

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

Debtor 1 Gold's St. Louis, LLC

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

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

Case number 20-31333-hdh11

E-Filed on 09/08/2020  
Claim # 332

## 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**

|   |   |   |   |
|---|---|---|---|
| <b>1. Who is the current creditor?</b>  |   | <u>635 Gravois Road Leasing, LLC</u><br>Name of the current creditor (the person or entity to be paid for this claim)   |   |
|   |   | Other names the creditor used with the debtor _____   |   |
| <b>2. Has this claim been acquired from someone else?</b>   |   | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. From whom? _____  |   |
| <b>3. Where should notices and payments to the creditor be sent?</b><br><br>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) | <b>Where should notices to the creditor be sent?</b>  |   | <b>Where should payments to the creditor be sent? (if different)</b>  |
|   | <u>Kane Russell Coleman Logan PC</u><br>Name<br><u>a/o Kyle Woodard 901 Main Street, Suite 5200</u><br>Number Street<br><u>Dallas TX 75202</u><br>City State ZIP Code<br>Contact phone <u>(214) 777-4200</u><br>Contact email <u>kwoodard@krcl.com</u><br><br>Uniform claim identifier for electronic payments in chapter 13 (if you use one):<br>_____ |   | <u>635 Gravois Road Leasing, LLC</u><br>Name<br><u>c/o Michael Shabsels 444 East 58th Street #3C</u><br>Number Street<br><u>New York NY 10022</u><br>City State ZIP Code<br>Contact phone <u>(917) 453-1192</u><br>Contact email <u>mshabsels@gmail.com</u> |
| <b>4. Does this claim amend one already filed?</b>  |   | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____<br>MM / DD / YYYY |   |
| <b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>   |   | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Who made the earlier filing? _____  |   |

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

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

7. How much is the claim? \$ 1,744,189.72. Does this amount include interest or other charges?  
☐ No  
☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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

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

10. Is this claim based on a lease? ☐ No  
☒ Yes. Amount necessary to cure any default as of the date of the petition. \$ 68,320.80

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

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

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

☒ No

☐ Yes. Check one:

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

Amount entitled to priority

\$ 0.00

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

\$ 0.00

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

\$ 0.00

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

\$ 0.00

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

\$ 0.00

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

\$ 0.00

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

Part 3: Sign Below

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

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

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

Check the appropriate box:

☐ I am the creditor.

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

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

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

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

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

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

Executed on date 09/08/2020  
MM / DD / YYYY

Michael Shabsels

Signature

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

Name Michael Shabsels

First name

Middle name

Last name

Title Manager

Company 635 Gravois Road Leasing LLC

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

Address 444 East 58th Street #3C

Number Street

New York

NY

10022

City

State

ZIP Code

Contact phone (917) 453-1192

Email mshabsels@gmail.com

Attachment 1 - GGI - Fenton Rejection Proof of Claim\_FINAL.pdf

Description - GGI Fenton Rejection Claim Supporting Documentation

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Debtor 1 Gold's St. Louis, LLC

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

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| Uniform claim identifier for electronic payments in chapter 13 (if you use one):<br>_____                                |   |  |
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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).

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

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

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

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

Executed on date 09/04/2020  
MM / DD / YYYY



Signature

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

Name Michael Shabsels  
First name Middle name Last name

Title Manager

Company 635 Gravois Road Leasing LLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 444 East 58th Street #3C  
Number Street  
New York NY 10022  
City State ZIP Code

Contact phone 917-453-1192 Email mshabsels@gmail.com

## SUMMARY OF CLAIM

**Creditor (Landlord):** 635 Gravois Road Leasing, LLC ("**Landlord**")

**Debtor (Tenant):** Gold's St. Louis, LLC ("**Debtor**")

**Leased Premises:** 635 Gravois Road, Fenton, St. Louis County, Missouri

**Lease Commencement Date:** July 31, 2016

**Petition Date:** May 4, 2020

**Lease Rejection Date:** May 4, 2020, or the date Debtor surrendered the Premises [*see* Dkt. #117]

**Lease Expiration Date:** November 30, 2034

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1. **Basis for Claim and Supporting Documentation.** Landlord is the lessor of the Leased Premises pursuant to the following documents, which are attached hereto as **Exhibits A thru D** and incorporated herein by reference:

- a. *Lease Agreement* dated July 31, 2016, between Scannell Properties #62, LLC, as landlord, and Debtor, as tenant (as amended and restated, the "**Lease**");
- b. *Amended and Restated Shopping Center Lease* dated August 31, 2018, between RBR Real Estate Holdings, LLC, as landlord, and Debtor, as tenant;
- c. *First Amendment to Amended and Restated Shopping Center Lease* dated August 31, 2018, between RBR Real Estate Holdings, LLC, as landlord, and Debtor, as tenant; and
- d. *Assignment and Assumption of Leases* dated November 26, 2019, between RBR Real Estate Holdings, LLC, as assignor, and MILTON 635 Gravois Road, LLC, as assignee.

2. **Lease Rejection.** On May 14, 2020, the Debtor filed its *Final Order Authorizing the Debtors to (I) Reject Certain Unexpired Non-Residential Real Property Leases and (II) Abandon Certain Personal Property Remaining at the Premises Covered by the Leases Effective Nunc Pro Tunc to Date of Filing of Motion and Amending Interim Order* [Docket No. 66] [Dkt. #117], whereby the Debtor rejected the Lease effective as of the Lease Rejection Date.

3. **Rejection Damages Calculation.** Pursuant to 11 U.S.C. § 502(b)(6), Landlord's unsecured claim resulting from the Debtor's rejection of the Lease is equal to: (A) the greater of (i) one year's rent following the Petition Date or (ii) the rent reserved by the Lease for 15% of the remaining term following the Petition Date, not to exceed three years; plus (B) any unpaid rent as of the Petition Date.



4. **Claim Amount.** Landlord is owed the following amounts in connection with the Lease and the Debtor's rejection thereof:

|   |                       |
|---|-----------------------|
| Pre-Petition Default Rent:  | \$68,320.80           |
| Rejection Damages – Basic Rent:<br><i>(15% of remaining term: 5/4/20 – 8/1/22)</i>  | \$1,399,788.02        |
| Rejection Damages – Additional Rent:<br><i>(\$2,391/mo. for CAM; \$193/mo. for insurance; \$7,678/mo. for<br/>real estate tax: [26+28/31] mos.)</i> | \$276,080.90          |
| <hr/>   |                       |
| <b>Total Claim:</b>   | <b>\$1,744,189.72</b> |

5. **Reservation of Rights.** Landlord reserves all of its rights, including but not limited to: (i) its right to assert an administrative claim for all amounts due under the Lease after the Petition Date but not paid; and (ii) the right to amend this claim at a later date for any reason.

# Exhibit A

**GOLD'S ST. LOUIS, LLC**  
**TENANT**

**WITH**

**SCANNELL PROPERTIES #62, LLC**  
**LANDLORD**

Date:

July 31, 2006

Gravois Center  
Fenton, St. Louis County, Missouri

## LEASE AGREEMENT

This Lease Agreement (the "Lease") is entered into this 31 day of July, 2006 (the "Effective Date"), by and between **SCANNELL PROPERTIES #62, LLC**, an Indiana limited liability company (hereinafter, "Landlord"), and **GOLD'S ST. LOUIS, LLC**, a Delaware limited liability company (hereinafter, "Tenant").

### RECITALS:

A. Landlord is the owner of that certain 8.351 acre tract of real property and improvements situated thereon as more particularly described on Exhibit A attached hereto and made a part hereof, having an address of 635 Gravois Road, Fenton, St. Louis County, Missouri (such real property and improvements collectively referred to herein as the "Shopping Center").

B. Landlord desires to lease and grant to Tenant, and Tenant desires to lease and obtain from Landlord, a portion of the Shopping Center comprising approximately 41,624 square feet total within the building (the "Building") as depicted on Exhibit B, attached hereto and made a part hereof (such portion of the Shopping Center referred to herein as the "Demised Premises") together with a non-exclusive right to use the Common Areas (as defined in this Lease), including without limitation, the parking facilities, curbs, driveways, signs, pylon signs and other facilities included in the Shopping Center.

### AGREEMENT:

In consideration of the covenants and conditions herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

#### 1. DEMISE OF PREMISES AND TERM

A. Demise of Premises: In consideration of the rents, covenants and agreements reserved and contained in this Lease, Landlord hereby leases and demises the entire Demised Premises to Tenant, and grants to Tenant the non-exclusive right to use the Common Areas (as hereinafter defined) and Tenant hereby accepts and takes the entire Demised Premises, and such non-exclusive rights to use the Common Areas, from Landlord, for Tenant's use, occupancy and benefit, as well as for the use, occupancy and benefit of Tenant's customers, employees, agents, invitees, subtenants, licensees and concessionaires for an initial term of fifteen (15) years, as the same may be extended as set forth below (such term, if and as so extended, is hereinafter called the "Term"). The lease of the Demised Premises by Tenant shall include, without limitation, the exclusive right of Tenant, for Tenant's benefit as well as for the benefit of Tenant's customers, employees, representatives, contractors, agents, invitees, patrons, subtenants, licensees, concessionaires and suppliers, subject to the terms, conditions, rules, regulations and limitations contained in this Lease, to use all portions of the Demised Premises, and the non-exclusive right to use the Common Areas. In this regard, the term "Common Areas" will mean and refer to the parking facilities, private streets, driveways, roadways and alleys, landscaped areas, curbs, loading and delivery areas, sidewalks, lighting facilities and other improvements and fixtures installed or constructed in the Shopping Center, other than those portions of the Building that are leased to Tenant or any other specific tenant of the Shopping Center. A site plan

showing the location of the Building, and the location of the Demised Premises within the Building, is attached hereto as **Exhibit B** (the "Site Plan"). Landlord shall not construct, install, place, modify or supplement, and shall not permit the construction, installation, placement, modification or supplementation of, any structure, fixture or other improvement on any portion of the Shopping Center (including the Common Areas) that blocks or otherwise impairs the visibility of the Demised Premises unless Landlord first obtains Tenant's prior written consent for same, which such consent shall not be unreasonably withheld, conditioned or delayed. If Landlord or any person or entity in control of or in common control with Landlord or any of its affiliates owns or otherwise controls any real property located adjacent to the Shopping Center (such real property, if any, referred to herein as the "Landlord Adjacent Property"), Landlord shall not construct, install, place, modify or supplement (nor shall permit the construction, installation, placement, modification or supplementation of) any material structure, fixture or other improvement on such Landlord Adjacent Property unless Landlord first obtains Tenant's prior written consent for same, which such consent shall not be unreasonably withheld, conditioned or delayed. If default on the part of Landlord under this Lease materially interferes with Tenant's use and enjoyment of the Demised Premises or Tenant's non-exclusive rights to use the Common Areas, or the provision of utilities and services thereto and, as a result, Tenant is unable to make reasonable use of the Demised Premises for its intended purposes for a period of three (3) consecutive days, Tenant will be entitled to a per diem abatement of the Base Rent due under this Lease, for a period commencing on the 4<sup>th</sup> consecutive business day of interruption until the earlier to occur of (i) the date that the Landlord fully and finally cures its default, or (ii) the date upon which Tenant is able to resume its operations of its business within the Demised Premises at substantially the same level as existed prior to Landlord's default. The amount of such abatement shall be based upon the proportion that the area of the Demised Premises that Tenant is not able to utilize at substantially the same level as existed prior to Landlord's default bears to the total area of the Demised Premises.

Landlord covenants and represents that it will not make any material alteration or change in the location and configuration or reduce the number of the parking spaces and access drives from the location, configuration and number of such parking spaces and access drives as shown on the Site Plan without the Tenant's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed, provided, however, that the Landlord will be entitled, without Tenant's consent but upon at least 30 days' advanced written notice thereof to Tenant, to effect a material relocation and/or reconfiguration of the parking spaces and/or access drives at any time between the months of March through October without Tenant's consent if and so long as, at all times during and following completion of that relocation and/or reconfiguration, (i) the parking areas within the Shopping Center shall contain an aggregate of at least five (5) ground-level vehicle parking spaces for every thousand (1,000) square feet of floor area contained within the Shopping Center, (ii) at least two hundred (200) standard sized vehicle parking spaces shall be located within 300 feet of the main entry door to the Demised Premises; and (iii) each parking space servicing the Shopping Center, regardless of angles of parking, shall have a minimum width of nine (9) feet on center, each measured at right angles to the sideline of the parking space.

Subject to the foregoing, Tenant and its employees, licensees, concessionaires, invitees, patrons, agents and representatives shall be provided with free parking within the Shopping Center on a "first-come, first-serve" basis throughout the Term of this Lease.

Landlord will be responsible for and will make any alterations or repairs necessary, if any, in and to the Common Areas so that at all times during the term of this Lease the Common Areas will comply with the requirements of the Americans with Disabilities Act.

B. Build to Suit Construction Rider. The Landlord will construct the improvements within the Demised Premises and otherwise complete the work and improvements for the Tenant's use of the Demised Premises (collectively referred to herein as the "Landlord's Work") in the manner contemplated in, within the time periods specified in, and otherwise upon the terms and conditions set forth in Exhibit C, attached hereto (the "Construction Rider").

