the term "Release" means any intentional or unintentional spilling, leaking, pumping, emitting, emptying, discharging, escaping, leaching, dumping or disposing of any Hazardous Substance or waste.

Section 29.03. Tenant hereby covenants and agrees that, except for Tenant's use of cleaning and similar supplies typically utilized in the Tenant's course of business and in compliance with laws, Tenant shall:

(a) Give written notice to the Landlord of any activity or operation to be conducted by the Tenant, its subtenants, licensees or concessionaires at the Premises which involves the use, handling, generation, treatment, storage or disposal of any hazardous substance or waste. Such written notice shall be delivered to the Landlord at least thirty (30) days prior to the initiation of any such activity or operation and shall contain at least the following:

(1) A description of such activity or operation;

(2) A detailed description of how and where such hazardous substances or wastes will be used, handled, generated, treated, stored, disposed or otherwise managed;

(3) A good-faith estimate of the maximum quantity of such hazardous substances or wastes that will be present at any one time on the Premises during any calendar month;

(4) A copy of any permits or licenses obtained by Tenant governing the activity or operation.

(b) Comply with all present and future federal, state and local laws, codes, ordinances, regulations and permit and license conditions governing the discharge, emission or disposal of any pollutant in, to or from the Premises, other premises or the environment and prescribing methods for storing, handling or otherwise managing hazardous substances and wastes including, but not limited to, the then-current versions of the following federal statutes, their state analogs, and the regulations implementing them: the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); the Clean Water Act (33 U.S.C. Section 1251 et seq.); the Clean Air Act (42 U.S.C. Section 7401 et seq.); and the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.). Tenant shall obtain all permits, licenses and approvals required under federal, state and local laws, codes, ordinances and regulations. Tenant shall give prompt written notice to the Landlord of any violation of any such law, code, ordinance or regulation by the Tenant, its subtenants, licensees or concessionaires, whether or not a citation or other notice of violation has been issued by a governmental authority, and shall take all steps necessary to remedy such violation.

(c) Give prompt written notice to Landlord of any release of any hazardous substance or waste to the Premises, other premises, and/or the environment at or from the Premises which release is not made pursuant to and in conformance with the terms of any permit or license duly issued by appropriate governmental authorities. Such notice shall include a description of measures taken or proposed to be taken by Tenant to contain and/or otherwise remedy the release and any resultant damage to property, persons and/or the environment.

(d) At its own expense, promptly take all steps necessary to contain and/or otherwise remedy any release of hazardous substances or wastes to the Premises, other premises and/or the environment at or from the Premises and any resultant damage to property, persons and/or the environment.

(e) At Landlord's reasonable request, which shall be as frequent as Landlord may deem reasonably necessary, retain an independent engineer or other qualified consultant or expert reasonably acceptable to Landlord, to conduct, at Tenant's expense, an environmental audit of the Premises and immediately surrounding areas. The scope of work to be performed by such engineer, consultant or expert shall be approved in writing in advance by Landlord. All of the engineer's, consultant's or expert's work product shall be made available to Landlord.

(f) Tenant, upon expiration or termination of this Lease, shall render to Landlord the Premises in clean condition and free from the presence and

contamination of any hazardous substances or wastes, except those released by any party other than Tenant, its agents, representatives, contractors, assigns, employees and invitees.

Section 29.04.

(a) To the extent permissible by law, Tenant shall accept full responsibility for and protect, defend, indemnify and save harmless Landlord, its officers, agents and employees from and against any and all claims, actions, suits, losses, damages, liability and expenses of any character including, but not limited to, costs of investigation, remediation, consequential damages, including loss of Rent with respect to the Premises or with respect to any other portion of the Landlord's premises, fines or penalties, and legal fees in connection with (but not limited to): loss of life, personal or bodily injury, disease, sickness, mental distress and/or damage to any property (including the loss of use resulting therefrom) or to the environment arising or resulting during or subsequent to the Term from or out of any conduct, activity, act, omission or operation involving the use, handling, generation, treatment, storage, disposal, other management or release of any hazardous substance or waste at or from the Premises, whether or not Tenant has acted negligently with respect to such hazardous substance or waste. The foregoing indemnification shall survive the expiration or earlier termination of this Lease

(b) Tenant shall, at its own expense, at Landlord's request, keep in force environmental impairment liability insurance in companies acceptable to Landlord sufficient to cover such indemnification and naming as insureds Landlord, Agent and Tenant and any other party named by Landlord and containing an express waiver of any right of subrogation against Landlord and other named insureds designated by Landlord. The limits of liability of such policy shall be determined by mutual agreement of Landlord and Insurer based on the degree of risk associated with the activities and operations conducted or to be conducted at the Premises. Such policy(ies) of insurance, or certificate(s) thereof, shall be deposited with Landlord with evidence of payment of premium at all times. Each policy shall provide against cancellation without twenty (20) days, prior written notice to the named insureds.

(c) Landlord shall not bring upon the Premises (nor permit its agents, employees and/or contractors to bring upon the Premises) any Hazardous Substances in violation of environmental laws. Landlord represents to the best of its actual knowledge, without independent inquiry, that it does not know of any Hazardous Substances in or on the Premises. If at any time during this Lease, Hazardous Substances are found to be present in or on the Premises in violation of any environmental law (other than Hazardous Substances introduced by Tenant, its agents, employees, contractors or invitees) as a result of any use of the Premises prior to the date hereof, Landlord shall, upon written notice of same from Tenant, remediate the same, as and to the extent required by law. If it is determined that there are any Hazardous Substances in the Premises during the Fixturing Period that were not caused or placed by Tenant or its agents, contractors, invitees, assigns or employees and such Hazardous Substances are required to be removed, remediated or encapsulated, pursuant to applicable law, then Landlord shall cause the same to be removed, remediated or encapsulated to the extent required by law, at no cost and expense to Tenant. If Landlord's removal or remediation delays the construction or installation of Tenant's improvements, then the Rental

Commencement Date shall be extended for one (1) day for each day of delay. Landlord shall indemnify, defend and hold Tenant harmless from any and all of the costs, fees, penalties, charges and expenses assessed against or imposed upon Tenant (as well as Tenant's reasonable attorneys' and consultants' fees and costs) as a result of any breach of the foregoing representations or the presence, use, disposal, transportation, generation and/or sale of Hazardous Substances on the Premises or the Center (except to the extent of Tenant's indemnity in Section 29.04(a) above). The foregoing indemnification shall survive the expiration or earlier termination of this Lease.

(d) Landlord has provided to Tenant a copy of the most recent environmental report for the Shopping Center that it has in its possession.

#### ARTICLE XXX MISCELLANEOUS PROVISIONS

##### Section 30.01. Successors and Assigns.

This Lease and the covenants, terms and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant and its permitted successors and assigns. As used herein, the term "Tenant" includes its permitted successors and assigns, and the term "Landlord" includes its successors and assigns.

The term "agents" and "employees" as used with respect to Tenant shall include sublessees, concessionaires, franchisees, and servants and employees of such sublessees, concessionaires, franchisees and licensees.

If Landlord transfers its estate in the Premises, or if Landlord further leases the Premises subject to this Lease, Landlord shall thereafter be relieved of all obligations of Landlord expressed in this Lease or implied by law upon Tenant's receipt of a written assumption of Landlord's obligations under this Lease by such successor or assignee.

##### Section 30.02. Corporate Tenancy.

If Tenant is a corporation, the undersigned officers of Tenant hereby warrant and certify to Landlord that Tenant is a corporation in good standing and duly organized under the laws of the State in which the Premises are located, or if chartered in a state other than that in which the Premises are located, is a corporation in good standing and duly organized under the laws of such state and is authorized to do business in the State in which the Premises are located. The undersigned officers of Tenant hereby further warrant and certify to Landlord that they, as such officers, are authorized and empowered to bind the corporation to the terms of this Lease by their signatures hereto.

##### Section 30.03. Entire Agreement.

This Lease contains the final agreement between the parties hereto. Landlord and Tenant shall not have any obligation not expressly set forth

herein; and neither party shall be bound by any promises or representations prior to the date hereof which are not expressly set forth herein.

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to its interest in the Shopping Center and any judgments rendered against Landlord shall be satisfied solely out of the proceeds of sale of its interest in the Shopping Center. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under this Lease.

#### Section 30.04. Captions; Deletions; Definitions.

The headings and captions used in this Lease are for convenience only and are not a part of the Lease. If any printed provision of this Lease is deleted by the parties, such deletion may not be utilized in interpreting the rights which it would have had, at law or otherwise, if such deleted provision had never been printed herein.

As used in this Lease, the term "calendar month" shall mean any of the twelve (12) named months of the year.

#### Section 30.05. Site Plan.

Except as otherwise expressly set forth in this Lease, nothing shown on Exhibit A shall be deemed to be a representation by Landlord as to any matter respecting the Shopping Center or as a condition of this Lease, unless such representation or condition is expressly set forth herein, said Exhibit A being attached only for the purpose of showing the land encompassed in the Shopping Center, the approximate size and location of the Premises, and Landlord's present proposed layout of the Shopping Center. Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the Term of this Lease, occupy any space in the Shopping Center.

#### Section 30.06. Obligations Surviving Termination.

If this Lease is terminated for any reason other than default of the Tenant, all liabilities of the parties shall be adjusted as of the effective date of termination. Any termination hereof by reason of a default of the Tenant shall not affect any obligation or liability of Tenant under this Lease



which accrued prior to the effective date of termination, and all such obligations and liabilities of Tenant shall survive such termination.

Section 30.07. Genders.

The use of the masculine, feminine, or neuter gender herein shall be deemed to mean the correct gender applicable, and the use of the singular shall include the plural, or conversely, as the context may require.