C. Commencement of Term: The Term of this Lease shall commence, and all rent and other charges provided for herein shall begin accruing on the Commencement Date, as herein defined. For the purpose of this Lease, the term "Commencement Date" shall mean and refer to the date upon which the Landlord gives Tenant written notice that the Improvements (as defined in the Construction Rider) are fully and finally completed in accordance with the approved Plans and Specifications (as defined in the Construction Rider), accompanied by (i) an Architect's Certificate of Substantial Completion provided by the Architect (as defined in the Construction Rider), confirming that the Landlord's Work has been fully and finally completed in accordance with the approved Plans and Specifications; and (ii) a Certificate of Occupancy (whether temporary or permanent) together with all other certificates, approvals and documents, if any, issued by applicable governmental authorities (herein referred to as "Authorities") and required for Tenant's possession of the Demised Premises and its use and occupancy of same. As of the date of this Lease, the target Commencement Date is April 1, 2007 (the "Target Commencement Date"). Occupancy of the Demised Premises by Tenant prior to the Commencement Date shall be subject to all of the terms, conditions and provisions of this Lease, other than the payment of rent and other sums due hereunder. In this regard, the Tenant will be entitled to enter the Demised Premises prior to the Commencement Date solely for the purpose of installing its furnishings, fixtures and equipment (the "Tenant's FF&E") provided that (i) the Tenant communicates its schedule for doing such work to the Landlord and/or Landlord's designated on-site representative; (ii) the Tenant does not interrupt, interfere with or otherwise attempt to direct any of the Landlord's Work being performed within the Demised Premises; and (iii) Tenant agrees that the Landlord and its contractors performing the Landlord's Work will have no liability for any loss or damage to any of the Tenant's FF&E installed or placed in the Demised Premises or on the Land prior to the Commencement Date unless such loss or damage is caused by the gross negligence or willful misconduct of the Landlord or its contractors. Tenant and Landlord shall use good faith efforts to coordinate their respective construction schedules and personnel so as to permit the performance of the Landlord's Work and the construction of Tenant's FF&E in a timely and efficient manner.

D. Lease Renewal Option: Provided that no Tenant Default (as defined in Section 17(A), below) then exists at the time Tenant desires to exercise same, Tenant shall have two (2) options to renew and extend the Term of this Lease for an additional five (5) year period each (each such five year renewal period referred to herein as the "Extension Period") by giving Landlord written notice of Tenant's intent to exercise such renewal option at least one hundred eighty (180) days prior to the expiration of the initial Term (or the expiration of the first Extension Period, as applicable). Upon the giving of such notice to Landlord, the Term of this Lease shall be automatically extended for an additional five (5) year period beginning on the first day following the expiration date of the initial Term (or on the first day following the expiration of the first Extension Period, as applicable), subject to the revocation of the Tenant's option in the manner contemplated in Section 2(A), below. All of the terms and conditions of this Lease shall remain in full force and effect during any such Extension Period(s), subject to an adjustment in the Base Rent as set forth in Section 2(A), below.

## 2. RENT

A. Base Rent: Tenant shall pay to Landlord during the initial Term of this Lease, as minimum guaranteed Base Rent for the Demised Premises (hereinafter, the "Base Rent"), the amounts shown below:

| Period Following Commencement Date | Base Rental Rate Per Square Foot Per Year | Annual Base Rent | Monthly Base Rent |
|------------------------------------|---|------------------|-------------------|
| Years 1 – 5                        | \$14.0000                                 | \$582,732.00     | \$48,561.00       |
| Years 6 – 10                       | \$15.6800                                 | \$652,668.00     | \$54,389.00       |
| Years 11 -15                       | \$17.5616                                 | \$730,980.00     | \$60,915.00       |
| Years 16 -20 (option)              | \$20.1958                                 | \$840,631.64     | \$70,052.64       |
| Years 21 -25 (option)              | \$23.2252                                 | \$966,724.73     | \$80,560.39       |

From and after the Commencement Date specified above, Base Rent shall be payable in equal monthly installments, in advance, on or before the first (1<sup>st</sup>) day of each calendar month throughout the Term of this Lease (and any applicable Extension Period). Tenant shall pay the Base Rent and all Additional Rent (as defined in Section 2(B), below, when due, without demand, and except as otherwise provided in this Lease, without abatement, deduction or setoff.

If any installment of Base Rent is not received within five (5) days following the date on which such sum is due (the "Grace Period"), Tenant shall pay, as Additional Rent, a late fee/administrative charge equal to One Hundred and No/100 Dollars (\$100.00), plus interest accruing from and after the expiration of that Grace Period, at the rate of twelve percent (12%) per annum until paid in full.

If Base Rent or Additional Rent payable by Tenant under this Lease is not received by Landlord within such Grace Period, the Tenant will not be in default hereunder unless and until the Landlord has given Tenant written notice of such default in the manner specified in Section 17(A)(i), below. If the Tenant is Habitually Delinquent (as herein defined) in the payment of Base Rent, then the Tenant shall be obligated to deposit, in escrow with Landlord, an amount equal to the next installment of Monthly Base Rent otherwise due under this Lease (the "Delinquent Deposit"), and Landlord will hold the Delinquent Deposit, without any credit to Tenant for any interest that may accrue on any such Delinquent Deposit. There will be no more than one (1) Delinquent Deposit at any given time under this Lease. The Landlord may apply all or any part of the Delinquent Deposit to any installment of Monthly Base Rent which is delinquent and not otherwise paid by Tenant during the Grace Period under this Lease. Upon application of any such amounts, the Landlord will give Tenant written notice of such application, and upon receipt of that notice, the Tenant will promptly deposit additional funds with Landlord to replenish the Delinquent Deposit so that the amount of the Delinquent Deposit will continue to be equivalent to the next three installments of Monthly Base Rent otherwise due under this Lease. The delivery, by Tenant, of any such Delinquent Deposit will not obviate or otherwise alter or relieve Tenant from its obligation to continue to pay installments of Monthly Base Rent or any other amounts otherwise due at the times specified in this Lease. The Landlord will hold any such Delinquent Deposit and may apply the same to any installment of Monthly Base Rent that is not paid prior to the expiration of the applicable Grace Period for that installment of Monthly Base Rent. Provided that if there is no then current uncured default on the part of the Tenant, the Landlord will refund any unapplied portion of

any such Delinquent Deposit to Tenant promptly following the expiration of the HD Period, as herein defined.

As used herein, the term "Habitually Delinquent" will mean and refer to the failure of Tenant to pay the full amount of any installment of Monthly Base Rent, prior to the expiration of the Grace Period for that installment, more than two (2) times within any rolling twelve month period. As an example, if the Tenant fails to pay (prior to the expiration of the Grace Period) the installment of Monthly Base Rent that is otherwise due on March 1, 2008, and subsequently fails to pay (prior to the expiration of the Grace Period) the installment of Monthly Base Rent that is otherwise due on February 1, 2009, then commencing February 5, 2009 the Tenant will be deemed to be Habitually Delinquent under this Lease. For these purposes, the term "HD Period" will mean and refer to a period of twelve (12) months following the date upon which the Tenant becomes Habitually Delinquent. In this regard, using the preceding example, if the Tenant was determined to be Habitually Delinquent on February 5, 2009, then the HD Period will run for a period of twelve (12) months to and including February 4, 2010 unless, during that HD Period, the Tenant fails to pay (prior to the expiration of the applicable Grace Period) any installment of Monthly Base Rent, in which case the HD Period will remain in effect for a period of twelve (12) months from that subsequent date.

B. Additional Rent. In addition to the Base Rent that is due from Tenant to Landlord under this Lease, the Tenant will be responsible for paying Tenant's Share (as herein defined) of all Operating Expenses (as herein defined). The term "Tenant's Share" will mean and refer to the percentage determined by dividing the actual gross square footage of the Demised Premises by the actual gross square footage of the Building. (or in the event Landlord constructs additional permissible leasable buildings on the Shopping Center, the actual square footage of the Building together with all such other buildings on the Shopping Center.) In this regard the Tenant's Share will be 41,624 divided by 86,931 or 47.88%. The term "Operating Expenses" will mean and refer to all Real Estate Taxes [as defined in Section 2(D)], Insurance Premiums [as defined in Section 2(E)] and Common Area Costs [as defined in Section 2(F)]. The Tenant's Share of Operating Expenses, together with all other amounts specified in this Lease that are required to be paid by Tenant, shall be referred to hereunder as "Additional Rent." If Tenant conducts an independent audit of the Demised Premises at its sole expense, and such audit reveals that the actual gross square footage of the Demised Premises is less than 41,624 square feet, then Tenant's Share, the Base Rent payable by Tenant hereunder and the Additional Rent shall be adjusted accordingly. It is expressly understood and agreed by Tenant and Landlord that any mezzanine or other area located directly adjacent to or outside the Demised Premises shall not be included in the calculation of the gross square footage of the Demised Premises and shall not be included for purposes of calculating Tenant's Share, Base Rent or Additional Rent.

C. Adjustments: If the Rental Commencement Date or the termination of this Lease occurs on other than the first or last day of a calendar month, respectively, an appropriate adjustment, calculated on a pro-rata daily basis, shall be made to the installment of Monthly Base Rent and any Additional Rent then payable by Tenant for such partial calendar month(s).

D. Real Estate Taxes. For purposes of this Lease, the term "Real Estate Taxes" will mean and refer to all taxes, assessments and other similar governmental charges which shall be imposed upon or become due and payable or become a lien upon the Shopping Center (or any portion thereof) assessed by any local or state Authority pursuant to existing or future laws, and all reasonable costs and expenses paid or incurred by Landlord in contesting the amounts thereof, to the extent and only to the extent that Tenant's Share of such costs and expenses do not exceed Tenant's Share of the savings realized in connection with any such contest. Real Estate Taxes shall not include (i) federal,



state or local income taxes; (ii) any type of sales or transfer taxes associated with the conveyance of any interest in or title to the Shopping Center; (iii) inheritance or estate taxes, assessments or impositions to the extent that the same would be applicable to the Landlord's interest in the Shopping Center; (iv) gift taxes; (v) excise taxes; (vi) profit taxes, assessments or impositions or taxes, impositions or assessments on gross rents; or (vii) capital taxes or levies. Additionally, Real Estate Taxes shall not include any penalties or assessments that may be imposed as a result of Landlord's failure to pay any taxes which are due in a timely fashion on or before their due dates or as a result of Landlord's negligence, inability or unwillingness to file any tax or informational returns when due. Real Estate Taxes for any partial year(s) in which the Lease Term commences or expires will be prorated. The Real Estate Taxes for any calendar year shall mean the real estate taxes actually due to be paid during such calendar year, whether or not such real estate taxes relate to such calendar year or fiscal year, subject to pro ration for partial year(s) as set forth above.

E. Insurance Premiums. For purposes of this Lease, the term "Insurance Premiums" will mean and refer to the premiums and all related costs and expenses pertaining to the procurement and maintenance of the insurance that is required to be maintained by Landlord under the provisions of Section 8 of this Lease.

F. Common Area Costs. For purposes of this Lease and except as expressly excluded by the terms of this Lease, the term "Common Area Costs" will mean and refer to all costs paid or incurred by Landlord in operating, managing, equipping, lighting, repairing, replacing and maintaining the Building and the Common Area of the Shopping Center, specifically including, without limitation, costs and expenses paid or incurred by Landlord in connection with the performance of the Landlord's maintenance and repair obligations under Section 7, below, and all costs and expenses associated with landscape maintenance and repairs; storm drainage and other utility systems; common fire protection systems and/or equipment, if any; traffic control equipment and signage; parking area and access drive line painting; parking lot, driveway and sidewalk sweeping, maintenance and repairs; exterior Building and parking lot lighting, maintenance and repairs; removal of snow and ice; Common Area trash removal; repair and maintenance of paving and asphalt; electricity and other costs associated with the operation and maintenance of the Shopping Center Sign (as defined in Section 26, below); rental of machinery and equipment used in the maintenance, repair, management and/or operation of the Common Area; painting, maintenance and repair of the roof, gutters, downspouts, exterior walls, foundations and structural elements of the Building; wages, salaries and other cost of personnel to implement the services contemplated herein; security costs; and a fifteen percent (15%) administrative fee calculated based upon the total amount of all of the Operating Costs, to cover Landlord's administrative and overhead costs. In addition to the foregoing, Common Area Costs shall also include all of the following costs incurred by Landlord:

(i) Replacing and/or adding improvements mandated by any governmental authority (to the extent that mandate is first applicable to the Shopping Center after the Commencement Date), and any repairs or removals necessitated thereby, in each and any such case, amortized over their useful life as determined in the reasonable judgment of Landlord's accountant (including interest at the applicable Federal Rate applicable to the period of such amortization); and

(ii) Replacing and/or adding any equipment, device, or capital improvement that actually reduces other Common Area Costs with respect to the Shopping Center, to the extent of any savings realized thereby, amortized over its useful life as determined in the reasonable

judgment of Landlord's accountant (including interest at the applicable Federal Rate applicable to the period of such amortization) by third party, independent service providers

Notwithstanding the foregoing, Shopping Center Operating Costs shall not include any of the Excluded Costs. For these purposes, the term "Excluded Costs" will be those costs and/or expenses which are identified on the attached Exhibit D.

G. Payment of Operating Expenses. Beginning on the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, the equal installments of Tenant's Share of annual estimated Operating Expenses. In this regard, the Landlord will estimate the amount of all Operating Expenses and Tenant will be obligated to pay to Landlord, at the same time each installment of Monthly Base Rent is due, an amount equal to one-twelfth (1/12th) of the annual estimated Tenant's Share of Operating Expenses. Within sixty (60) days following the end of each calendar year, Landlord shall provide Tenant with a statement (the "Tenant Operating Expense Statement") that specifies (i) the total Operating Expenses actually paid by Landlord for the preceding calendar year; (ii) the total Tenant's Share of Operating Expenses owed by Tenant for the preceding calendar year (based upon the amount of Operating Expenses actually paid for such year); and (iii) the total Tenant's Share of Operating Expenses paid by Tenant during the preceding calendar year. Within thirty (30) days after Tenant's receipt of the Tenant Operating Expense Statement, Tenant shall pay any deficiency between the amount of Tenant's Share of Operating Expenses owed for the preceding calendar year and the estimated amounts paid by Tenant for the preceding calendar year. If the estimated amount paid by Tenant exceeds the amount owed for the preceding calendar year, the excess shall, at Tenant's option, be applied, by Landlord, as a credit against the next succeeding installment(s) of Monthly Base Rent or refunded to Tenant within thirty (30) days after Tenant's receipt of the Tenant Operating Expense Statement. Tenant will be responsible for the payment of any amounts due under this Section 2(G) at such times and in such amounts so that all such amounts are timely paid, without delinquency, and Tenant will be responsible for the payment of any interest, penalty, fee or other charge associated with any failure of Tenant to timely pay any such amounts.

G-1. Reduction/Apportionment of Operating Expenses. Operating Expenses shall be reduced by all cash discounts, trade discounts or quantity discounts received by Landlord or Landlord's managing agent in the purchase of any goods, utilities, or services in connection with the operation of the Shopping Center. Landlord shall make payments for goods, utilities, or services in a timely manner in order to obtain the maximum possible discount. If any facilities, services or utilities used in connection with the Shopping Center are provided from another building or property owned or operated by Landlord or vice versa, the costs incurred by Landlord in connection with such facilities, services or utilities shall be allocated to Operating Expenses by Landlord on an equitable basis.

H. Tenant Audit Rights: Tenant and/or its agents, representatives and employees shall have the right to audit and copy Landlord's books and records relating to Operating Expenses payable hereunder during normal business hours at Landlord's principal place of business in accordance with the provisions of this paragraph provided that (i) Tenant is then current in the payment of Base Rent and Additional Rent payable hereunder; (ii) Tenant shall not divulge the contents of Landlord's books and records or the result of its audit, except as may be required for the proper evaluation and inspection by Tenant's accounting, legal or similar professionals; (iii) Tenant shall provide to Landlord, at no cost to Landlord, a summary of Tenant's conclusions following such audit or inspection of Landlord's books and records; (iv) Tenant completes its audit or inspection of Landlord's books and records within forty five (45) days following commencement of any such audit or inspection; and (v) Tenant has not already audited and inspected Landlord's books and records within the twelve (12)

month period immediately preceding Tenant's then current request; and (vi) Tenant requests an audit or inspection of Landlord's books and records within one (1) year following Tenant's receipt of the Tenant Operating Statement for the Lease Year for which Tenant requests to examine Landlord's books and records. If Tenant's audit or inspection reveals that Tenant has overpaid Tenant's Share of Operating Expenses, then the overpayment, plus interest at the then current prime rate as published and announced in the Wall Street Journal or similar financial publication selected by Landlord (the "Prime Rate") on the overpayment from the date it was made until the date it is credited, shall, at Tenant's option, either be applied to the next accruing payment due under the Lease or immediately refunded to Tenant. Alternatively, if Tenant's audit or inspection reveals that Tenant has underpaid Tenant's Share of Operating Expenses, then the underpayment shall be promptly paid by the Tenant to Landlord as Additional Rent. If such overpayment exceeds the amount that should have been charged by more than 5%, then Landlord shall pay Tenant's reasonable out-of-pocket costs incurred in connection with Tenant's audit or inspection of Landlord's books and records; provided, however, that the Landlord will not be responsible for any such amounts to the extent charged or payable on a "contingency fee" basis.

I. Estimate of Tenant's Share of Operating Expenses: The Operating Expenses payable for the Shopping Center for any given calendar year of the Lease Term will be estimated by Landlord by December 15<sup>th</sup> of each calendar year, and Landlord will deliver to Tenant a written estimate of the amount of anticipated Operating Expenses per square foot, for each square foot of space in the Building for the ensuing calendar year on or before December 20<sup>th</sup> of the then current calendar year.

J. Rent Payment Address: Base Rent and any Additional Rent payable hereunder shall be paid to Landlord at 800 East 96<sup>th</sup> Street, Suite 175, Indianapolis, Indiana 46240 or at such other place as Landlord or its assigns may designate in a written notice given to Tenant in accordance with the notice provisions of this Lease.

K. Restrictive Endorsements Ineffective: No payment by Tenant or receipt by Landlord of a lesser amount than the current installment of Base Rent and/or Additional Rent which may be due shall be deemed to be other than on account of the earliest Base Rent and/or Additional Rent (as applicable) due under this Lease, nor shall any endorsement or statement on any check be deemed a waiver, settlement, accord and satisfaction or other agreement by Landlord, and Landlord may accept such check without prejudice to its right to recover the entire balance of Base Rent and Additional Rent, or to pursue any other remedy provided in this Lease.

L. Memorandum of Lease: Landlord and Tenant shall, not later than thirty (30) days after the receipt (or deemed receipt) of prior written request from the other party, execute a memorandum of lease that sets forth the following items (each of which shall be calculated in accordance with the terms of this Lease): (i) the Commencement Date of the Lease; (ii) the scheduled termination date of the Lease; and (iii) such other information reasonably requested by either party.

### 3. DELIVERY OF DEMISED PREMISES

A. Landlord's Delivery of Demised Premises: Landlord shall deliver the Demised Premises to Tenant in good and tenantable condition and in accordance with the specifications set forth the Construction Rider attached hereto as Exhibit C. Without limiting the foregoing, Landlord represents and warrants to Tenant (and will represent and warrant to Tenant on the Commencement Date of the Lease) that:

(i) the respective walls, roof, foundation and all other structural elements of the Building and other improvements situated on and within the Demised Premises and the Shopping Center are structurally sound, are in compliance with the Construction Rider and are in compliance with all applicable governmental and quasi-governmental codes, regulations, laws, statutes and other mandates;

(ii) gas, electricity, water and sewage, garbage and other utilities and facilities are available for use by and within the Demised Premises in compliance with the specifications set forth in the Construction Rider;

(iii) all of the improvements on, under and within the Shopping Center and all portions thereof (including without limitation, the parking facilities, Building access improvements, sprinkler systems, lighting facilities, fire alarm systems and other equipment, facilities and improvements) are in compliance with all applicable city, county, state and other governmental and quasi-governmental agency promulgated requirements, codes, laws, statutes, regulations and rules and comply with the specifications set forth in the Construction Rider;

(iv) the Demised Premises are zoned so as to permit the construction and operation of a full service Health Club Facility (as defined in Section 27, below) with sales of related services and products and Landlord has no knowledge of any fact, action or proceeding, whether actual, pending, or threatened, that could result in a modification or termination of the zoning classification for the Shopping Center or of any of the laws, statutes, rules, ordinances, regulations, or restrictions affecting the development, construction or operation of the Demised Premises for Tenant's intended uses. Landlord and Tenant shall use all commercially reasonable efforts to ensure that the current zoning designation for the Shopping Center is maintained so as to permit Tenant's use of the Demised Premises for Tenant's intended purposes.

(v) the Landlord has received no notice of, nor has any reason to suspect any violation of all or any portion of the Shopping Center (including the Demised Premises) with any federal, state or local law (including common law), regulation, ordinance, judgment, decree or order (whether civil, criminal or administrative in nature) relating to the protection of human health and/or the environment, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 USC 9601 et. seq., the Resource Conservation and Recovery Act, 42 USC 6901 et. seq., and the Clean Water Act 33 USC 1251 et. seq. and any other similar federal, state or local law as may be amended from time to time.

(vi) To the best of Landlord's knowledge, there are no pending or threatened condemnation or similar proceedings affecting all or any portion of the Shopping Center and Landlord is not aware of any facts or circumstances that might result in such a suit or other proceeding being asserted.

B. Landlord's Work. Landlord shall perform and complete the Landlord's Work, as defined in the Construction Rider, in accordance with the provisions set forth in this Lease and in the Construction Rider. Subject to conditions of documented Force Majeure or Tenant Delay (as such term is hereinafter defined), Landlord shall fully complete the Work on or before the Target Commencement Date. In this regard, but subject to conditions of documented Force Majeure or Tenant Delay, if the Work is not completed by the Target Commencement Date, then the Commencement Date shall be extended on a day for day basis for each day that the Landlord's Work is not completed beyond the Target Commencement Date. Subject to conditions of documented Force Majeure or Tenant Delay, if

Landlord fails to complete the Landlord's Work within sixty (60) days following the Target Commencement Date, Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord at any time prior to the earlier of (i) Landlord's completion of the Landlord's Work; or (ii) sixty (60) days following the Target Commencement Date. Upon the delivery by Tenant to Landlord of the termination notice as set forth herein, neither party hereto shall have any liability or continuing obligation to the other. For purposes of this Lease, the term "Tenant Delay" will mean and refer to a period of time equal to a number of days (i) which represents the number of days of delay in Tenant's responding to any request for approval under this Lease or the Construction Rider beyond the number of days permitted for any such response hereunder, (ii) delays occasioned by changes in the Plans and Specifications and/or changes in the Landlord's Work requested by Tenant (except to the extent those requested changes represent changes required to comply with the Tenant Design Specifications (as defined in the Construction Rider) or to comply with the Plans and Specifications, or (iii) delays in the Landlord's Work otherwise occasioned by any default on the part of Tenant or any negligence or willful misconduct of Tenant.

C. Permits: Within a commercially reasonable period after the execution of this Lease by both Landlord and Tenant, Landlord shall submit to the applicable Authorities any applications necessary to obtain any licenses, certificates, permits and other approvals necessary for the Landlord's Work (with all such licenses, certificates, permits, and other approvals being collectively referred to herein as the "Approvals"). Landlord and Tenant will each use commercially reasonable efforts to cooperate with one another in applying for, obtaining and maintaining any and all applicable Approvals, to the extent that such other party's cooperation is reasonably necessary.

D. Pre-existing Conditions: If there exists any condition with respect to all or any portion of the Demised Premises that constitutes (or will, with the passage of time, constitute) a default or breach of any obligation of Landlord or of any representation and warranty made by Landlord to Tenant herein, (i) Tenant shall promptly notify Landlord, in writing, of such condition or matter; (ii) Landlord shall use all commercially reasonable efforts to rectify such condition or matter in an efficient and timely manner; and (iii) the Commencement Date and/or Term of this Lease, if applicable under the circumstances, shall be extended by an amount of time equal to that taken by Landlord to rectify the breaching condition or matter.

#### 4. LANDLORD'S TITLE

Landlord represents and warrants to Tenant and to Tenant's lender that as of the execution date of this Lease, (i) Landlord is the owner of fee simple title to the Shopping Center or has the sole and exclusive right to acquire fee simple title to the Shopping Center pursuant to an existing and fully binding written purchase agreement between Landlord and the owner of fee simple title to the Shopping Center and that as of the Target Commencement Date of this Lease, Landlord is not in default under the terms and conditions of any indebtedness, deeds of trust, licenses, agreements or ground leases affecting all or any portion of the Demised Premises; (ii) Tenant has or will have the right to use and occupy the Demised Premises for Tenant's intended purposes as set forth herein, and no governmental law, restrictive covenant or other lien or encumbrance affecting the Demised Premises (or any portions thereof) restricts or prohibits the use of the Demised Premises for the aforesaid purposes; and (iii) as of the Commencement Date there will be no structural, mechanical or other defects in the design or function of the Demised Premises (or any portions thereof). Finally, Landlord represents and warrants that all the rights, privileges and powers of Landlord with respect to the Demised Premises under this Lease shall be exercised in a reasonable manner, without unnecessary or unreasonable interference with Tenant's intended use and occupancy of the Demised Premises.

5. LANDLORD'S REPRESENTATIONS AND WARRANTIES AND COVENANTS

Landlord represents and warrants to Tenant and to Tenant's lender that the following are true and correct and covenants to Tenant (where applicable) as follows:

(i) Landlord is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Indiana, duly registered and/or qualified as a foreign limited liability company under the laws of the State of Missouri, and has the requisite power to own and lease the Demised Premises, and to carry on its business as and where presently conducted.