Section 30.08. Intentionally Deleted.

Section 30.09. Partial Invalidity.

If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. Notwithstanding any provision of this Lease to the contrary, if the Tenant's obligations to pay Rent are severed or held to be unenforceable, this Lease and all of Tenant's rights and obligations hereunder shall be automatically immediately terminated.

Section 30.10. Brokers.

Tenant represents and warrants that it has not dealt with any broker other than that specified in Section 1.01(q) of this Lease in respect of this Lease and agrees to defend, indemnify, and save Landlord harmless against all demands, claims and liabilities arising out of any dealings between Tenant and any other broker in respect of this Lease.

Section 30.11. No Partnership.

By executing this Lease, Landlord does not, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of Tenant's business, or otherwise. Any provision of this Lease regarding the use of the Premises or operation of Tenant's business are included solely for the purpose of maintaining an orderly shopping center.

Section 30.12. Surrender of Premises.

At the expiration of the tenancy hereby created, or upon any re-entry by Landlord into the Premises pursuant to Section 24.03, Tenant shall surrender the Premises in broom clean condition, with all Tenant's leasehold improvements in place (to the extent expressly permitted pursuant to this Lease), reasonable wear and tear excepted, and shall deliver all keys for the Premises to Landlord at the place then fixed for the payment of Rent, and shall inform Landlord of all combinations on locks, safes, and vaults, if any, in the Premises. Tenant shall remove all of its trade fixtures and inventory and any alterations, additions, or improvements made by Tenant which Landlord requires to be removed pursuant to Section 12.03, before surrendering the Premises as aforesaid, and shall repair any damage to the Premises caused by such removal. Tenant's obligations to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease. In the event Tenant remains in possession

of the Premises after the expiration of the Term, without the execution of a new lease, Tenant, at the option of Landlord shall be deemed to be occupying the Premises as a tenant from month to month, at one hundred fifty percent (150%) of the Fixed Minimum Rent, subject to all the other conditions, provisions, and obligations of this Lease insofar as the same are applicable to a month to month tenancy.

Section 30.13. Force Majeure.

Anything in this Lease to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of the party claiming the delay, each party shall not be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease (other than the payment of Rent) if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, through Act of God or other cause beyond the control of the Landlord or Tenant (financial inability).

Section 30.14. No Option.

The submission of this Lease for examination or consideration by Tenant or discussions between Landlord and Tenant does not constitute a reservation of or option for the Premises or any other space in the Shopping Center, and this Lease shall be and become effective as a Lease and Agreement only upon legal execution and delivery hereof by Landlord and Tenant.

Section 30.15. Counterparts, Photostatic Copies.

This Lease, including the attached Guaranty(ies), if any, may be executed in one or more counterparts, any one of which if originally executed, shall be binding upon each of the parties signing thereon and all of which taken together shall constitute one and the same instrument. One or more photostatic copies of this Lease, including the attached Guaranty(ies), if any, may be originally executed by the parties hereto and such photostatic copies shall be deemed originals and shall be valid, binding, and enforceable in accordance with their terms.

Section 30.16. No Construction Against Drafting Party.

Landlord and Tenant acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against Landlord merely because Landlord's counsel initially prepared it.

Section 30.17. Intentionally Deleted.

Section 30.18. Intentionally Deleted.

Section 30.19. Intentionally Deleted.

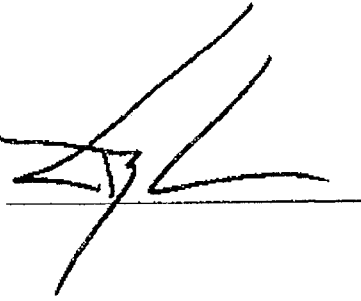
Section 30.20. Intentionally Deleted.

Section 30.21. Time of the Essence.

Time shall be of the essence in the performance of all obligations under this Lease.

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

WITNESS:



ATTEST:

By: Anthony V. Buglak  
Name: ANTHONY V. BUGLAK  
Title: CONTROLLER

(CORPORATE SEAL)

LANDLORD:

CDT ASSOCIATES LIMITED PARTNERSHIP  
a Maryland limited partnership

By: Montrose GP, LLC, its general partner

By: Montrose Members Corporation, its  
general manager

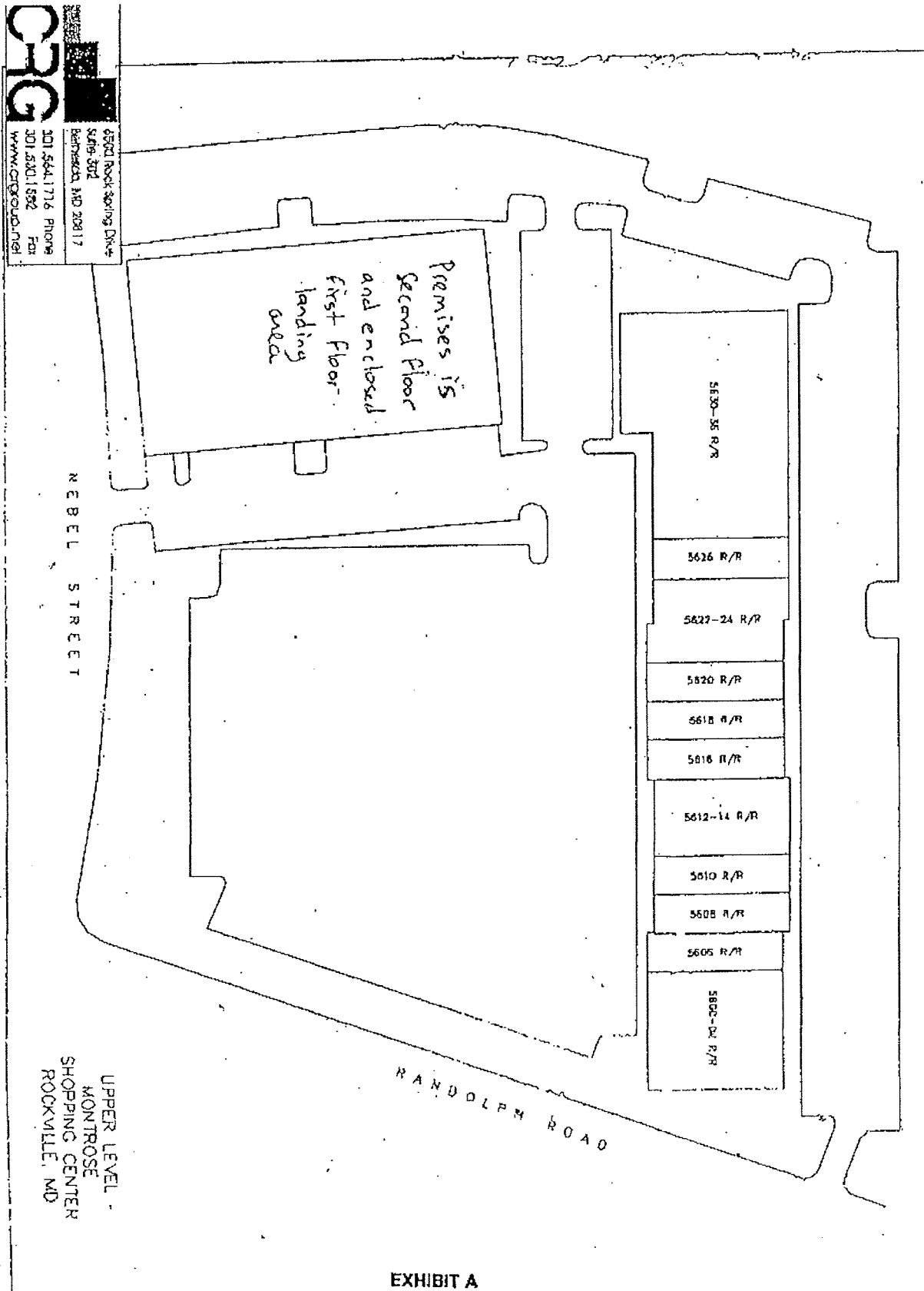
By: Ronald J. Cohen (SEAL)  
Ronald J. Cohen, President

TENANT:

GOLD'S HOLDING CORP., a Delaware  
corporation, d/b/a Gold's Gym

By: Ronald J. Cohen  
Name: Ronald J. Cohen  
Title: SVP, CFO  
Tax ID#: \_\_\_\_\_

# Montrose Shopping Center Rockville, Maryland



Except for the space leased to tenant and except as may be expressly set forth in Tenant's Lease, the designation and location of this plot plan of store units, sizes and other detailed information respecting the shopping center, its building and common areas, is not a representation by Landlord that such conditions exist or that, if they do exist, that they will continue to exist throughout all or any part of the term of Tenant's Lease.

EXHIBIT B

LANDLORD'S WORK

Except for the items specifically listed below, Tenant expressly acknowledges and agrees that it is obligated to accept the Premises in their current "as is" condition:

- HVAC in good working order (one (1) ton per 250 square feet of the Premises);
- Two inch (2") water line and a six (6) inch sewer line;
- 1200 amp electrical panel;
- The existing sprinkler system exclusively serving the Premises shall be in compliance with applicable governmental laws, rules and regulations.

EXHIBIT C

Agreement Specifying Term of Lease

Attached to and made part of the Shopping Center Lease dated the \_\_\_\_ day of \_\_\_\_\_, 2004, by and between CDT ASSOCIATES LIMITED PARTNERSHIP, as Landlord, and GOLD'S GYM HOLDING CORP., as Tenant (the "Lease").

Landlord and Tenant do hereby confirm and acknowledge the following: (i) the Rental Commencement Date is hereby established to be \_\_\_\_\_, 2004; (ii) the Expiration Date (subject to any renewal options that may be exercised by Tenant pursuant to the provisions of the Lease) is hereby established to be \_\_\_\_\_.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rental Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Corporate Seal]

TENANT:

GOLD'S GYM HOLDING CORP., a Delaware corporation, d/b/a Gold's Gym

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT D

### RULES AND REGULATIONS

The following Rules and Regulations cover the Shopping Center, and shall remain in full force and effect until Tenant is notified, in writing, by Landlord, of any changes or amendments. Landlord agrees that it will not unreasonably discriminate in the application of these rules and regulations.

1. For purposes of these Rules and Regulations, the term "Center Management" shall mean the duly designated representative of Landlord managing the Shopping Center. The Center Management is Ronald Cohen Management Company, 2701 Tower Oaks Boulevard, Suite 200, Rockville, Maryland 20852.

2. The requirements of tenants will be attended to only upon notice to the office of the Center Management. Landlord's employees shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of the Landlord or the Center Management.

3. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, reasonably designated for such purposes by Landlord. Tenant shall not deliver any merchandise to or collect any refuse from the Premises in a manner which will interfere with the business of the Shopping Center.

4. The delivery or shipping of merchandise, supplies, and fixtures to and from the Premises shall be subject to such rules and regulations, as, in the commercially reasonable judgment of Landlord, are necessary for the proper operation of the Premises or the Shopping Center.

5. Tenant shall store all Tenant's trash and garbage in approved receptacles, within the Premises or in approved dumpster(s) in such location(s) reasonably designated by Landlord, and shall be responsible for the removal and disposition of refuse and rubbish from the Premises. Tenant shall not permit the accumulation of rubbish, trash, garbage, debris, boxes, cans, or other refuse of any kind of description in the Premises, or in any area immediately adjoining the Premises, or in any part of the Shopping Center. Any dumpster serving one or more tenants of the Shopping Center will be of a type and be located in areas as approved by Landlord.

6. No aerial, earth station, or micro-wave dish, shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance, the written consent of Landlord. Any aerial, station, or dish so installed without such written consent shall be subject to removal without notice at any time, at Tenant's sole risk and expense.

7. Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

8. The sidewalks and loading areas immediately adjoining the Premises shall be kept clean and free from snow, ice, dirt, and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstruction or merchandise in such areas. Tenant shall not sweep dirt and rubbish into the parking lot.

9. Tenant and Tenant's employees shall park their cars only in those portions of the parking area designated for that purpose by Landlord. Tenant shall furnish Landlord with State automobile license numbers assigned to Tenant's

car or cars, and cars of Tenant's employees, within five (5) days after taking possession of the Premises and shall thereafter notify Landlord of any change within five (5) days after such changes occur. In the event that Tenant or its employees fail to park their cars in designated parking areas as aforesaid, the Landlord, at its option, shall charge Tenant ten dollars (\$10) per day per car parked in any area other than those designated therefor as and for liquidated damage.

10. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no inappropriate foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or demand resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents, or invitees shall have caused it.

11. Tenant shall not burn any trash or garbage of any kind in or about the Premises or the Shopping Center.

12. Landlord reserves the right to require Tenant to discontinue any display or demonstration in or from the Premises, which, in Landlord's reasonable opinion, creates an interference with the use of the public passageways of the Shopping Center or constitutes a nuisance or an unhealthy or unsafe condition.

14. Tenant shall, at all times, maintain an adequate number of suitable fire extinguishers on its Premises for use in case of localized fires, including electrical or chemical fires.

15. Tenant shall immediately notify the Center Management of any serious breakage, sickness, fire, or disorder which comes to its attention in its Premises or in any of the Common Areas of the Shopping Center.

16. The sidewalks, entrances, passages, courts, or corridors, shall not be obstructed or encumbered by a tenant or used for any purpose other than ingress or egress to and from the Premises; nor shall Tenant open its doors, or position any object of any kind in such manner as to project outside the Premises and thereby restrict or impede in any way the public passageways. No showcases or other objects shall be positioned, or affixed outside of the Premises, nor placed in or on vestibules, sidewalks, entrances, passages, courts, or corridors.

17. No bicycles, vehicles, or animals of any kind shall be brought into or kept in or about Tenant's Premises unless they are a part of Tenant's business. No tenant shall cause or permit any unusual or objectionable sounds or odors to be produced or emanate from the Premises.

18. Tenant shall not permit the use in its Premises of any device or instrument, such as a sound reproduction system, television sets, phonographs, or radios or excessively bright, changing, flashing, flickering, moving lights or lighting devices or any similar devices, the effect of which shall be audible or visible beyond the confines of its Premises, nor shall Tenant permit any act or thing upon its Premises disturbing to the normal sensibilities of other tenants.

19. No tenant, nor any of the employees, agents, visitors, subtenants, licensees, or concessionaires of a tenant, shall at any time bring or keep upon the Premises inflammable, combustible or explosive fluids, chemicals, or substances.

20. Tenant shall keep clean the inside and outside of all glass in the doors and show windows and all exterior store front surfaces of this Premises; shall replace at its own expense with glass of like kind and quality any plate glass of its Premises which may become cracked or broken within twenty-four (24)



hours unless the damage thereto is caused by Landlord or its agents, employees or contractors.

21. Canvassing, soliciting, and peddling in the Shopping Center is prohibited, and each tenant shall cooperate in preventing same. Tenant shall not solicit business in the parking or other common areas of the Shopping Center, or distribute handbills or other advertising matter in or upon automobiles parked in the Shopping Center, provided that the foregoing shall not prohibit Tenant from using direct mail solicitation or advertising in the regular communications media.

22. Landlord shall have the right to prohibit any advertising by a tenant which, in Landlord's commercially reasonable opinion, tends to impair the reputation of the Shopping Center or its desirability as a location for stores or offices, and upon written notice from Landlord, such tenant shall refrain from or discontinue such advertising.

23. No tenant shall occupy or permit any portion of the Premises to be used for the possession, storage, manufacture, or sale of narcotics, or illegal drugs in any form (except for a tenant whose primary business is the operation of a drug store), or for any unlawful purpose. No tenant shall engage or pay any employees on its Premises except those actually working for Tenant on said Premises, nor advertise for laborers giving an address at said Premises. No tenant shall use any space in the Shopping Center for manufacturing, for lodging, or sleeping, or for the sale at auction of merchandise, goods, or property of any kind.

24. Landlord reserves the right to exclude from the Shopping Center at any time disorderly or undesirable persons. Tenant shall be responsible for maintaining with the Center Management an up-to-date list of Tenant's employees, and for giving reasonable advance notice to the Center Management of invitees expected outside of Tenant's regular business hours.

25. Employees of Landlord, other than those expressly authorized, are prohibited from receiving any packages or other articles delivered to the Shopping Center for Tenant, and should any such employee receive any such package or article, he or she in so doing shall be the agent of Tenant and not Landlord.

26. Tenant shall not permit others to tie in to the electrical or water supply on the Premises without prior written notice to the Center Management.

27. Tenant shall insure that all entrance doors and windows in its Premises shall be locked when said Premises are not in use.

28. Except as otherwise provided in the Lease, no tenant shall mark, paint, bore into, cut, or in any way deface any part of the Premises or the Shopping Center of which it forms a part, without the consent of the Landlord. No wires shall be installed except in conduits, ducts, or outlets established for that purpose, unless prior written consent of the Landlord has been obtained. If any tenant restricts access to under-floor duct system by laying any floor covering, such tenant shall be responsible for providing access thereto, at its expense, upon request of Landlord.

29. Except for noise and vibrations typically found in first class gyms and health club facilities to the extent Tenant has complied with the reasonable requirements of Landlord for such noise, vibration and odor reductions as part of the approval of Tenant's Plans pursuant to the provisions of Section 2.01 or any other plans pursuant to the provisions of Section 12.03, Tenant shall keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Premises.

30. Absolutely no penetrations of the roof shall be made without prior written consent of Landlord. Such work shall be done solely by the roofing contractor designated by Landlord and with a representative of Landlord present at all times.

31. Landlord reserves the right to rescind, amend, alter, or waive any of the foregoing rules and regulations at any time when, in its judgment, it deems it necessary, desirable, or proper for its best interest and for the best interest of the tenants, and no such rescission, amendment, alteration, or waiver of any rule or regulation in favor of one tenant shall operate as an alteration or waiver in favor of any other tenant. Landlord shall not be responsible to any tenant for the nonobservance or violation by any other tenant of any of these rules and regulations at any time.

**EXHIBIT E**  
**SIGN CRITERIA**

Section 1. General

The following provisions establish the criteria for Tenant signage in, upon and around the Premises and the Shopping Center. To the extent that the provisions of this Exhibit conflict with the provisions of the Lease, the provisions of the Lease shall be controlling. Included herein are the specifications for design, location, construction and installation of all Tenant signage and the procedure for effecting same. These criteria have been established for the purpose of assuring an attractive Shopping Center and for the mutual benefit of all tenants.

Tenant shall not construct or erect any signage in the Premises or the Shopping Center without the prior written approval of Landlord, which approval shall be in Landlord's sole and absolute discretion. Conformance with these criteria shall be strictly enforced.

Section 2. Responsibility

Each tenant will be required to identify its Premises by two (2) signs, at Tenant's sole cost and expense, including permits: one (1) exterior building mounted sign, and one (1) identification sign on the rear door (where applicable), all subject to the criteria, requirements and approvals specified herein. Said exterior signs shall be installed and fully operational no later than the Rental Commencement Date pursuant to the Lease. No tenant shall install more than two signs. The character, design, color, layout, location, construction and installation of all sign shall be subject to Landlord's prior written approval. Signs are to be fabricated and installed by Tenant's sign contractor, which contractor shall appear on Landlord's approved list. Any and all permits required by Montgomery County and any other governmental jurisdiction shall be Tenant's responsibility and at Tenant's expense.