(ii) Landlord has the full right, power and lawful authority to enter into this Lease, and Landlord has the full right, power and lawful authority to lease the Demised Premises to Tenant and to perform all of Landlord's obligations hereunder. All proceedings required by or on the part of Landlord and/or its principals to authorize Landlord to execute, deliver and carry out this Lease have been duly and properly taken. This Lease constitutes a legal, valid, binding and enforceable obligation of Landlord.

(iii) The execution and delivery of this Lease by Landlord, and Landlord's compliance with its terms and the consummation of the transactions contemplated hereby, does not and will not: (a) violate, conflict with, or result in a breach of any provisions of the articles of organization or operating agreement of Landlord; or (b) constitute a default under any existing or contemplated contract, commitment, indenture, mortgage, easement, restriction, covenant, note, bond, license, lease, deed of trust, agreement or other instrument or obligation of which Landlord is or will become a party, beneficiary or obligor thereto (collectively referred to herein as the "Landlord Agreements"); (c) require third party consent that has not been obtained by Landlord with respect to any one or more Landlord Agreements; (d) result in the creation of a lien or a right of acceleration under one or more Landlord Agreements; (e) result in a breach or violation of any Landlord Agreement; (f) create or result in any claim, cause of action, judgment, order, or decree to be issued or asserted by any court, administrative agency, or other governmental authority; or (g) violate the provisions of any lease or Landlord Agreement with any other third party to which Landlord or any of its principals is a party or by which Landlord and/or the Demised Premises may otherwise be bound.

(iv) There are no (and will be no) Landlord Agreements between Landlord and third parties burdening all or any portions of the Shopping Center to the extent that Tenant would be hindered in its ability to transact its intended business operations within the Demised Premises. Without limiting the generality of the foregoing, there are no (and will be no) (a) parking agreements, contracts, leases or other arrangements with other tenants of the Shopping Center, any Landlord Adjacent Property or other property owned by any third party that would reduce the number of parking spaces and facilities on the Shopping Center available for use by Tenant and its employees, patrons, invitees, subtenants, licensees and concessionaires; (b) agreements, contracts, leases or other arrangements permitting the construction or installation of any improvement on the Shopping Center or any Landlord Adjacent Property that would cause more than twenty percent (20%) of the Demised Premises and/or Tenant's signage thereon to be blocked from unobstructed visibility from Gravius Road or Highway 141; (c) leases, contracts or other agreements, to which Landlord is a party, that may negatively affect Tenant's ability to maintain its certificate of occupancy and/or to comply with any county, municipal or other mandated parking requirements; or (d) buildings, improvements or other structures constructed or erected on or about the Shopping Center or any Landlord Adjacent Property that could reduce the number of parking spaces and facilities made available for use by Tenant and its employees, patrons, invitees, subtenants, licensees and concessionaires. From and after the date of

this Lease, Landlord shall not execute nor deliver any reciprocal easement or other agreement benefiting or burdening the Shopping Center and/or the Landlord Adjacent Property (or any portions thereof) or that otherwise could materially adversely affect Tenant's rights under this Lease, except with the prior written consent of Tenant, which consent will not be unreasonably withheld.

(v) All Real Estate Taxes assessed against all or any portion of the Demised Premises have been paid and Landlord is not delinquent in the payment of such Taxes. As of the date of this Lease, Landlord has received no written notice from any taxing authority regarding, and has no knowledge of, any special charges, impact fees or assessments levied or proposed to be levied, against the Demised Premises or any portion thereof.

(vi) On the Commencement Date, the Demised Premises and all Common Areas will be in compliance with all applicable ordinances, rules, regulations, codes and restrictions, zoning ordinances, fire regulations, building codes, health codes, the requirements of the Americans with Disabilities Act and all other applicable governmental and quasi-governmental laws, statutes, rules, ordinances, orders, codes and restrictions promulgated by the Authorities, including those parking requirements necessary for Tenant to comply with any parking requirements applicable within the County of St. Charles, Missouri (all of which are collectively referred to as the "Legal Requirements").

(vii) Landlord has no knowledge of any fact, action or proceeding, whether actual, pending, or threatened, that could result in a modification or termination of the zoning classification for the Demised Premises or of any of the ordinances, regulations, or restrictions affecting the development, construction or operation of the Demised Premises for Tenant's intended uses. Landlord has received no notice, and has no knowledge, that any portion of the Demised Premises or the Shopping Center (including, without limitation, the parking area) violates any applicable Legal Requirements. Landlord and Tenant shall use all commercially reasonable efforts to ensure that the current zoning designation for the Demised Premises is maintained so as to permit Tenant's use of the Demised Premises for Tenant's intended purposes.

(viii) Except as otherwise set forth in this Lease, there are no agreements or contracts with any municipality, governmental unit or subdivision that affects or impacts the Shopping Center or any portions thereof (including, without limitation, the Demised Premises and any parking areas) that could result in any increase in the cost of operation, maintenance, repair, restoration or replacement thereof.

(ix) To the best of Landlord's knowledge, there are no pending or threatened condemnation or similar proceedings affecting all or any portion of the Demised Premises (including, without limitation, the parking areas) and Landlord is not aware of any facts or circumstances that might result in such a suit or other proceeding being asserted.

(x) Except for normal cleaning supplies and construction materials used in accordance with manufacturer's instructions and applicable law, Landlord has never caused nor permitted any Hazardous Materials (defined below) to be placed, used, held, located or disposed of on, under, or at the Demised Premises, or any parts thereof in violation of applicable laws.

(xi) As of the Commencement Date of this Lease, the Demised Premises are free of any existing environmental contamination that would (a) necessitate regulatory action or the need for remedial treatment or disposal; and/or (b) materially and adversely impact the ability of Tenant and its

employees, members, guests, and invitees to use the Demised Premises in accordance with Tenant's intended purposes (such existing contamination herein referred to as "Pre-Existing Contamination").

(xii) Landlord shall indemnify and hold Tenant harmless from all liability, damages, losses, penalties, fines, expenses or costs asserted against or incurred by Tenant and arising in connection with any Pre-Existing Contamination on or about the Demised Premises.

(xiii) Landlord shall not reconfigure or relocate any drive aisles, driveways or curb cuts/access points servicing the Demised Premises property from adjacent public roadways without first obtaining Tenant's prior written consent, which such consent shall not be unreasonably withheld.

(xiv) Except as expressly provided otherwise herein and without limiting Landlord's repair and maintenance obligations as set forth herein, all operating systems, facilities and equipment comprising a part of the improvements within the Demised Premises (including but not limited to, heating, ventilation and air conditioning, elevators and escalators, if applicable, lighting, electrical, sprinkler, plumbing, mechanical and similar systems), are serviceable and in good working condition and will continued to be so for a period of one (1) year following the Commencement Date; provided that Landlord shall provide Tenant with copies of all warranties associated with Landlord's Work and will cooperate with Tenant in connection with any efforts, on the part of the Tenant, to enforce any rights under and with respect to any such warranties after such 1-year period. Additionally, the structural integrity of all elements comprising the Demised Premises (including without limitation, the roof, support columns and exterior walls) will, on the Commencement Date, be in sound condition, in compliance with all applicable Legal Requirements and in conformity with the Plans and Specifications and all other matters set forth in the Construction Rider.

6. TAXES ON TENANT'S INTEREST Tenant shall at all times be responsible for and shall pay when due all municipal, county, state and federal taxes assessed against the Tenant's trade fixtures, equipment and any other personal property of any kind owned, installed or used by Tenant within the Demised Premises.

## 7. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS.

A. Tenant Maintenance and Repair Obligations: Save and except (i) for structural elements comprising the Demised Premises; or (ii) to the extent necessitated by the gross negligence or willful misconduct of Landlord or its employees, representatives, agents or contractors; or (iii) as expressly set forth in this Lease to the contrary, Tenant shall maintain the Demised Premises and all improvements, fixtures, systems and equipment within the Demised Premises in good condition, and shall make all repairs and replacements thereto as are reasonably necessary to keep and maintain the Demised Premises in good order, condition and repair. Without limiting the foregoing, Tenant shall maintain, repair and replace if necessary, the following: (a) all non-structural interior components of the Demised Premises, including walls, floors, floor coverings and ceilings; (b) all windows, doors and locks, including frames, glass, molding, casements and hardware within the Demised Premises; (c) all glass, plate glass and grilles (including glass installed in the outside walls of the Building comprising the Demised Premises); (d) all wires, conduits and lines located within the Building that service only the Demised Premises; (e) all appliances, systems, facilities and equipment that service only the Demised Premises, including signage, air conditioning equipment, heating and ventilation systems, grease trap facilities and other food related systems; (f) structural elements comprising the Demised Premises damaged or destroyed by the gross negligence or willful misconduct of the Tenant, its employees, invitees, licensees, representatives, agents and/or contractors; and (g) any part of the Demised



Premises that the Landlord is not expressly obligated to maintain and/or repair as set forth in this Lease and as specified in Section 7(C) below. Tenant shall also keep the Demised Premises in a safe, clean and sanitary condition and shall provide for the removal of trash and rubbish from the Demised Premises.

Notwithstanding the foregoing to the contrary, in no event shall Tenant be obligated to remove, remediate, abate or take other action with respect to any Hazardous Materials situated on, in or about the Demised Premises unless the presence of such Hazardous Materials in or upon the Demised Premises is directly caused by Tenant or its agents, employees, contractors or representatives. For purposes of this Lease, "Hazardous Materials" shall refer to any substance, chemical, material or matter determined to be hazardous or dangerous pursuant to any federal, state or local law (including common law), regulation, ordinance, judgment, decree or order (whether civil, criminal or administrative in nature) relating to the protection of human health and/or the environment, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 USC 9601 et seq., the Resource Conservation and Recovery Act, 42 USC 6901 et. seq., and the Clean Water Act 33 USC 1251 et. seq. and any other similar federal, state or local law as may have been amended from time to time. Furthermore, except as otherwise expressly provided herein, Tenant shall not be obligated to expend funds or make structural or other alterations to the Building and/or any other component of the Demised Premises to the extent such expenditures or alterations are customarily deemed to be "capital expense items" or are necessitated by laws, statutes, ordinances, rules, regulations, orders, determinations, restrictive covenants or deed restrictions applicable to landowners, occupants, buildings or properties in general that are in effect prior to the Commencement Date, except that Tenant shall be responsible for any such expenditures or alterations that are necessitated due to Tenant's particular use of the Demised Premises (as opposed to any use the Demised Premises in general).

Except to the extent the provisions of this Lease impose a duty or obligation upon Landlord, Tenant shall, at Tenant's sole cost and expense, (a) comply with all laws, orders, ordinances, and regulations of federal, state, county, and municipal authorities having jurisdiction over the Demised Premises that are applicable to the Demised Premises; (b) comply with all directives, orders, citations or other mandate issued by any governmental or quasi-governmental agency (i) requiring the abatement of any nuisance; (ii) imposing upon Tenant a duty or obligation arising from Tenant's use and occupancy of the Demised Premises (or any portion thereof) as opposed to the use and occupancy of the Demised Premises in general; (iii) resulting from conditions that have been created by or at the request of Tenant; or (iv) resulting from a breach of any of Tenant's obligations hereunder or by or through other fault of Tenant or its agents, employees, representatives, contractors, tenants or invitees; (c) comply with all insurance requirements required by the provisions of this Lease or otherwise deemed reasonably prudent under the circumstances; and (d) indemnify and hold Landlord harmless from any damage, loss or claim that Landlord incurs or suffers by reason of Tenant's failure to comply with its obligations under clauses (a) or (b) of this paragraph.

Tenant's obligation to repair will not extend to:

- (i) damage and repairs caused by Landlord or Landlord's agents, employees, invitees, or licensees in connection with the Demised Premises (or any portion thereof);
- (ii) damage resulting from any defects in the design, construction, or materials of the Building, the Demised Premises (or any portions thereof);

(iii) damage caused in whole or in part by the negligence, gross negligence or willful misconduct of Landlord or Landlord's agents, employees, representatives, contractors, invitees or licensees;

(iv) reasonable wear and tear;

(v) damage due to fire, earthquake, acts of God, the elements, or other casualties to the extent not required to be insured by Tenant;

(vi) damage to the interior of the Demised Premises resulting from causes outside the Demised Premises not required to be insured by Tenant; and

(vii) damage arising from Landlord's failure to comply with the provisions of this Lease.

Landlord will assign to Tenant, and Tenant will have the benefit of, any guarantee or warranty to which Landlord is entitled under any purchase, construction, or installation contract relating to a component of the Demised Premises that Tenant is obligated to repair and maintain under the terms of this Lease. In such an instance, Tenant will have the right to call upon the Contractor, as defined in the Construction Rider, to make such adjustments, replacements, or repairs that are required to be made by the Contractor under such with respect to such guarantee or warranty.