Section 3. Tenant Name

The advertising or information of all signs shall be limited to letters designating the "Tenant Name" which shall be defined for purposes of these Sign Criteria as the store name, trade name and/or type of store (which designation of the store type shall be general descriptive terms and shall not include any specification of the merchandise offered for sale therein or the services rendered therein) only. Any logo, emblem, symbol, mark, crest, or corporate shield design shall be limited to that used in all of Tenant's other stores or store signs and shall be permitted only with prior written approval of Landlord.

Section 4. Building Mounted Signs

The letters of all building-mounted signs must be installed within the continuous signband provided by the Landlord and shall be internally illuminated (60MA transformers with 12mm double tube argon gas) letters, or as may be provided by Landlord under separate criteria. The overall size of the sign shall not exceed the maximum length as may be determined by any applicable county law, ordinance or regulation.

The horizontal centerline of the building-mounted sign shall align with horizontal signband centerline. In the event that the text cannot be accommodated on one line, two lines of text are permitted.

Lettering style shall be pre-approved by Landlord in writing, at Landlord's sole discretion.

All letters to be installed to background with non-corrosive mounting hardware per attached drawings. All fasteners to be concealed.

Fabrication, installation and permits for all signs shall be in compliance with all applicable governmental codes and bear U.L. label.

Sign circuits to be provided and installed by Tenant and controlled by time clock provided by Tenant.

Section 5. Service Door Identification (if applicable)

An area on the service door located at the rear of the Premises shall be used for address and store identification. Lettering shall be black 3M extended life vinyl applied directly on door. Lettering style shall be Helvetica Bold, upper case. Address number shall be six (6") inches in height and name and shall be two (2") inches in height.

Section 6. Procedure for Approval

Four (4) copies of manufacturer's shop drawings and specification shall be submitted concurrently with Tenant plans and specifications not less than 30 days before the Rental Commencement Date. The drawings must indicate sizes of all letters and spacing, type of material, color, dimensions in relation to leasable area, and installation details compatible with the construction signband. Full information regarding electrical load requirements and brightness in foot-lamberts must be included. Proposed location of license, union, and fabrication labels must also be indicated. All disapproved drawings must be resubmitted until approved by Landlord. Incomplete drawings will be returned without approval.

Section 7. Prohibited Signage

The following type of signs are strictly prohibited:

(a) Paper signs or stickers utilized as signs inside or outside glass storefront.

(b) Signs of a temporary character or purpose, irrespective of the composition of the sign or material used therefore. (Unless prior written approval is obtained from Landlord.)

(c) Painted or printed signs.

(d) Outrigger signs.

(e) Moving, flashing, flickering or blinking signs, rooftop signs, parapet signs, or free-standing signs.

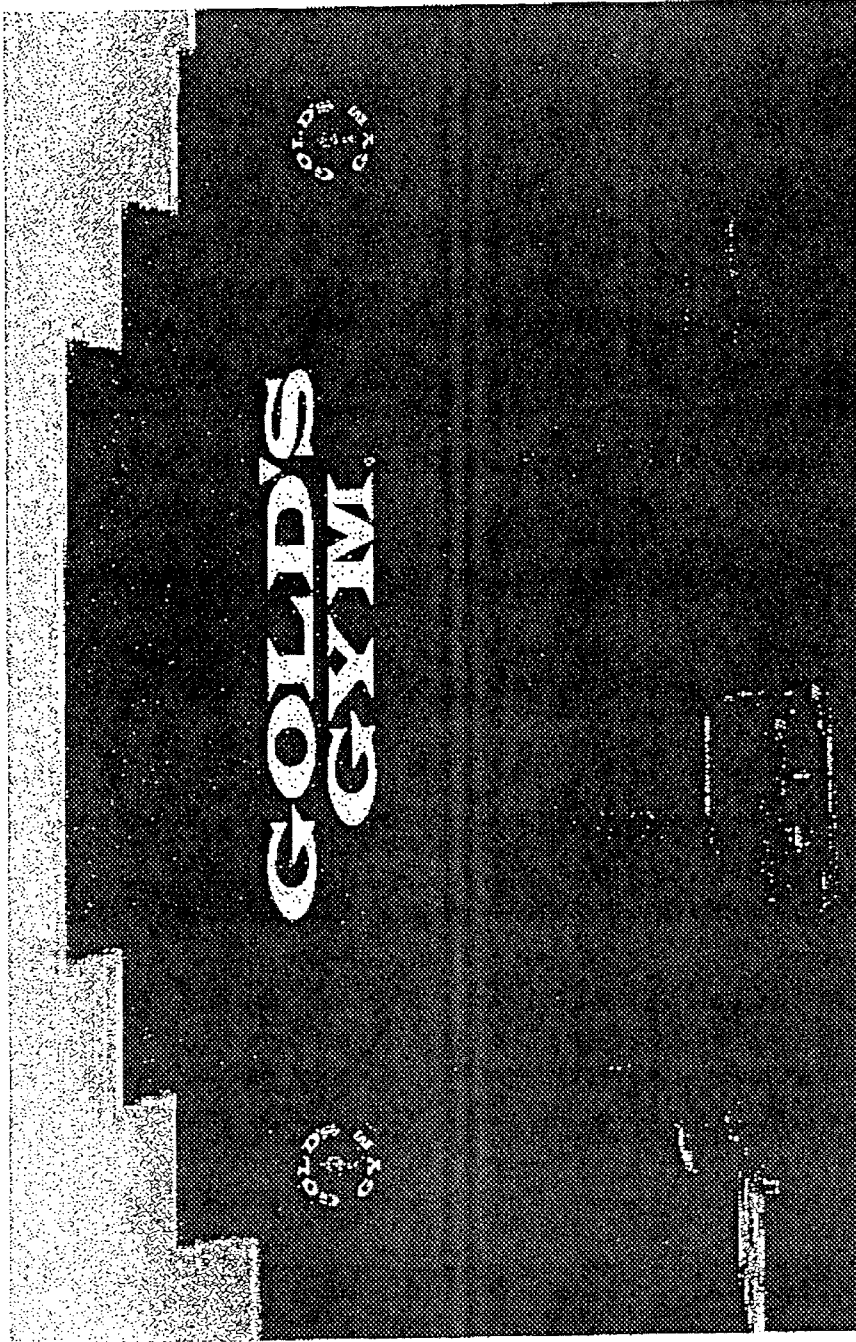
(f) Exposed neon or fluorescent tubing, incandescent lamps, raceways, ballast boxes, electrical transformers, crossover, conduit or sign cabinets.

(g) Floodlight illumination.

EXHIBIT E-1  
TO  
LEASE

Tenant's Sign

Channel Letters • Individually Mounted • Gold's Gym • Rockville • MD



Channel Letters • Individually Mounted

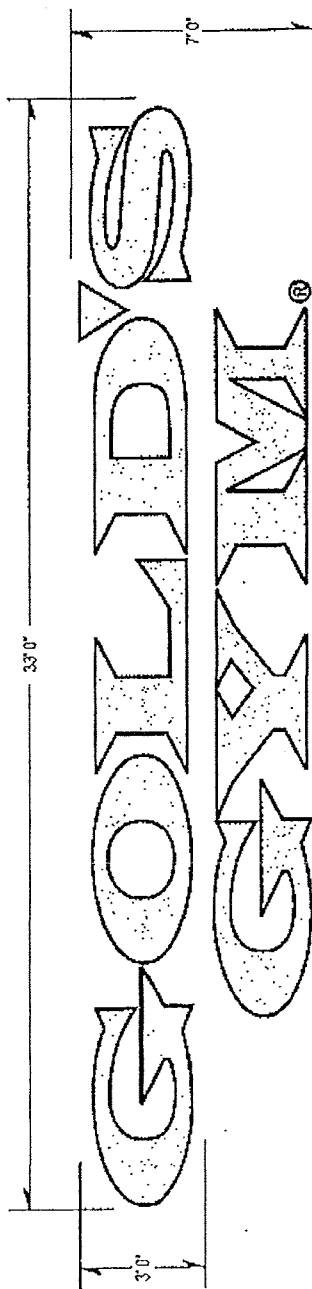
Scale 3/32" = 1" For Presentation



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Sales Rep: Dave Remitz Designer: Adrian	APPROVAL: I have reviewed and approved this sign. 602 is on this drawing for fabrication and installation. _____ Client Approval _____ Landlord Approval	Start Date: 04/05/2003 Last Revision: 04/06/2003 Job#: 80400 Drawing#: 80400a/c.v1 e1 Page: 1 of 3	Client Name: Gold's Gym Location: 5520 Randolph Road Rockville, MD
MEMBER I-S-T-A LISTED	© COPYRIGHT 2004 BY SIGN TECH INTERNATIONAL. ALL DESIGNS PRESENTED ARE THE SOLE PROPERTY OF SIGN TECH INTERNATIONAL. AND MAY NOT BE REPRODUCED IN PART OR WHOLE WITHOUT WRITTEN PERMISSION FROM SIGN TECH INTERNATIONAL.		



A Channel Letters • Individually Mounted  
Scale 3/16" = 1" For Production

#### SPECIFICATIONS FOR FABRICATION AND INSTALLATION:

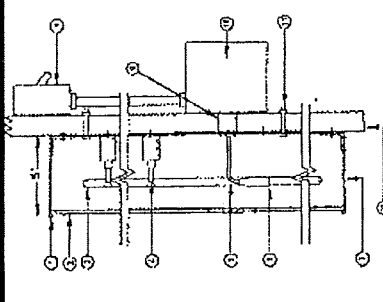
- Internally illuminated channel letters built to UL specification
- Quantity: one (1)
- Overall height of sign: 7' - 0" / Overall length of sign: 33' - 0" / Total square feet: 231'
- Aluminum construction: backs .063 / returns .040 / depth: 5"
- Plex face: 3/16"
- Trim cap: 1"
- Mounting method: individual (remote transformers/wiring)
- Transformer mounting placement: below rooftop
- Primary electrical requirement: 120 volt (installed within six feet of sign by others)
- Timer or photo-cell (installed by others)

#### COLOR AND NEON SPECIFICATIONS:

- Channel letters painted with two-stage automotive acrylic
- Returns: Black
- Interfix painted for increased illumination: white
- Plex face color: #2016 yellow
- Trim cap: black
- Neon: Number of strokes: 6 / size: 15mm / color: 6500 white

#### OTHER COMPONENTS / SPECIAL CONSTRUCTION CONSIDERATIONS:

#### INDIVIDUALLY MOUNTED CHANNEL LETTERS



- TRIV CAP WITH RETAINING SCREW
- PLEX FACE
- NEON TUBE
- NEON TUBE SUPPORT
- LISTED STD CABLE
- ELECTRODE INSULATING FOOT AND SLEEVE
- ALUMINUM .063" BACKS / .040" RETURN
- DISCONNECT SWITCH
- SEAL "TIGHT" PASS THROUGH WIRING KIT
10. 20 ma TRANSFORMER w/ WALL BOX
- WALL ANCHORS AS REQUIRED
- WALL FASCIA



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Client Name:  
Gold's Gym

Location:  
5520 Randolph Road  
Rockville, MD

Start Date: 04/05/2003  
Last Revision: 04/05/2003  
Job#: 80400  
Drawing#: 80400a.v1 s1  
Page: 2 of 3

APPROVAL: I have reviewed and approved the sign details on this drawing for fabrication and installation.

Client Approval

Landlord Approval

Sales Rep:  
Dave Remitz  
Designer:  
Adrian





A	TOTAL SQUARE FOOTAGE
6' 0"	36 sf.

SPECIFICATIONS FOR FABRICATION AND INSTALLATION:

- FABRICATE TWO (2) WEIGHT PLATE SIGNS TO READ: "GOLD'S GYM"
- ALUMINUM BACKS: .063 / SIDEWALLS: .040
- LETTER DEPTH: 8"
- MOUNTING METHOD: INDIVIDUAL WITH 1/4" STANDOFF FROM WALL
- ALL TRANSFORMERS / SECONDARY WIRING MOUNTED BEHIND WALL FACADE AND BELOW ROOFLINE
- BUILT TO UL SPECIFICATION WITH AN ELECTRICAL REQUIREMENT OF: 120 VOLT -OR- 277 VOLT
- INTERNALLY ILLUMINATED CHANNEL LETTERS TO FOLLOW UL48-F1 FABRICATION SPECIFICATIONS

COLOR SCHEDULE AND SPECIFICATIONS FOR CHANNEL LETTERS:

- FACE: FLEX
- GRAPHICS TO HEAT TRANSFER GRAPHICS TO MATCH PMS 109C, PMS 186C & BLACK
- RETAINERS: 2" COLOR: BLACK
- LETTER RETURN: WRISCO GLOSS BLACK
- ILLUMINATED WITH HIO FLOURESCENT LIGHTS
- INTERIOR LTR. METAL: PAINTED WHITE FOR MAX. ILLUMINATION

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www.signus.com

Client Name:  
Gold's Gym

Location:  
5520 Randolph Road  
Rockville, MD

Start Date: 04/05/2003  
Last Revision: 04/06/2003  
Job#: 80400  
Drawing#: 80400c.v1 s1  
Page: 3 of 3

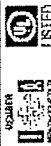
APPROVAL: I have reviewed and approved the sign specifications on this drawing for fabrication and installation.

Client Approval

Landlord Approval

Sales Rep:  
Dave Remitz

Designer:  
Adrian







# SPECIFICATIONS FOR FABRICATION AND INSTALLATION:

- Reface existing D/F pylon sign
- Quantity: one (1)
- Face type: Flex
- Face graphics: Translucent vinyl graphics to match PMS 109C, PMS 188C & Black
- Pole cover & Cabinet to be repainted (PMS 188C & Black)
- Overall height: 4' 0"; Overall Length: 15' 0"

A Pylon Reface

Scale 3/16" = 1' For Production

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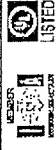
Client Name:  
 Gold's Gym  
 Location:  
 5520 Randolph Road  
 Rockville, MD

Start Date: 04/05/2003  
 Last Revision: 04/05/2003  
 Job#: 80400  
 Drawing#: 80400b.v1 s1  
 Page: 1 of 1

APPROVAL: I have reviewed and approved the sign details on this drawing for fabrication and installation.

Client Approval  
 Landlord Approval

Sales Rep:  
 Dave Remitz  
 Designer:  
 Adrian



## EXHIBIT F

### RIDER OF ADDITIONAL LEASE PROVISIONS

1.) Options to Extend. Provided (1) Tenant is not then in default of any term or provision of this Lease, (2) this Lease is in full force and effect, and (3) Tenant is not subject to any insolvency or bankruptcy proceedings, then Tenant shall have the option to extend the Term of this Lease for two (2) additional periods of five (5) Lease Years each ("First Extension Period" and "Second Extension Period", respectively), commencing on the first day following the last day of the initial Term of this Lease, or on the first day following the last day of the First Extension Period, as applicable, on the same terms and conditions as contained in this Lease. Tenant's option(s) to extend the Term of this Lease, as above provided, shall be subject to the conditions precedent that (i) Tenant shall give Landlord written notice of Tenant's exercise of the above option(s) to extend no earlier than three hundred sixty-five (365) days prior to the end of the original Term, or First Extension Period, as applicable, and no later than one hundred eighty (180) days prior to the expiration of the original Term, or First Extension Period, as applicable, and (ii) all charges, other than Minimum Rent, shall continue to be paid as if such extension period(s) were a part of the original Term of this Lease. Each extension period, if properly exercised, shall be deemed part of the Term of this Lease. Following the expiration of the Second Extension Period, Tenant shall have no further right to renew or extend the Lease pursuant to this Section. The Minimum Rent for each Lease Year of the First Extension Period and Second Extension period shall be:

<u>Period</u>	<u>Annually</u>	<u>Monthly</u>
First Extension Period (Lease Years 11 through 15)	\$546,438.72	\$45,536.56
Second Extension Period (Lease Years 16 through 20)	\$611,767.44	\$50,980.62

2.) Pylon Sign. There is an existing pylon sign at the Shopping Center ("Pylon Sign") and Landlord agrees that so long as such Pylon Sign exists, subject to applicable codes, regulations, restrictions, requirements and conditions, as well as the initial and continuing approvals of all governmental authorities having appropriate jurisdiction, Tenant shall have the right to install a sign panel on the top panel of the Pylon Sign. The design of Tenant's sign face shall be subject to Landlord's approval and Tenant's rights to have its sign located on the Pylon Sign shall exist only provided, and for so long as, Tenant is operating its business from, and in occupancy of, the Premises and is not in default of the provisions of this Lease beyond any applicable cure period. Tenant shall be solely responsible, at its sole cost and expense, for complying with the provisions of all applicable governmental authorities and obtaining their approvals for such signage. Furthermore, Tenant shall be solely responsible for all costs associated with the fabrication, installation, and maintenance of its sign face and Tenant shall reimburse Landlord for its pro-rata share of any and all costs attributable to the operation, maintenance and repair to the pylon sign upon which Tenant's sign face is placed. Landlord covenants that the Pylon Sign shall be in good condition, good working order, and in compliance with applicable governmental laws, rules and regulations as of the date of Notice of Possession.

3.) Permit Contingency. Within five (5) days after the date Landlord approves Tenant's Plans ("Permit Filing Date"), Tenant shall, at Tenant's own expense, promptly apply for any and all permits, licenses and approvals ("Permits") required to permit Tenant to perform Tenant's Work. Tenant shall give Landlord written notice of (1) the actual date the application for Permits has been filed, together with a dated stamped copy of the first page of Tenant's

application from the applicable governmental agencies showing the filing date and (ii) the actual date Tenant obtains its Permits, which notice shall be accompanied by a copy of such Permit. Landlord agrees to cooperate with Tenant, at no cost to Landlord, as may be necessary for Tenant to obtain such Permits. If Tenant fails to timely submit Tenant's Plans for approval as required in this Lease, or to resubmit the same within ten (10) days after receiving any comments from Landlord, or if Tenant fails to submit its application for Permits on or before the Permit Filing Date the Fixturing Period provided for in Section 1.01(p) shall be modified to provide that the Fixturing Period shall be ninety (90) days after Landlord delivers possession to Tenant and Tenant shall be deemed to have waived its rights to terminate provided for in this Section. If, Tenant has timely submitted and resubmitted Tenant's Plans to Landlord for approval and for Permits as required above and Tenant fails to obtain all such Permits within thirty (30) days after submission of its application for such Permits, Landlord shall have the right, but not the obligation, to pursue such Permits on Tenant's behalf and at Tenant's expense. If Tenant fails to obtain all such Permits within sixty (60) days after submission of its application for such Permits, Landlord shall have the right to terminate this Lease by giving notice of such election to terminate; provided, however, Landlord's notice to terminate shall be null and void and this Lease shall continue in full force and effect if Tenant advises Landlord within ten (10) days of receiving Landlord's termination notice that Tenant has either obtained such Permits or waives its right to obtain the same. If Tenant waives its right to obtain such Permits, the Fixturing Period shall be deemed to have commenced as of the date Landlord's termination notice was given. Provided that (i) Tenant has timely submitted and resubmitted Tenant's Plans to Landlord for approval and its application for Permits as provided for above, (ii) Tenant has responded to any comments or other action by the applicable governmental agencies within seven (7) days from Tenant's oral or written notice of said comments or other action, as the case may be; (iii) Tenant has kept Landlord advised of Tenant's progress in obtaining the Permits, and (iv) Tenant has used good faith efforts to obtain the same, if Tenant fails to obtain all such Permits within one hundred eighty (180) days after Tenant's timely submission of its application for such Permits, Tenant shall have the right to terminate this Lease by giving notice of such election to terminate to Landlord; provided, however, Tenant's notice to terminate shall be null and void and this Lease shall continue in full force and effect if Landlord advises Tenant within ten (10) days of receiving Tenant's termination notice that Landlord obtained such Permits for Tenant.