B. HVAC Maintenance Contract: Without limiting Tenant's obligations as set forth above, Tenant shall, at all times during the Term of this Lease, have and keep in force a maintenance contract, in a form and with a contractor reasonably satisfactory to Landlord, providing for inspection at least twice each Lease Year of the heating, air conditioning and ventilating equipment serving the Demised Premises exclusively, and providing for necessary repairs and periodic maintenance thereto. Tenant shall send Landlord a copy of the contract within thirty (30) days after Tenant opens the Demised Premises to the public for business. Alternatively, Tenant may elect to utilize certified HVAC professionals employed by Tenant or its affiliates.

C. Landlord Maintenance and Repair Obligations: Subject to the reimbursement provisions of Section 2, above, and except as otherwise expressly set forth herein to the contrary, or for damage caused by any gross negligence or willful misconduct of Tenant or Tenant's employees, agents or contractors, Landlord will keep in good order, condition, and repair the Common Areas and all roofs, foundations, structural elements and exterior walls of the Building. Except to the extent the provisions of this Lease impose a duty or obligation upon Tenant, Landlord shall, at Landlord's sole cost and expense, (a) comply with all laws, orders, ordinances, regulations, directives, orders, citations or other mandates issued by any Authority having jurisdiction over the Shopping Center (i) requiring the abatement of any nuisance; (ii) imposing upon Landlord a duty or obligation arising from Landlord's ownership of the Shopping Center (or any portion thereof), as opposed to Tenant's particular use and occupancy of the Demised Premises; (iii) resulting from conditions that have been created by or at the request of Landlord; or (iv) resulting from a breach of any of Landlord's obligations hereunder or by or through other fault of Landlord or its agents, employees, representatives, contractors, tenants or invitees; and (b) comply with all insurance requirements required by the provisions of this Lease.

Without limiting the generality of the foregoing, Landlord shall keep and maintain in good condition and repair the Common Areas (including, without limitation, all parking areas and facilities)

and shall operate and manage the Common Areas (including, without limitation, the parking areas and facilities) in accordance with generally accepted principles of sound and prudent management consistently applied to the operation and management of comparable properties. At a minimum, and without intention to limit any additional or greater obligations that might be imposed upon Landlord in order to comply with the above standard of operation and management, with respect to the Common Areas, Landlord shall:

(i) keep the Common Areas properly cleaned and swept, drained, free of snow, ice, standing water, rubbish and other obstructions and in an attractive and safe condition;

(ii) keep the Common Areas lighted during, and for appropriate periods before and after, the business hours of the Shopping Center. Such obligation shall include, without limitation, the payment of all costs of electricity needed to operate any lighting standards or fixtures located in the Common Areas;

(iii) maintain sufficient signs, markers, painted lines and other means and methods of pedestrian and vehicular traffic control;

(iv) provide and maintain security and patrol services (if reasonably prudent under the circumstances); and

(v) maintain all plantings and landscaped areas in a neat and attractive condition.

Landlord shall further be responsible for repairing and/or correcting any defect in the construction of and/or the materials utilized in connection with the Landlord's Work for a period of one (1) year following the Commencement Date, whether or not the scope of such Landlord's Work encompasses the matters set forth in Subparagraph C above.

As a condition precedent to all obligations of Landlord to make repairs required to be made by it pursuant to this Lease, Tenant must notify Landlord in writing of the need for such repair(s). If Landlord fails to commence the making of such repairs within thirty (30) days after such notice is given and/or thereafter fails to diligently pursue to completion the making of such repairs, Tenant shall have the right (but not the obligation) to cause such repairs to be made and to charge Landlord the cost of such repairs. If the Tenant notifies the Landlord that the repair is necessary to end or avert an emergency, and Landlord fails to commence repair as soon as reasonably possible after receiving notice from Tenant of such necessity, Tenant may make such repairs, at Landlord's cost, without waiting thirty (30) days, and Landlord shall immediately reimburse Tenant for all actual costs incurred or to be incurred by Tenant in the making of such repairs. Tenant shall be entitled to offset any amounts due and payable by Landlord to Tenant hereunder from the Base Rent that is otherwise due and payable under this Lease, subject to the offset limitations set forth in Section 17(D), below.

D. Surrender of Demised Premises: Upon the expiration or termination of this Lease, Tenant will surrender the Demised Premises to Landlord in good order, condition and repair, save and except ordinary wear and tear and damage caused by fire or other casualty.

## 8. FIRE AND EXTENDED COVERAGE INSURANCE

A. Landlord Insurance: During the Term of hereof, Landlord shall purchase and maintain insurance for the benefit of Landlord, Tenant and any Mortgagee (defined in Section 21(C), below) as

their interests may appear) in companies reasonably satisfactory to Landlord, in at least the following coverages:

(i) During the construction of the Landlord's Work and any other construction by Landlord or any other tenant on or about the Shopping Center, Landlord shall purchase and maintain, or require its Contractor to purchase and maintain, builder's risk (all risk) insurance (non-reporting/completed value) for the benefit of Landlord and Tenant (as their interests may appear), and Mortgagee, which shall include, without limitation: (a) fire and extended coverage, collapse of the improvements to agreed limits; (b) as to property to be restored following a casualty or condemnation or any restoration work conducted in connection with a condemnation, in an amount not less than the full replacement cost of such property. Landlord and Landlord's Mortgagee will each be identified as "loss payees" for the coverage described in this Section 8(A)(i).

(ii) Special (all risks) form property insurance covering the Shopping Center (including the Demised Premises) and all improvements situated thereon (including those improvements constituting Landlord's Work) and all equipment owned by Landlord and used in connection with the Shopping Center, in an amount not less than their full replacement value, without deduction for physical depreciation thereof, which insurance shall include a demolition and increased cost of construction endorsement. Landlord or its Mortgagee will be identified as "loss payees" for the coverage described in this Section 8(A)(ii).

(iii) Commercial general liability insurance insuring against claims for bodily injury or death occurring in or on the Shopping Center to the limit of not less than Three Million Dollars (\$3,000,000.00) for injury and/or death and third party property damage per occurrence, and in an amount not less than Three Million Dollars (\$1,000,000.00) for injury and/or death and third party property damage per person. Additionally, Landlord shall maintain an umbrella liability policy above the above set forth minimum in the amount of three million dollars (\$3,000,000.00). Such insurance policy or policies shall name Tenant as an additional insured as its interest may appear.

(iv) Loss of rent insurance covering an amount equal to at least the next occurring twelve (12) months of rent due and payable from all tenants of the Shopping Center. Landlord or its Mortgagee will be identified as the "loss payee" for the coverage described in this Section 8(A)(iv).

The proceeds of any insurance payable to Landlord in the event of loss or damage shall first and foremost be applied towards the repairing and/or rebuilding of the Demised Premises. Upon request from Tenant, Landlord shall furnish Tenant with ACCORD 27 certificates as evidence of its insurance. Landlord shall not be required to insure Tenant's personal property or leasehold improvements made by Tenant from and after the Commencement Date.

B. Tenant Insurance: During the Term of hereof, Tenant shall purchase and maintain insurance for the benefit of Landlord, Tenant and Landlord's Mortgagee (as their interests may appear) in companies reasonably satisfactory to Landlord and Tenant, providing commercial general liability insurance, insuring against claims for bodily injury or death occurring in, on or about the Demised Premises to the limit of not less than One Million Dollars (\$1,000,000.00) for injury and/or death and third party property damage per occurrence, and in an amount not less than One Million Dollars (\$1,000,000.00) for injury and/or death and third party property damage per person. Additionally, Tenant shall maintain an umbrella liability policy above the above set forth minimum in the amount of three million dollars (\$3,000,000.00). Such policies shall name Landlord and its Mortgagee (if identified by Landlord) as additional insured(s) as its (their) interest may appear, and, provided that such a term

is reasonably available from Tenant's insurance carrier, shall contain an endorsement providing that it will be renewed unless thirty (30) days prior written notice of cancellation is sent to Landlord, and cannot be canceled or materially amended, without at least thirty (30) days prior written notice thereof to Landlord. Tenant shall provide evidence of such insurance coverage to Landlord on or before occupancy of the Demised Premises. Each policy of insurance to be maintained by Tenant pursuant to this paragraph may, at Tenant's option, provide for such deductible amount as Tenant may elect, which deductible amount, however, shall not exceed twenty five thousand dollars (\$25,000.00) as to each loss.

C. Self Insurance. Tenant shall have the right to "self-insure" the risks that are otherwise required to be covered by the insurance required in Section 8(B), above, on the following terms and conditions and subject to:

(i) The term "self-insure" and/or "self-insurance" shall mean that Tenant is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and Tenant shall pay any amounts due in lieu of insurance proceeds which would have been payable if the specified insurance policy(ies) had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Lease.

(ii) All amounts which Tenant pays or is required to pay and all loss or damages resulting from risks for which Tenant has elected to self-insure hereunder shall be subject to the waiver provisions contained in Section 8(D), below, and shall not limit Tenant's indemnification obligations set forth in Section 16(A) hereof.

(iii) Tenant's right to self-insure and to continue to self-insure is conditioned upon and subject to:

(a) Gold's Gym International, Inc. (the "Guarantor") having and maintaining, during any and all periods in which the Tenant elects to self insure, (1) EBITDA (as hereinafter defined) for the preceding twelve (12) month period of no less than Five Million Dollars (\$5,000,000.00); (2) working capital of at least Five Million Dollars (\$5,000,000.00); and (3) loss reserves for the amount of Tenant's self-insurance obligations under the Lease, the amounts of which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded (collectively the "Threshold Financial Criteria"). For purposes of this Lease, the term "EBITDA" shall mean and refer to, for any period, the sum of (i) the net income of the Guarantor for such period, after eliminating all non-recurring extraordinary items, plus (ii) interest expense, income taxes, depreciation and amortization, in each case to the extent included in determining net income for that period.

(b) The Tenant providing to Landlord an audited financial statement for itself and for the Guarantor, prepared in accordance with generally accepted accounting principles, prior to undertaking to self-insure, and thereafter, on an annual basis by May 1 of every calendar year, establishing and confirming that the Guarantor has satisfied the Threshold Financial Criteria. In addition, the Tenant shall provide a semi-annual certification from Guarantor's chief financial officer confirming the continued compliance of the Guarantor with the Threshold Financial Criteria. If the Tenant fails to provide any such semi-annual certification required under this section, the Tenant will not be in default hereunder for such failure unless the Tenant fails to deliver the required semi-annual certification within fifteen (15) days following its receipt of written demand from the Landlord.

(c) In the event Tenant and/or the Guarantor fail to fulfill the requirements of Section 8(C)(iii), then Tenant shall lose the right to self-insure and shall be required to provide the insurance specified in Section 8(B) within ten (10) business days following receipt of notice of non-qualification from Landlord, which insurance will then need to be provided by commercial insurance providers that satisfy the requirements specified in Section 8(B); provided, however, that Tenant's self-insurance obligations shall continue in full force and effect until the insurance specified in Section 8(B) is issued by a qualifying insurance company. In this regard, during any interim period between the dates of any semi-annual certification required under Section 8(C)(iii)(b), if the Guarantor no longer meets the Threshold Financial Criteria, the Tenant will give Landlord written notice to that effect and the Tenant will then have ten (10) days following the date of that notice to procure insurance from a commercial insurance provider that satisfies the requirements specified in Section 8(B).

If Tenant elects to so self-insure, Tenant shall not be required to provide certificates of insurance for the insurance required under Section 8(B). If Tenant is required hereunder to procure such coverage from one or more commercial insurance providers and fails to do so following receipt of written notice and within the time periods provided herein, the Landlord shall have the right, but not the obligation, to procure such coverage and the cost thereof shall be immediately due from the Tenant as Additional Rent.

(iv) In the event that Tenant elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from the insurance company, Tenant shall:

(a) Undertake the defense of any such claim, including a defense of Landlord required under the provisions of Section 16(A), below, at Tenant's sole cost and expense; and

(b) Use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds, but for such election by Tenant to self-insure.

(v) The obligations of Tenant under this Section 8(C) are independent and shall remain in full force and effect notwithstanding any breach of any provision of the Lease by Landlord.

(vi) The obligations of Tenant under this Section 8(C) shall survive any expiration or earlier termination of this Lease, covering all periods of time in which this Lease was in effect; provided, however, if this Lease is terminated on account of any default on the part of the Landlord, the Tenant's continuing obligations under this Section 8(C)(vi) will be limited to those liabilities that have arisen as a result of any act or omission on the part of the Tenant. The Tenant's obligation relative to the survival of these self insurance obligations may be cancelled or otherwise terminated by Tenant providing commercial insurance coverage satisfactory to Landlord covering the "tail" period following the expiration or earlier termination of this Lease.