4.) Satellite. Landlord hereby consents to Tenant's installation on the roof of the Premises of satellite dishes or antennae (the "Satellite") to the extent permitted by law, as long as such installation and the maintenance and use of the Satellite is in accordance with all terms of this Lease. Tenant shall submit written plans for the installation, maintenance and use of the Satellite to Landlord for Landlord's review and consent, which consent shall not be unreasonably withheld. Tenant acknowledges that Landlord may, at any time, and without liability to Tenant therefor, allow other tenants of the Shopping Center or other persons to use the roof for any purpose. Tenant further acknowledges that Landlord has made no representation as to the utility to Tenant of the Satellite. Tenant shall be responsible for the cost of installation, maintenance and removal of all rooftop equipment. Landlord reserves the right at any time to require Tenant to move the Satellite to another location on the roof of the Premises at Tenant's sole cost and expense.

(a) Tenant's Satellite shall be considered Tenant's property under this Lease.

(b) Tenant's installation of the Satellite shall be made pursuant to Article XII of this Lease and shall be deemed to be a structural alteration under the provisions of this Lease.

(c) Any damage by fire or any other casualty to the Satellite shall be at Tenant's sole risk and expense, and any such damage, whether partial or complete, shall in no way operate to terminate this Lease or affect Tenant's obligations hereunder.

(d) No taking or condemnation of the roof or other parts of the Shopping Center used in connection with the Satellite shall give rise to any right of Tenant to terminate this Lease, nor shall Tenant share with Landlord in any award or damages with respect thereto.

(e) In no event shall Tenant assign, transfer, mortgage, encumber, sublet, rent or otherwise alienate the appurtenant right described in this Section to install, maintain and use the Satellite.

(f) Tenant's indemnification of Landlord as provided in this Lease shall be deemed to include, with reference to the Premises, the use of the roof of the Premises for and in connection with the Satellite.

Tenant agrees to pursue receipt of all approvals from all governmental authorities and to assume the costs of securing such approvals.

5.) Exclusive Use. (A) As long as Tenant is not in default hereunder beyond any applicable notice and cure period, the Lease is in full force and effect, and Tenant is open and operating in the Premises for the Permitted Use described in Section 1.01(c) (or still within the Fixturing Period or Minimum Rent Abatement Period), Landlord covenants that it will not enter into any future lease in the Shopping Center which grants to the tenant thereunder the express right to operate as a Health Club Facility (as defined herein). As used herein, "Health Club Facility" shall mean: (a) a health and fitness club offering substantially the same services as those expressly set forth in Section 1.01(c); (b) a facility that provides physical or rehabilitative therapy (excluding, however, any medical or physician supervised health care facility, which may include the provision of physical or rehabilitative therapy by physicians or other licensed practitioners, or a day spa providing massage therapy by licensed massage therapists); or (c) a facility providing yoga, pilates or other holistic/meditative exercises (or the natural evolution of such exercises), personal training, racquetball or basketball facilities.

(B) The foregoing restriction shall not apply to: (i) any existing tenant at the Shopping Center, or (ii) any successor, assignee or subtenant of an existing tenant at the Shopping Center, or (iii) any replacement tenant of an existing tenant at the Shopping Center whose permitted use is substantially the same as that of the existing tenant, or (iv) any tenant primarily offering classes in specialized physical disciplines (i.e., gymnastics, karate or dance), as opposed to fitness generally, (v) any tenant operating a retail business primarily specializing in fitness for children (e.g., Kid Zone or My Gym); or (vi) to any tenant whose primary business is the operation of a weight loss center (e.g., Weight Watchers, Jenny Craig or Lindora). Notwithstanding the foregoing, if an existing tenant of the Shopping Center (or an assignee or sublessee of such existing tenant) is required pursuant to the terms of its Lease to seek Landlord's consent to a change in its use, Landlord shall not consent to a change in such existing tenant's use that would conflict with tenant's exclusive use rights granted herein; provided, however, if Landlord is required to terminate such existing tenant's lease in lieu of consenting to such proposed change in use, Landlord shall not be deemed to have consent rights with respect to such existing tenant's change in use.

(C) Notwithstanding anything to the contrary contained in the Lease, in the event Landlord breaches this covenant and such breach is not cured within ninety (90) days after Landlord's receipt of written notice from Tenant, Tenant, following the expiration of such ninety (90) day period, may seek all remedies available to Tenant at law or in equity as the result of such breach, which remedies may include the right to seek a court order terminating this Lease.

(D) Notwithstanding anything in the foregoing to the contrary, Tenant shall have no remedy for a violation of this Paragraph 5, if another tenant or occupant in the Shopping Center violates a provision of its lease or license agreement regarding its premises, which either does not permit or specifically prohibits a violation of Tenant's exclusive rights and Landlord uses good faith efforts to enforce Landlord's rights under such lease or license agreement and to obtain Judicial Relief if necessary. For purposes hereof, "Judicial Relief" shall mean Landlord attempting to obtain a temporary restraining order, preliminary injunction, or order resulting from an arbitration proceeding enjoining the Competing Use. Landlord shall not be required to appeal any adverse decision denying Judicial Relief, unless Tenant specifically requests, in writing, that Landlord pursue such appeal at Tenant's sole cost and expense, in which event Tenant shall indemnify and hold Landlord harmless from any costs and expenses arising from the pursuit of such appeal.

6.) Prohibited Uses. Landlord covenants that, so long as Tenant is not in default of this Lease beyond any applicable notice and cure period, and Tenant is open and operating for the Permitted Use, no part of the Shopping Center shall be used for any of the following: (i) a bowling alley, movie theatre, skating rink, dance hall (but excluding a dance studio), billiard or pool hall, arcade (unless such arcade is incidental to a restaurant use), or combination restaurant/entertainment facility (e.g., Dave & Busters); (ii) bar, tavern, cocktail lounge (however, the foregoing restriction shall not preclude a tenant from operating primarily as a restaurant with a bar incidental to such restaurant use; (iii) any "adult-oriented" business, including (a) a bookstore primarily selling adult-oriented and/or pornographic reading materials, (b) a video store primarily selling adult-oriented and/or pornographic videos, (c) nude modeling, or (d) lingerie sales; (iv) hotel or motel (unless part of a substantial renovation/redevelopment of the Shopping Center); (v) massage parlor (provided, however, the foregoing, shall not preclude massage services by licensed massage therapists or a day spa); (vi) mobile home or trailer park or trailer court; (vii) sales, leasing, rental or retail display of boats, automobiles, trucks, recreational vehicles; (viii) hospital, retirement, convalescent, nursing home or assisted living center use (provided, however, the foregoing shall not preclude a retail medical care facility commonly found in retail shopping centers (i.e., a walk-in storefront medical facility or emergency care facility), such retail medical facility not to exceed 5,000 square feet); or (ix) office use aggregating over 10,000 square feet (excluding office use incidental to a primary retail use or quasi-office use such as banks, real estate companies, tax preparation typically found in retail centers provided the same does not offer tax training sessions in the Shopping Center), unless part of a substantial renovation/redevelopment of the Shopping Center; or (x) any single grocery store or single specialty grocery store use over 15,000 square feet. The foregoing restriction shall not apply to: (i) any existing tenant at the Shopping Center, or (ii) any successor, assignee or subtenant of an existing tenant at the Shopping Center, or (iii) any replacement tenant of an existing tenant at the Shopping Center whose permitted use is substantially the same as that of the existing tenant.

## EXHIBIT G

### RESTRICTED USES

Neither the Premises nor any part thereof shall be used or occupied as or for a supermarket, foodstore, grocery store, supermarket drugstore, or a store that sells drugs which require prescriptions or the presence of a pharmacist or which sells cosmetics, health and beauty aids, patent medicines, or home health-care and related products, or convalescent-type appliances and devices, including wheelchairs, walkers, diagnostic equipment, hospital-type beds, aspirators, and respiratory equipment, nor shall the Premises be used to operate a photo finishing business or department, nor a store selling, for off-premises consumption, any of the following items (individually or in any combination), groceries, meat, seafood, poultry, and dairy products, except by a restaurant for the sale of prepared foods for consumption on or off the Shopping Center premises.

Additionally, neither the Premises, nor any part thereof, may be used for any one or more of the following:

A. For the conduct of a business operation which regularly or with significant frequency sells merchandise of the types or qualities now commonly known as "odd lot", "close out", "clearance", "discounted", "cancellation", "second", "factory reject", "sample", "floor model", "demonstrator", "obsolescent", "over-stock", "distressed", "bankruptcy", "fire sale", or "damaged".

B. For any purpose or business which is obnoxious or unreasonably offensive because of the emission of noise, smoke, dust or odors; provided however, that nothing in this Exhibit shall prohibit Tenant from operating a gym business that causes noise, odor or vibration typically generated by first class gym/ health club facilities so long as Tenant has complied with the reasonable requirements of Landlord for such noise, vibration and odor reductions as part of the approval of Tenant's Plans pursuant to the provisions of Section 2.01 or any other plans pursuant to the provisions of Section 12.03.

C. For any purpose other than the conduct of a "retail business", which term shall mean and include, but shall not be limited to, mail-order catalog store operations of the Sears Roebuck, and Montgomery Ward type, banks, savings and loan companies, travel agencies, finance company businesses, service and self-service dry cleaning and laundry businesses, shoe repair shops, barber shops, beauty shops, dance studios, health salons, and real estate brokerage, stock brokerage and insurance brokerage businesses, as well as ordinary retail businesses selling merchandise and/or services.

D. For the operation of a motel or tourist court.

E. Bowling alleys or theaters of any type.

F. Funeral parlor.

G. For any "amusement operation", so-called, which term shall mean and include any activity consisting wholly or in substantial part of the furnishing of entertainment or amusement facilities, whether or not as a business or as part or aspect of a business, including without limitation, off-track betting parlors, "penny arcades", so-called; amusement games or devices (electronic or otherwise), "discos", so-called; so-called "strip shows"; or for a massage parlor, so-called or the business of the sale of so-called "adult only" or lewd, or pornographic

material such as, without limitation, tapes, magazines, books, movies, photographs, cards, pictures, newspapers, or merchandise of any such kind.

H. For any automobile or truck sale, sales, storage, service, fueling, washing or repair operation.

I. Fire arm shooting range.

J. For any office or storage operations except for office and storage operations which are a part of the conduct of a retail business in the Shopping Center.

K. For the operation of a department store, junior department store, or discount department store, containing 10,000 or more square feet of floor area.

L. Primarily, an amusement center containing coin-operated games, pinball machines or similar devices.

M. Flea market.

N. Warehouse.

O. Any business which sells, distributes, displays, or offers for sale of any roach clip, water pipe, bong, toke, coke spoon, cigarette paper, hypodermic syringe, or other paraphernalia used in the use or ingestion of illicit drugs.

#### EXCLUSIVE USES:

Neither the Premises, nor any part thereof, may be used for any one or more of the following:

. . . the principal purpose is for the wholesale and/or retail sale of carpeting and/or rugs [Imperial Rugs, Inc.]

. . . primary business (50% or more of demised space dedicated to a particular use) of electronic graphics, printing and duplicating [Bravodo, Inc.]

. . . the operation of a boarding and grooming kennel for dogs and cats [Pet Hotel]

## EXHIBIT H

### GUARANTY

In order to induce CDT ASSOCIATES LIMITED PARTNERSHIP ("Landlord") to execute and deliver that certain Lease Agreement (the "Lease") between Landlord and GOLD'S GYM HOLDING CORP. ("Tenant") for the Premises containing approximately 29,035 square feet of gross leasable area (as the same may be altered, expanded, reduced or relocated) in the Montrose Shopping Center ("Shopping Center"), and in consideration thereof, the undersigned GOLD'S GYM INTERNATIONAL, INC., a Delaware corporation ("Guarantor") hereby unconditionally, absolutely and irrevocably guarantees to Landlord, and its successors and assigns, the prompt and full payment and performance by Tenant of each and every item, covenant, condition, provision and obligation to be paid, kept, observed or performed by Tenant under the Lease, together with any and all costs and expenses, including reasonable attorneys' fees, which may be actually incurred by Landlord in connection with any default by Tenant under the Lease or enforcing the Lease and/or this Guaranty (collectively the "Obligations"). Guarantor expressly acknowledges that he, she or it has reviewed the Lease and understands the same. If there is more than one Guarantor, the terms and conditions of this Guaranty shall apply to all Guarantors jointly and severally. The liability of Guarantor is coextensive with that of Tenant and also joint and several, and legal action may be brought against Guarantor and carried to final judgment either with or without making Tenant or any assignee or successor thereof as a party thereto.

The undersigned further covenants and agrees that Landlord may at any time or from time to time, in its sole and absolute unfettered discretion, without notice to the undersigned:

(a) Extend or change the time of payment of any rent due under the Lease or any other payment required to be made by Tenant under said Lease, or the manner, place, or terms of performance or observance of any of the terms, covenants, conditions, provisions or obligations to be kept, observed or performed by Tenant under the Lease; and/or

(b) Modify any of the terms, covenants, conditions or provisions of the Lease, or waive compliance with any of the terms, covenants, conditions, provisions or obligations under the Lease.

Payment by the undersigned under this Guaranty is to be made without requiring any proceedings to be taken against Tenant for the collection of any amounts owed by Tenant under the Lease or for the keeping, performing or observing of any of the terms, covenants, conditions, provisions or obligations to be observed by Tenant under the Lease. The undersigned hereby completely and fully waives (a) notice of acceptance of this Guaranty, (b) presentment for payment, (c) notice of dishonor or default of Tenant under the Lease, (d) protest and notice of protest thereof, (e) any right of setoff, counterclaim or deduction against amounts due under this Guaranty, (f) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or prior performance, and (g) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

Without limiting the generality of the foregoing, the liability of the undersigned under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by (a) reason of any waiver or failure to enforce or delay in enforcing any of the Obligations, or (b) the granting of any indulgence or extension of time to Tenant, or (c) the assignment of the Lease, or the subletting of the Premises by Tenant, with or without Landlord's consent, or (d) the expiration of the Term of the Lease, or (e) if Tenant holds over beyond the Term of the Lease, or (f) any merger or reorganization of the release or discharge of Tenant or any other guarantor in any voluntary or involuntary receivership, bankruptcy, winding-up or other creditors' proceedings, or (g) the rejection, disaffirmance or disclaimer of the Lease by any party in any action or proceeding, or (h) the release of any collateral held for the Obligations or release of the Guarantor or any other guarantor, or (i) any defect or invalidity of the Lease, or (j) the transfer by Guarantor of any or all



of the capital stock of Tenant. The liability of the Guarantor shall not be affected by any repossession, re-entry or re-letting of the Premises by Landlord, provided, however, that the net payments received by Landlord after deducting all costs and expenses of repossession and/or reletting the same (including, without limitation, any attorney fees, brokerage fees and any reasonable costs or expenses incurred in redecorating, remodeling, or altering the Premises for reletting), shall be credited from time to time by Landlord to the account of Tenant and Guarantor and Guarantor shall pay any balance owing to Landlord from time to time, immediately upon being given written notice of demand by Landlord in the manner for providing notice set forth in the Lease.

This Guaranty shall be binding upon the undersigned, his or its respective successors, assigns, personal or legal representatives and heirs, and shall inure to the benefit of Landlord and Landlord's successors and assigns. The undersigned hereby consents and agrees that this Guaranty may be assigned by Landlord, without recourse, in connection with any sale or assignment by Landlord of part or all of its interest in the Shopping Center in which the demised premises under the Lease are contained.

This Guaranty shall remain in full force and effect until the payment or performance of all of the Obligations and the other amounts payable under this Guaranty (whether or not the Lease shall have been terminated). Until the payment and performance of all the Obligations and the amounts payable under this Guaranty, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by the Guarantor in compliance with the obligations of the Guarantor under this Guaranty; (b) waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor under this Guaranty; and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to the Landlord under the Lease.

The terms, covenants, conditions and obligations contained in this Guaranty may not be waived, changed, modified, discharged, or abandoned, except by agreement in writing, signed by the party or parties against whom enforcement of any waiver, change, modification, discharge or abandonment is sought. Guarantor agrees that it will, from time to time, within twenty (20) days after Landlord's request, execute and deliver a statement certifying that this Guaranty is unmodified and in full force and effect. Guarantor hereby constitutes and appoints Landlord its true and lawful attorney-in-fact in Guarantor's name (which power of attorney shall be deemed irrevocable and a power coupled with an interest) to execute such statement if Guarantor shall fail to do so within such twenty (20)-day period.

All notices or other communications to be provided pursuant to this Guaranty shall be in writing and shall be deemed to be properly served if sent by registered or certified mail or Federal Express or similar courier service with overnight delivery or via professional messenger service (with receipt therefor) or by certified or registered mail, return receipt requested, (i) if to Landlord, c/o Ronald Cohen Management Company, 2701 Tower Oaks Boulevard, Suite 200, Rockville, Maryland 20852, and (ii) if to Guarantor, at the address set forth below. All notices or other communications to be provided pursuant to this Guaranty sent by certified or registered mail, return receipt requested, first-class postage prepaid shall be deemed effective two (2) business days after mailing, otherwise such notices shall be effective upon receipt.

**Waiver of Jury Trial.** GUARANTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY ON ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN LANDLORD AND GUARANTOR OR THEIR SUCCESSORS, ASSIGNS, PERSONAL OR LEGAL REPRESENTATIVES AND HEIRS UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF ITS PROVISIONS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR ACKNOWLEDGES THAT LANDLORD NOR ANY PERSON ACTING ON BEHALF OF LANDLORD HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER ACKNOWLEDGES THAT HE, SHE OR IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS GUARANTY WITH LEGAL COUNSEL.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty under seal as of the 6<sup>th</sup> day of October, 2004.

ATTEST:

GUARANTOR(S)

GOLD'S GYM INTERNATIONAL, INC., a Delaware corporation

By: Anthony V. Buglak  
Name: ANTHONY V. BUGLAK  
Title: CONTROLLER

By: Ronald H. Smith  
Name: Ronald H. Smith  
Title: VP CFO  
Tax ID#: [REDACTED]

EXHIBIT I  
TO  
LEASE

LANDLORD'S WAIVER OF LIEN

THIS LANDLORD'S WAIVER OF LIEN (this "Waiver") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2004, by and among CDT ASSOCIATES LIMITED PARTNERSHIP ("Landlord"), GOLD'S HOLDING CORP., a Delaware corporation ("Tenant"), and Heller Financial, Inc. or its successors and assigns, in its capacity as agent ("Agent") for certain financial institutions ("Lenders").