D. Waiver of Subrogation: LANDLORD AND TENANT EACH HEREBY WAIVE EACH AND EVERY CLAIM FOR RECOVERY FROM THE OTHER FOR ANY AND ALL LOSS OF, OR DAMAGE TO, ALL OR ANY PORTION OR COMPONENT OF THE SHOPPING CENTER, THE BUILDING AND THE DEMISED PREMISES (INCLUDING WITHOUT LIMITATION, THE CONTENTS THEREOF), OR FOR INJURY TO ANY PERSON, WHICH LOSS, DAMAGE, OR INJURY IS COVERED BY VALID AND COLLECTIBLE INSURANCE POLICIES. LANDLORD AND TENANT FURTHER WAIVE EACH AND EVERY CLAIM AGAINST ONE ANOTHER FOR ANY AND ALL LOSS OF, OR DAMAGE TO,

ALL OR ANY PORTION OF THE SHOPPING CENTER, THE BUILDING AND/OR THE DEMISED PREMISES AND/OR ANY CONTENTS THEREOF, OR FOR INJURY TO ANY PERSON, THAT WOULD HAVE BEEN COVERED HAD THE INSURANCE POLICIES REQUIRED TO BE MAINTAINED BY LANDLORD OR TENANT, AS APPLICABLE, UNDER THIS LEASE BEEN IN FORCE, TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS RECOVERABLE, OR WOULD HAVE BEEN RECOVERABLE, UNDER ANY OF SUCH INSURANCE POLICIES. INASMUCH AS THIS MUTUAL WAIVER WILL PRECLUDE THE ASSIGNMENT OF ANY SUCH CLAIM BY SUBROGATION (OR OTHERWISE) TO AN INSURANCE COMPANY OR ANY OTHER PERSON OR ENTITY, LANDLORD AND TENANT SHALL EACH GIVE TO EACH INSURANCE COMPANY THAT HAS ISSUED, OR IN THE FUTURE MAY ISSUE, TO IT POLICIES OF INSURANCE, WRITTEN NOTICE OF THE TERMS OF THIS MUTUAL WAIVER, AND TO HAVE SAID INSURANCE POLICIES PROPERLY ENDORSED TO REFLECT SUCH WAIVERS.

E. Damage to Property: All Tenant's trade fixtures, equipment, personal property, fixtures, goods, wares and merchandise in, on or about the Demised Premises shall be and remain at Tenant's sole risk, and except to the extent attributable to the gross negligence or willful misconduct of Landlord, its employees, agents, and contractors. Landlord shall not be responsible for, and Landlord is hereby released from, any liability resulting from any damage to or loss thereof, arising, directly or indirectly, from (i) any acts of negligence of any other persons in, on or about the Demised Premises; (ii) the bursting, overflowing or leaking of water, sewer or steam pipes; (iii) the leaking or overflowing of the roof or downspouts, plumbing or heating fixtures; (iv) electric wires or electric equipment; or (v) any other cause, including but not limited to, rain, snow, wind or ice.

#### 9. UTILITIES

A. Utility Charges: From and after the Commencement Date, Tenant shall pay directly to the utility companies and/or governmental agencies providing such services, all separately metered charges for gas; electricity; light; heat; sanitary sewage service; water; telephone; power and all other separately metered utilities used, rendered or supplied upon or in connection with the Demised Premises. If and to the extent that non-payment of any such amounts permits the applicable utility service provider to impose a lien on all or any part of the Shopping Center as a result of non-payment, then the amounts due under any lien filed for this purpose shall constitute Additional Rent under this Lease, Tenant shall promptly pay such amounts to Landlord, and upon receipt thereof, together with any other costs associated with the Tenant's non-payment, the Landlord will pay and discharge any such lien. Landlord shall, as a part of Landlord's Initial Work, cause suitable meters (if applicable and if not theretofore installed in the Demised Premises) to be installed to measure Tenant's usage of such services, and Tenant shall thereafter maintain such meters in good working order.

B. Hook-Up Fees, Etc.: Notwithstanding any provision to the contrary set forth in this Lease, Landlord shall pay (or shall have paid) any hook-up fees, tap fees, impact fees and/or other similar charges in connection with the procurement of any of the foregoing services for the Demised Premises.

#### 10. MECHANIC'S LIENS OR ENCUMBRANCES

Tenant shall not permit the Demised Premises (or any fixtures or improvement therein) to become subject to any mechanic's lien, materialman's charge or encumbrance, and shall indemnify and hold harmless Landlord from and against all such liens, charges and encumbrances and any and all reasonable attorney's fees actually incurred by Landlord in connection therewith, and shall release,

bond off and/or discharge any such lien within sixty (60) days after written demand therefore is given by Landlord; provided however, that such sixty (60) day period shall be extended if Tenant begins taking steps necessary to release, bond off or discharge any such mechanic's lien within such sixty (60) day period and thereafter pursues such steps to conclusion.

#### 11. USE OF DEMISED PREMISES

Subject to zoning and other governmental regulations promulgated by applicable Authorities after the Commencement Date, the Demised Premises may be used and occupied for the operation of a health and fitness center offering such fitness programs and recreational facilities as Tenant may determine from time to time (which may include, but shall not be limited to, jogging tracks, gymnasiums, running tracks, whirlpools, swimming pools, saunas, aerobics and/or floor exercises, yoga, pilates and similar meditative or holistic exercises, martial arts or similar pursuits, basketball and racquetball courts, free weights, exercise machinery and equipment), personal fitness training classes and facilities, child nursery facilities, massage, physical and rehabilitative therapy services and facilities, tanning facilities, gym-related retail sales activities (including but not limited to, sales of vitamins, nutritional supplements, equipment and fitness apparel), personal enhancement amenities and other usual amenities from time to time found in a modern fitness, nutrition, sports medicine, and health club facility (including without limitation, hair and nail manicure and care facilities, restaurant and/or juice/snack bar facilities and meditation facilities), and commercial office space that may be ancillary to a modern fitness, nutrition, sports medicine, and health club business, all as permitted by the Authorities. It is understood and agreed that (a) the foregoing list of specific programs, facilities and services is illustrative, and not exhaustive; (b) Tenant shall not be obligated to offer each item on such list to its customers or members; and (c) all of the foregoing items are subject to technological and cultural advancements and trends.

Tenant shall have the right to operate the Demised Premises between the hours of 5:00 a.m. and midnight (or such other additional or lesser hours as Tenant shall determine from time to time), seven (7) days a week (or such lesser number of days as Tenant shall determine from time to time). As long as Tenant uses and occupies the Demised Premises for the permissible uses hereinabove set forth, Tenant shall not be responsible in any manner for the normal migration outside of the Demised Premises of sounds, vibrations and odors consistent with the normal course of Tenant's health and fitness club business operations.

#### 12. ALTERATIONS AND IMPROVEMENTS

A. General: Tenant covenants and agrees that it will make no structural alterations, improvements or changes of any kind to the Building without first submitting reasonably detailed plans and specifications therefore to Landlord and securing the prior written consent of Landlord, (which consent shall not be unreasonably withheld, conditioned or delayed); provided however, that Tenant shall be permitted to make such non-structural alterations and improvements as it may so elect without obtaining the Landlord's prior written or other consent. If Landlord fails to respond to Tenant's request for consent to any submission for structural alterations or improvements within thirty (30) days following delivery of such plans and specifications to Landlord, then Landlord's consent to the alteration(s) in question shall be deemed to have been given for all purposes and Tenant may proceed to implement such plans and specifications as if Landlord had expressly given its written consent to such plans and specifications.



B. Title to Improvements; Removal of Tenant's Property: All improvements, alterations, replacements and building service equipment made or installed by or on behalf of Tenant and permanently affixed to the Demised Premises shall, immediately upon termination of this Lease, become the property of Landlord, without payment therefor by Landlord, but subject to the provisions of this Lease. Notwithstanding the foregoing, all movable trade fixtures, machinery, movable equipment (other than building service equipment), specialized flooring and lighting, specialized millwork (including without limitation reception area elements, display counters, lockers and similar trade fixtures), movable partitions, furniture and furnishings and signature or branded items installed by Tenant or maintained in the Building or other portions of the Demised Premises, even if affixed thereto, shall remain the property of Tenant, and Tenant shall be entitled to remove the same or any part thereof at any time during the Lease Term, but Tenant shall, at its expense, repair any and all damage to the Building resulting from or caused by such removal.

C. Other Matters: Upon occupancy of the Demised Premises, Tenant shall thereafter be solely responsible for obtaining all permits and licenses necessary to perform any alterations, improvements and changes within the Demised Premises not constituting Landlord's Work, including any applicable non-residential use permits, certificates of occupancy or other applicable occupancy licenses it wishes, subject to other applicable provisions of this Lease. All work performed by Tenant shall be accomplished in a good and workmanlike manner and in accordance with all applicable laws, rules, regulations, and codes of applicable governmental authorities.

### 13. DAMAGE OR DESTRUCTION

A. Landlord Repair Obligations: If the Demised Premises, the Common Areas, or any portions thereof necessary for the conduct of Tenant's intended use and/or occupancy of the Demised Premises is damaged or destroyed during the Term of this Lease by any casualty insurable under standard fire and extended coverage insurance policies (or otherwise insurable by policies required to be obtained by Landlord hereunder), Landlord shall repair or rebuild the Demised Premises and Common Areas (as applicable) to substantially the condition in which the Demised Premises and Common Areas were in immediately prior to such damage or destruction to the extent of available insurance proceeds. Landlord shall use all commercially reasonable efforts to substantially complete such repairs and/or reconstruction within ninety (90) days following the date of the damage or destruction. If such repair or reconstruction cannot (or is not) completed within one hundred fifty (150) days following the date of such damage or destruction, Tenant shall have the option of terminating this Lease (and all Tenant's obligations thereunder) upon the giving of written notice of such termination to Landlord. If Tenant does not elect to terminate this Lease and Landlord fails to diligently pursue such repairs to completion, Tenant may, at its option, promptly make the repairs that Landlord is obligated to make and receive from Landlord (and/or its insurers), insurance proceeds otherwise payable to Landlord under the Landlord maintained insurance policies in amounts needed to reimburse Tenant for such repairs.

B. Abatement of Rent: The Base Rent, Additional Rent and other charges payable to Landlord by Tenant pursuant to the provisions of this Lease will be abated proportionately during any period in which, by reason of any damage or destruction not occasioned by the negligence or willful misconduct of Tenant or Tenant's employees or invitees, there is a substantial interference with or reduction in, the historical business operations of Tenant within the Demised Premises. The abatement will be proportional to the area of the Demised Premises that Tenant may be required to discontinue for the conduct of its business. The abatement will continue for the period commencing with the

destruction or damage and ending upon the completion of the work, repair, or reconstruction that Landlord is obligated to perform.

C. Lease Termination: If the Demised Premises or any portion of the Shopping Center reasonably necessary for the conduct of Tenant's intended use and/or occupancy is damaged or destroyed (a) to the extent of 80% or more of the then-replacement value of (i) the Demised Premises or (ii) any portion of the Shopping Center reasonably necessary for the conduct of Tenant's intended use and/or occupancy, as applicable; (b) during the last three (3) years of the Term of this Lease (as may have been extended); (c) by a cause or casualty other than those covered by fire and extended coverage insurance required to be carried by Landlord hereunder; (d) to the extent that it would take, in either Landlord or Tenant's reasonable opinion, in excess of one hundred fifty (150) days to complete the requisite repairs; or (e) to a condition that, in both Landlord and Tenant's commercially reasonable opinions, would not be economically feasible and commercially reasonable to repair and restore; then either Tenant or Landlord may terminate this Lease by giving the other party written notice of such termination within sixty (60) days following the date of such damage or destruction. The termination notice shall set forth the effective date of the termination of this Lease.

D. Restoration of Demised Premises: Upon the completion of any of the work, repair, or restoration required to be performed by Landlord, Tenant will repair and restore those items installed or constructed within the Demised Premises by Tenant or on Tenant's behalf from and after the Commencement Date.

E. Conduct of Business: Except as otherwise set forth herein, during any period of reconstruction or repair of the Demised Premises, Tenant will use all commercially reasonable efforts to continue the operation of its business in the Demised Premises to the extent commercially reasonable.

#### 14. CONDEMNATION

A. Generally: If the Demised Premises, the Shopping Center or any portion thereof shall be taken or condemned for public use (or transferred in lieu thereof) and this Lease is not canceled as provided below, Landlord shall rebuild and restore the remaining portion of the Demised Premises and/or the Shopping Center so as to make an architecturally complete unit, and the Base Rent and Additional Rent shall each be equitably reduced to reflect the extent that the interference of such taking has or will have on the operation of Tenant's business operations within the Demised Premises as reasonably determined by Tenant and approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), such reduction to be effective on the date physical possession is taken by the condemning authority. For purposes of this Section, a "taking" shall be deemed to include any conveyance made in lieu of condemnation proceedings being instituted and/or finalized.

B. Option to Cancel: In the event that (i) fifty percent (50%) or more of the square footage of the Demised Premises shall be so taken (or a lesser amount, in the event that Tenant is unable to reasonably operate its business in the portion of the Demised Premises remaining after such taking); or (ii) thirty-three percent (33%) or more of the square footage area of the Demised Premises shall be so taken during the last two (2) years of the then-current Term of this Lease (or a lesser amount, in the event that Tenant is unable to reasonably operate its business in the portion of the Demised Premises remaining after such taking), either Tenant or Landlord may cancel and terminate this Lease by giving written notice to the other of its intent to terminate within thirty (30) days after the condemnation judgment or determination is entered or finalized (or the date on which a conveyance is made in lieu thereof), in which event Landlord shall not be required to restore or rebuild the Demised Premises.

Moreover, in the event that fifteen percent (15%) or more of the parking area within the Shopping Center shall be so taken, Tenant shall have the right to cancel and terminate this Lease by giving written notice of its intention to do so to Landlord within thirty (30) days after title is vested in the condemning authority, in which event Landlord shall not be required to restore or rebuild the Demised Premises and/or Shopping Center. It is agreed, however, that if a portion of the Demised Premises and/or Shopping Center is taken and the Lease is not canceled or terminated as permitted above, the Demised Premises and/or Shopping Center shall be restored as stated above.

C. Claims to Condemnation Award: In the event of any taking, Landlord and Tenant will each have the right to claim and recover such compensation as may be legally claimed or recoverable in connection with such condemnation under applicable law.

D. Restoration: Landlord's obligation to restore the Demised Premises and/or Shopping Center shall be limited to the proceeds actually received by Landlord as a result of any such condemnation or taking. In no event shall such restoration be required to include any alterations, additions or betterments made by Tenant in or about the Demised Premises from and after the Commencement Date of this Lease. If Landlord must restore the Demised Premises, it shall use all commercially reasonable efforts to do so within ninety (90) days following the earlier to occur of either (i) the date on which the condemning authority takes possession of the property; or (ii) the date on which title to the property vests in the condemning authority. Landlord shall provide Tenant with an estimate of the time needed to restore the Demised Premises and/or Shopping Center to the condition as existed immediately prior to the taking, provided that Landlord's time estimate shall be on the basis of construction which begins and proceeds as efficiently as is reasonably possible under the circumstances then and there existing. If the time period so estimated exceeds one hundred fifty (150) days after the vesting of title or the taking of possession (or if such restoration is not completed within such one hundred fifty day period), then, within fifteen (15) days after such estimate is provided to Tenant (or the expiration of the 150 day restoration period, as applicable), Tenant may terminate this Lease by giving written notice thereof to Landlord. If the estimated restoration period is less than hundred fifty (150) days, or if Tenant shall not terminate this Lease as hereinbefore provided, Landlord shall promptly commence such repair work and diligently proceed to complete the same.

E. Material Adverse Effect: Notwithstanding anything to the contrary contained herein, Tenant shall have the right to terminate this Lease upon the occurrence of any condemnation or taking of all or a part of the Demised Premises or Shopping Center if such condemnation or taking materially hinders Tenant's ability to transact its business in substantially the same manner as it had prior to any such condemnation or taking. Tenant may exercise this right of termination upon the giving of at least thirty (30) days prior written notice to Landlord, and upon the termination date set forth in the notice, this Lease shall terminate, any rights to occupy the Demised Premises shall cease and Tenant shall have no further obligations to Landlord hereunder.

F. Abatement of Rent: The Base Rent, Additional Rent and other charges payable by Tenant hereunder will be abated proportionately during any period in which, by reason of any condemnation or taking, there is a substantial interference with or reduction in, the historical business operations of Tenant within the Demised Premises. The amount of the abatement shall be equitably determined and may be proportional to the area of the Demised Premises that Tenant may be required to discontinue for the conduct of its business. The abatement will commence on that date on which the condemning authority takes title or possession of the condemned property, whichever date is earlier.

## 15. COMPLIANCE WITH REGULATIONS

Subject to the obligations of Landlord as set forth in this Lease, Tenant shall comply with all laws, codes, ordinances, administrative and court orders and directives, rules and regulations that have the force of law, whether now in effect or hereafter promulgated, applicable to Tenant's use, occupancy, improvement and/or alteration of the Demised Premises. Notwithstanding the foregoing, Tenant shall have the right to contest the applicability and/or validity of any of the above so long as, by reason of such action, the Demised Premises would not be in danger of encumbrance, forfeiture or loss. Additionally, to the extent that any structural modifications, alterations or changes are required to be performed in and/or to the Demised Premises or Shopping Center in order to comply with any laws, codes, ordinances, administrative and court orders and directives, rules and regulations that have the force of law, that were in effect or otherwise applicable to the Demised Premises or the Shopping Center on the Commencement Date, and such work shall be performed promptly by Landlord, at Landlord's sole cost and expense.

16. INDEMNIFICATION

A. Indemnification by Tenant: Except with respect to claims arising from the negligence, gross negligence or willful misconduct of Landlord and/or its agents, servants or employees, or invitees, Tenant covenants and agrees to indemnify and hold Landlord harmless (to the extent Landlord is not reimbursed by insurance) from any and all losses, damages, claims, suits or actions, judgments and costs, that may arise in connection with Tenant's failure to perform its obligations as set forth in this Lease, any business operations conducted by Tenant in or on the Demised Premises or within the Shopping Center, including injury to or death of any person within the Demised Premises, damage to any property within the Demised Premises or Shopping Center, or from any claims for liability of any nature whatever arising from the negligence, gross negligence or willful misconduct done in or on the Demised Premises or Shopping Center by Tenant, its agents, employees, contractors, servants, or invitees.

B. Indemnification by Landlord: Except with respect to claims arising from the negligence, gross negligence or willful misconduct of Tenant and/or its agents, servants or employees, or invitees Landlord shall indemnify and hold Tenant harmless (to the extent Tenant is not reimbursed by insurance or by any insurance coverage that would have been in effect if Tenant had not exercised its right to self insure under Section 8(C), above) from any and all losses, damages, claims, suits or actions, judgments and costs, that may arise in connection with Landlord's failure to perform its obligations as set forth in this Lease, any business operations conducted by Landlord, or any act or omission constituting the negligence, gross negligence or willful misconduct of Landlord and/or its agents, employees, contractors, licensees, or invitees. Additionally, except with respect to claims arising from the negligence, gross negligence or willful misconduct of Tenant and/or its agents, servants or employees, or otherwise covered by Tenant's indemnity obligations under Section 16(A), above, Landlord shall indemnify and hold Tenant harmless (to the extent Tenant is not reimbursed by insurance) from any and all losses, damages, claims, suits or actions, judgments and costs, which may arise or grow out of any injury to or death of any person within the Shopping Center (save and except the Demised Premises), damage to any property within the Shopping Center (save and except the Demised Premises), or from any claims for liability of any nature whatever arising from the negligence, gross negligence or willful misconduct done in or on the Shopping Center (save and except the Demised Premises) by Landlord, its agents, servants, employees, contractors, or invitees.

C. Indemnity May Be Satisfied by Insurance: Any obligation of Landlord or Tenant to indemnify the other may be satisfied by the application of any insurance available to the other, pursuant to the provisions of this Lease, or as a result of Landlord or Tenant having obtained such insurance on their own accord.

## 17. DEFAULT AND REMEDIES

A. Tenant Default: Tenant shall be deemed to have committed a default under this Lease (a "Tenant Default") if:

(i) Tenant fails to pay any installment of Base Rent, or any portion thereof, when due, and the same remains unpaid for a period of five (5) business days following delivery by Landlord of written notice of such delinquency; or

(ii) Tenant fails to pay any Additional Rent or any other charge provided for in this Lease, or any portion thereof, when due and payable to Landlord or to the applicable third party payee thereof and the same remains unpaid for a period of ten (10) days following delivery by Landlord of written notice of such delinquency; or

(iii) Tenant defaults in the performance of any obligation required to be performed by Tenant pursuant to the provisions of this Lease and such default remains uncured for a period of thirty (30) days following delivery by Landlord of written notice of such default; provided however, that if the default is not reasonably susceptible to cure within such 30 day period, Tenant shall not be deemed to have committed a Tenant Default as long as Tenant commences to cure the default within such 30 day period and diligently pursues the cure of the default thereafter until completion; or

(iv) Tenant files in any court a petition in bankruptcy or insolvency or for reorganization or arrangement under applicable federal or state bankruptcy laws, or for the appointment of a receiver or trustee of all or a substantial portion of Tenant's (or the Guarantor's) assets, and such petition is not discontinued or dismissed within forty-five (45) days after written notice from Landlord; or

(v) an involuntary petition of the kind referred to in subparagraph (iv) above is filed against Tenant and such petition is not vacated or withdrawn within sixty (60) days after the date of filing thereof; or

(vi) Tenant makes an assignment for the benefit of creditors other than in the ordinary course of business, and such assignment is not discontinued within thirty (30) days after written notice from Landlord; or

(vii) Tenant is finally adjudicated a bankrupt; or

(viii) Tenant assigns or sublets the Demised Premises in violation of the provisions of this Lease and such assignment or subletting continues for a period of thirty (30) days following delivery by Landlord of written notice thereof to Tenant.

B. Remedies Upon Tenant Default: Upon the occurrence of a Tenant Default, Landlord shall have the following remedies (which shall be in addition to, and not in lieu of, those available to Landlord at law or in equity):

(i) Upon the giving of written notice to Tenant, Landlord may terminate Tenant's right to possession of the Demised Premises without terminating this Lease, and Landlord may enter into the Demised Premises and take possession thereof, without releasing Tenant, in whole or in part, from Tenant's obligation to pay rent hereunder for the stated Term at the time and in the manner provided in this Lease. Upon Landlord's entry into possession of the Demised Premises without terminating this Lease, Landlord shall use all commercially reasonable efforts to relet the Demised Premises for the account of Tenant to any person, firm or corporation, for such rent, for such time and upon such terms as Landlord, in its sole but commercially reasonable discretion, shall determine. Landlord shall not be required to accept any tenant offered by Tenant; provided however, that Landlord shall use such efforts as are commercially reasonable to mitigate its damages in the event of a Tenant Default hereunder. Landlord may repair, redecorate and/or remodel the Demised Premises to the extent necessary to relet the Demised Premises, and Tenant shall, upon demand, pay a pro-rata portion of such repair, redecoration and/or remodeling costs based on the number of months remaining in the Term of the Lease, together with an amount equal to the expenses reasonably and actually incurred by Landlord to obtain possession of the Demised Premises and to relet the Demised Premises (including brokerage fees or commissions and reasonable attorneys' fees). If the consideration payable to Landlord as a result of such reletting is not sufficient to pay the monthly installment of Base Rent and Additional Rent required to be paid by Tenant under this Lease, Tenant shall pay to Landlord the amount of such deficiency immediately upon receipt of written demand therefore.

(ii) Landlord may cancel and terminate this Lease, upon the delivery to Tenant of written notice to such effect, and may pursue any remedy at law or in equity that is available to Landlord. Should Landlord at any time terminate this Lease upon the occurrence of any Tenant Default, in addition to other remedies it may have, it may recover from Tenant all damages it may incur by reason of such Tenant Default, including:

- (a) costs of recovering possession of the Demised Premises from Tenant;
- (b) reasonable attorneys' fees incidental to recovering possession of the Demised Premises from Tenant; and
- (c) the worth, at the time of such termination (discounted to present value at a rate equal to the higher of six percent (6%) or the prime rate of Citibank, N.A. as of the date of such termination), of the excess, if any, of the amount of Base Rent, Additional Rent and charges equivalent to rent due under this Lease for the remainder of the stated Term over the then fair market rental value of the Demised Premises for the remainder of the stated Term,

All of the foregoing sums shall be immediately due and payable by Tenant upon delivery of written demand therefore; provided however, that (x) there shall be credited against the amounts described above, all amounts payable to Landlord pursuant to any reletting of the Demised Premises for periods following such termination; and (y) Landlord shall use all commercially reasonable efforts to mitigate its damages.

(iii) Landlord may cure such Tenant Default on Tenant's behalf, at Tenant's reasonable cost and expense. Any sums so expended by Landlord shall be deemed to be Additional Rent, and shall be paid by Tenant to Landlord within thirty (30) days' following delivery to Tenant of written demand therefore by Landlord.

C. Landlord Default: Landlord shall be deemed to have committed a default under this Lease (a "Landlord Default") if Landlord fails to make repairs required to be made by Landlord or otherwise defaults in the performance of any obligation or the observance of any covenant that this Lease requires Landlord to make, perform and/or observe, and such failure or default remains uncured for a period of thirty (30) days after Tenant has given Landlord written notice of such failure or default; provided however, that if the failure or default is not reasonably susceptible to cure within such 30 day period, Landlord shall not be deemed to have committed a Landlord Default as long as Landlord commences to cure the default within such 30 period and diligently pursues the cure of the default thereafter until completion. Notwithstanding the foregoing, if any failure of Landlord to perform any required condition, duty, covenant, obligation, rule, regulation or term within the time periods otherwise provided herein causes the Demised Premises (or any portion thereof) to become unsafe or uninhabitable for occupancy or otherwise untenable for Tenant's intended purposes (herein an "Emergency Condition"), Tenant shall provide written notice of such Emergency Condition and Landlord shall exercise commercially reasonable efforts to remedy such Emergency Condition within three (3) days after Tenant's delivery of such notice (unless such Emergency Condition is not reasonably susceptible to cure within such three (3) day period, in which event as long as Landlord commences to cure such condition within the three (3) day period and diligently pursues to completion such cure, Landlord shall have an additional fifteen (15) days in which to cure the Emergency Condition.)