WHEREAS, Landlord is the landlord of certain premises containing approximately 29,035 square feet (the "Premises"), located in a shopping center known as Montrose Shopping Center, in Rockville, Maryland (the "Shopping Center"), which are leased to Tenant pursuant to a Lease dated \_\_\_\_\_ between Landlord and Tenant (the "Lease").

WHEREAS, Agent has entered into or anticipates entering into a security agreement (the "Security Agreement") with Tenant whereby Agent, on Lenders' behalf, shall extend certain financing to Tenant and, as a condition to Agent's agreement to extend such financing, requires that Tenant grant a security interest to Agent of all personal property of Tenant in the Premises (the "Collateral"). Specifically excluded from the Collateral are all permanently installed improvements to the Premises (other than those improvements expressly deemed Tenant's property pursuant to the terms and conditions of the Lease), including but not limited to: (a) heating, ventilation and air conditioning equipment (HVAC), (b) lighting and all other electrical fixtures and equipment, and (c) all plumbing fixtures and equipment including hot water heaters, water systems, sprinkler systems, and the like.

WHEREAS, Landlord has agreed to execute this Waiver in order to induce Agent to extend credit to Tenant, with the understanding that Agent will rely upon the terms hereof in extending credit to Tenant.

NOW THEREFORE, in consideration of the foregoing, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, Landlord hereby covenants and agrees for the benefit of Agent as follows:

1. The lien and security interest of Agent in the Collateral shall be superior to any lien, right, title, claim or interest which Landlord may now or hereafter have therein. Providing Agent complies with the terms of this Waiver, Landlord agrees to forebear from asserting any statutory, contractual or possessory lien, right, title, claim or interest in and to the Collateral so long as the Security Agreement is in effect.
2. To the extent Landlord has control of the Premises, Agent shall have access to the Collateral and the Premises to remove any Collateral therefrom should Agent elect to exercise its rights or remedies with respect to the Collateral under the Security Agreement. In the event Agent elects to repossess the Collateral, Agent agrees: a) to notify Landlord of its intention to repossess the Collateral prior to the commencement of any action to repossess the Collateral, b) to permit Landlord, upon Landlord's written request, ten (10) days opportunity to

cure Tenant's default which is the basis for Agent's right to repossess the Collateral, c) to cooperate with Landlord, upon Landlord's request and to the extent permitted by law, in the timely removal of the Collateral (said time not to exceed sixty (60) days from date of Landlord's request), and d) to repair any damage caused to the Premises, and the Shopping Center, by removal of the Collateral from the Premises.

3. Furthermore, in the event Landlord recaptures the Premises from Tenant (through bankruptcy, voluntary surrender, court action or otherwise), then, subject to Paragraph 5 below, Agent shall remove the Collateral within sixty (60) days after receipt of Landlord's written request that such Collateral be removed. Agent shall repair any damage caused to the Premises or the Shopping Center by the removal of the Collateral.

If Agent fails to remove the Collateral within the timetable set forth herein, then the following shall apply: the Collateral shall be deemed abandoned and Landlord shall have the right (but not the obligation) to remove the Collateral and subsequently store or dispose of it. Any sums received by Landlord in the disposal of the Collateral shall be applied only to offset any expenses incurred by Landlord in the disposal of the Collateral. To the extent Landlord does not receive rent from Tenant for the applicable time period, Agent shall be liable for rent at the rental provided under the Lease (or, if the Lease is not then in effect, at the rental provided under the Lease immediately prior to termination thereof), prorated on a per diem basis during any period in which the Collateral remains within the Premises. Agent's payment of rent shall not result in Agent incurring any other obligations of Tenant under the Lease.

4. Agent further agrees to indemnify and save Landlord harmless from and against all liabilities, obligations, damages, costs, charges, judgments and expenses, including but not limited to reasonable attorney's fees which may be imposed upon, incurred, sustained or paid by Landlord by virtue of, or in connection with, Agent exercising its rights specified in this Waiver.
5. Notice of Default and Opportunity to Cure. Landlord agrees that in the event of any claimed breach or default by Tenant which would entitle Landlord to terminate the Lease, Landlord shall notify Agent of such claimed breach or default by certified mail, return receipt requested, or Federal Express or other reputable overnight courier, at the following address:

Heller Financial, Inc.  
500 West Monroe Street  
Chicago, Illinois 60661  
Attention: Account Manager  
Corporate Finance Group

Upon receipt of said notice, Agent shall be afforded the right to cure such breach or default on Tenant's behalf within the same cure period(s) afforded Tenant under the Lease. Agent's cure of any such default shall

include payment of interest, late charges and other costs and expenses for which Tenant would be liable under the Lease had Tenant cured such default.

6. Termination of Lease; New Lease. In the event Landlord terminates the Lease by reason of the occurrence of a default which by its nature cannot be cured by Agent (e.g., the filing of bankruptcy by Tenant under the Lease), Agent may elect to enter into a new lease with Landlord upon terms identical to those of the Lease for the remaining unexpired portion of the term of the Lease. If Agent fails to deliver written notice of such election within ten (10) days following the earlier of 1) the date of such termination, or 2) the date of Agent's receipt of Landlord's notice of its intent to terminate the Lease (time being strictly of the essence), Landlord shall have no further obligation to Agent under this paragraph.
7. Governing Law. This Agreement shall be governed by and shall be construed and enforced in accordance with the internal laws of the State of Maryland, without regard to conflicts of law principles, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, and may not be modified, amended or altered except by a writing signed by each of the parties hereto.
8. Tenant, by its signature hereunder, consents to all of the terms and conditions set forth herein.

IN WITNESS WHEREOF, this Waiver has been executed and delivered by the undersigned as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

WITNESS:

LANDLORD:  
CDT ASSOCIATES LIMITED PARTNERSHIP  
a Maryland limited partnership

By: Montrose GP, LLC, its general partner

By: Montrose Members Corporation, its general manager

By: \_\_\_\_\_ (SEAL)  
Ronald J. Cohen, President

ATTEST:

TENANT:  
GOLD'S HOLDING CORP., a Delaware corporation,  
d/b/a Gold's Gym

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Tax ID#: \_\_\_\_\_

WITNESS/ATTEST:

AGENT:

HELLER FINANCIAL, INC.

By: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

RONALD COHEN MANAGEMENT  
POSSESSION & IMPROVEMENT CERTIFICATION

Landlord: CDT Associates Limited Partnership

Proposed Tenant: Gold's Gym

Premises: 5520 and 5544-46 Randolph Road, Rockville, MD 20852

[Signature]

I hereby acknowledge receipt of 2 keys for the above-referenced premises.

[Signature]

I understand that during the "due diligence" Landlord will continue to have access to the premises.

[Signature]

I hereby acknowledge that Prospective Tenant and its authorized agents, servants, and employees shall be permitted entry upon the Premises for the purpose of making surveys and architectural and any other studies as Prospective Tenant deems necessary. All studies shall be made at the sole risk, cost and expense of Prospective Tenant. If Prospective Tenant exercises its rights hereunder, it shall:

- (a) keep the Premises free and clear of any and all liens or claims resulting therefrom;
- (b) defend, indemnify, and hold Landlord harmless against and from any claim or liability imposed or sought to be imposed upon Landlord for loss or damage to property and/or injuries to or death of persons arising therefrom; and
- (c) repair any damage to the Premises caused by its entries.

Landlord requires proof of insurance from the Prospective Tenant and Prospective Tenant's contractor(s) upon possession of the premises. Please have your insurance carrier and your contractor(s) provide Landlord with Certifications of Insurance as indicated on the attached sheet.

Please initial the paragraphs, sign and date below.

ACCEPTED:

[Signature] 5/2/04

By: Aaron Lieberman  
Title: Director of Development

4/30/04  
Date

Kristen Dean  
Kristen Dean, Property Manager  
Cohen Companies  
Agent, CDT Assoc. Limited Partnership

RECEIVED  
SEP 08 2020  
BMC GROUP

FedEx Ship Manager - Print Your Label(s)

ORIGIN ID:BCBA (703) 766-4400  
LEON KOUTSOUFTIKIS  
MAGRUDER COOK & KOUTSOUFTIKIS  
1889 PRESTON WHITE DRIVE  
SUITE 200  
RESTON, VA 20191  
UNITED STATES US

SHIP DATE: 04SEP20  
ACTWGT: 0.50 LB  
CAD: 4058670/NET4280

BILL SENDER

TO **BMC GROUP**

**ATTN: GGI HOLDINGS CLAIMS  
PROCESSING**

**3732 WEST 120TH STREET**

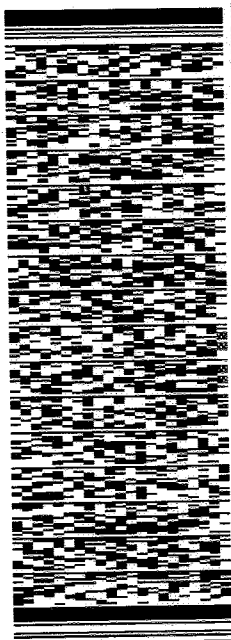
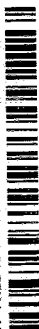
**HAWTHORNE CA 90250**

(703) 766-4400

REF: W35671804

INV:

DEPT:



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TRK# 7714 5288 5023  
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TUE - 08 SEP 3:00P  
STANDARD OVERNIGHT

**SA AVXA**

90250  
CA-US LAX