D. Remedies Upon Landlord Default: Upon the occurrence of a Landlord Default, Tenant shall have the following remedies (which shall be in addition to, and not in lieu of, any remedies available to Tenant at law or in equity):

(i) Tenant may (but shall not be required to) discharge Landlord's obligations and all costs and expenses reasonably incurred by Tenant in connection with doing so (together with interest at the highest rate allowed by law per annum computed from the date on which Tenant incurs such costs and expenses until the date full repayment is made by Landlord) shall be payable by Landlord to Tenant within thirty (30) days following the delivery of written demand therefore. If Landlord fails to make the repayment on a timely basis, in addition to any other rights it may have pursuant to this Lease, at law or in equity, Tenant shall have the right to offset the amount of such repayment against Rent and other charges due under this Lease; provided, however, the Tenant shall have no right to offset an amount in excess of Fifteen Thousand Dollars (\$15,000.00) for these purposes in any given calendar year of the Term unless such offset is authorized by an order of a court of competent jurisdiction.

(ii) Tenant shall also have the right to pursue any other remedy available under this Lease or at law or in equity, including the right to seek injunctive relief or specific performance, and upon proper order of a court of competent jurisdiction, this Lease may be terminated if and to the extent that termination is ordered by a court of competent jurisdiction.

Notwithstanding anything to the contrary contained herein, Tenant shall use such efforts as are commercially reasonable to mitigate its damages in the event of a Landlord Default hereunder.

## 18. ASSIGNMENT AND SUBLETTING

A. General: Tenant shall have the right to make any assignment or subletting of all or any portion of Tenant's interest in this Lease and/or the Demised Premises provided that (i) such assignee or subtenant shall have a commercially reasonable level of creditworthiness; (ii) such assignment or subletting shall not be effective until Tenant provides written notice thereof to Landlord; and (iii)

Landlord consents to such assignment or subletting, as provided in Section 18(B), below. Tenant may request, in connection with any such assignment, that upon the effective date of the assignment, that Tenant be released from any continuing liability to Landlord pursuant to the provisions of this Lease. It is also agreed that Tenant may, without obtaining Landlord's consent or providing notice to Landlord, assign or sublet the Demised Premises to Guarantor or any entity purchasing all or a substantial interest in the Guarantor or an entity purchasing all or substantially all of the Guarantor's assets. Additionally, Tenant may assign all or any portion of its interest in this Lease (and/or may sublet all or any portion of the Demised Premises) without obtaining Landlord's consent to such assignment or subletting to (i) Guarantor or to any subsidiary of Guarantor provided that Guarantor or such subsidiary has substantially the same or greater financial standing as Tenant had on the Commencement Date; (ii) in the event of a merger of Tenant with another company or entity of at least the same financial standing as Tenant, to the surviving entity of such merger; (iii) in the event there is a sale or transfer for fair value in an arm's length transaction of all or substantially all of Tenant's assets or stock provided that the purchaser has substantially the same or greater financial standing as Tenant had on the Commencement Date; (iv) in the event of a public offering of shares in Tenant; or (v) in the event of a recapitalization, reorganization or sale of a controlling interest in Tenant for fair value in an arm's length transaction provided that the purchaser has substantially the same or greater financial standing as Tenant had on the Commencement Date. It is also agreed that Tenant may, with notice to but without obtaining Landlord's consent, license or otherwise contract with licensees, concessionaires and other parties to occupy portions of the Demised Premises in order to operate certain ancillary services and sales of Tenant's business operations as a full service health club, including but not limited to, those sales and services described elsewhere in this Lease as permissible uses of the Demised Premises. In each instance in which the Tenant may assign this Lease or sublet the Demised Premises without Landlord's consent if the assignee has substantially the same or greater financial standing as Tenant had on the Commencement Date, the assignment or subletting will not be effective unless and until Tenant has delivered detailed financial information pertaining to the assignor and assignee as of the relevant time periods conclusively demonstrating compliance with the financial standing requirements specified herein.

B. Consent Required: Except as expressly set forth above, prior to any assignment or subletting of all or any portion of Tenant's interest in this Lease and/or the Demised Premises, Tenant shall obtain Landlord's written consent (which such consent shall not be unreasonably withheld, conditioned or delayed), and shall provide to Landlord the material terms of any agreements proposed by Tenant to do one or more of the following:

- (i) to assign this Lease, or sublet the Demised Premises; or
- (ii) (save and except for Tenant's existing financing arrangements with lenders at the time of the execution of this Lease and for additional financing that Tenant may obtain from time to time in order to transact its business), to mortgage, pledge, collaterally assign, hypothecate, or otherwise grant a security interest in this Lease and/or the right, title and interest of Tenant herein.

It is expressly understood and agreed that no provision set forth in this Lease shall be deemed or construed to prohibit, or require Landlord's approval of, Tenant's mortgaging, pledging, hypothecating, or otherwise granting a security interest in any one or more items of Tenant's personal property (including without limitation, Tenant's furniture, trade fixtures, branded items and other personal property) used, or otherwise located, in the Demised Premises, and/or to Tenant's leasing (as opposed to owning) all or any portion of the same. Landlord hereby unconditionally waives any and all rights of lien, levy, distraint, or execution with respect to any and all of such furniture, trade fixtures,



equipment and/or other personal property, whether such rights are afforded to Landlord pursuant to this Lease or otherwise at law or in equity.

C. Unpermitted Assignment or Sublease Void. Unless otherwise expressly permitted by the provisions of this Lease, any attempted assignment or subletting that is made without Landlord's prior written consent will be void and of no force or effect.

D. Release Provision. Notwithstanding anything to the contrary contained in this Lease, the Tenant may assign this lease to a Qualified Assignee without Landlord's consent, subject to Landlord's right to verify that the proposed assignee is a Qualified Assignee. In this regard, the term "Qualified Assignee" will mean and refer to an entity which meets the following criteria: (i) at the time of the proposed assignment, the proposed assignee owns and operates at least thirty five (35) Health Club Facilities (as defined in Section 27, below) within the United States and/or Canada; (ii) at the time of the proposed assignment, the management personnel of the proposed assignee has a minimum of five (5) years experience in owning and operating Health Club Facilities; and (iii) for each of the three (3) years preceding the proposed assignment, the proposed assignee has EBITDA (as determined in accordance with generally accepted accounting principals) of no less than Twenty Five Million Dollars (\$25,000,000.00). At least thirty (30) days prior to any assignment of this Lease to any such Qualified Assignee, Tenant will deliver to Landlord reasonably detailed evidence demonstrating that the proposed assignee is a Qualified Assignee hereunder. If Landlord fails to give Tenant written notice contesting the qualification of the proposed assignee as a Qualified Assignee within that thirty (30) day period, Landlord will be deemed to have agreed that the proposed assignee is a Qualified Assignee. If this Lease is assigned to a Qualified Assignee (or deemed Qualified Assignee), Landlord will execute and deliver to Tenant, the Qualified Assignee and Guarantor a release, releasing Guarantor from liability under and with respect to its Guaranty. In the alternative, in absence of any proposed assignment of the Lease, if Guarantor identifies a proposed replacement guarantor that meets the criteria for a Qualified Assignee, then, likewise, Guarantor will be entitled to be released from liability under its Guaranty, in the same manner as the Tenant may be released from liability under this Lease. Guarantor shall not otherwise be entitled to be released or relieved of any of its obligations under the Guaranty without Landlord's consent.

#### 19. INSPECTION BY LANDLORD

During the Term of this Lease, Landlord and its agents shall have the right at all reasonable times, upon at least three (3) business days' advanced written notice to Tenant, to enter the Demised Premises for the purpose of performing the maintenance and repairs required of it by this Lease and for the purpose of inspecting the Demised Premises to ensure Tenant's compliance with its obligations under this Lease. Additionally, during the last one hundred eighty (180) days of the Lease Term, Landlord and its agents shall have the right, at all reasonable times, upon at least two (2) days' advanced written notice to Tenant, to show both the interior and exterior of the Building on the Demised Premises to prospective tenants or purchasers. Landlord or its agents may enter the Demised Premises at any time, without notice, in the event of an emergency constituting a danger or injury to persons or property. The right of inspection and entry granted to Landlord shall not be unreasonably exercised, nor shall it be exercised in a manner that would interfere with Tenant's ability to transact its business operations within the Demised Premises.

#### 20. ASSIGNMENT OF LANDLORD'S INTEREST

If Landlord assigns its interest in this Lease or the rents hereunder, Tenant shall, following Tenant's receipt of written notice of such assignment and written request of Landlord, pay all sums becoming due to Landlord hereunder from and after a date specified by Landlord to Landlord's assignee. Notwithstanding the foregoing to the contrary, Tenant shall be required to comply with the provisions of this paragraph only after Landlord has furnished Tenant with a document executed by the assignee of Landlord wherein such assignee expressly assumes all of Landlord's obligations and duties under this Lease, including without limitation, the return of any security deposit made by Tenant pursuant to the provisions of this Lease.

21. ATTORNMEN, SUBORDINATION AND NON - DISTURBANCE

A. Attornment: Subject to the prior satisfaction of Landlord's obligation to obtain requisite non-disturbance agreements as set forth below, if any Mortgagee (defined below) conducts a foreclosure sale of all or any portion of the Shopping Center or otherwise enforce any of the remedies available to such lenders, Tenant, upon receipt of written request of the successor to the interest of Landlord in the Shopping Center (or portion thereof), shall automatically attorn to such successor in interest, without any change in the terms or conditions of this Lease, provided, however, that such successor in interest shall not be:

(i) bound by any payment of Base Rent for one (1) month in advance or any Additional Rent for more than three (3) months in advance; or

(ii) liable for damages for any act or omission of any prior landlord, including Landlord; provided however, that such successor in interest shall not be released from any of the continuing obligations of Landlord under this Lease, notwithstanding that one or more of such continuing obligations might have first accrued prior to such successor's succession to Landlord's interest under this Lease.

B. Subordination: Subject to the prior satisfaction of Landlord's obligation to obtain requisite non-disturbance agreements as set forth below, this Lease and all rights granted hereunder shall be subject and subordinate to the lien of any present or future mortgage or mortgages upon the Shopping Center (or any portion thereof), irrespective of the time of execution or the time of recording of any such mortgage or mortgages, and to any modifications, extensions, renewals and refinancings thereof. Notwithstanding the foregoing however, this Lease and the rights granted hereunder shall not be deemed to be subject and subordinate to any present or future mortgage liens if such subordination would adversely affect Tenant's priority rights with respect to intervening liens, if any, that may be recorded after this Lease or a memorandum hereof, but prior to the recordation of the mortgage executed and delivered in connection with such refinancing. The word "mortgage" as used in this Section shall be deemed to include any modifications, extensions, renewals and replacements thereof, and any and all advances thereunder, as well as any deed of trust or other similar financing document.

C. Non-Disturbance: The subordination of this Lease to any mortgage granted by Landlord and the attornment by Tenant to any successor in interest of Landlord are expressly conditioned upon, and shall not be effective unless and until, Landlord shall first deliver to Tenant a Subordination, Non-Disturbance and Attornment Agreement for the benefit of Tenant and its successors and assigns in substantially the form attached hereto as Exhibit E, duly signed and acknowledged by all ground lessors and holders of liens against all or any portion of the Shopping Center (collectively referred to herein as "Mortgagee," whether one or more). Any mortgage or ground lease which may exist as of the date of the execution of this Lease or any future mortgage or ground lease which Landlord may obtain

shall be subject to the non-disturbance agreement requirements set forth herein. Landlord shall deliver to Tenant a fully executed SNDA from each and every existing Mortgagee on or before the expiration of thirty (30) days following the Commencement Date hereof.

22. QUIET ENJOYMENT

Provided that Tenant fully and timely performs all material terms of this Lease on Tenant's part to be performed, including payment by Tenant of Rent, Tenant shall have, hold and enjoy the Demised Premises and all rights, licenses and appurtenances thereto, throughout the Term of the Lease without hindrance or disturbance from or by Landlord and/or its successors and assigns, or from or by any party claiming by, through or under Landlord or its successors and assigns.

23. FAILURE TO INSIST UPON STRICT PERFORMANCE

The failure of either party to insist upon strict performance of any of the terms, conditions and covenants herein contained shall not be deemed a waiver of any rights herein contained nor shall be deemed a waiver of any rights or remedies that either party may have under this Lease or at law or equity, nor shall be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. Furthermore, the rights and remedies hereby granted to Landlord and Tenant are cumulative and the use of one remedy shall not exclude or waive Landlord's or Tenant's right to use another.

24. HOLDING OVER

In the event that Tenant shall hold over after the expiration (but not after any sooner termination) of this Lease, the tenancy created by such holding over shall be deemed to be a "modified month-to-month" tenancy, but in all other respects shall be governed by the terms of this Lease; provided, however, that if such holding over is without the express prior written consent and approval of Landlord, the Base Rent shall be one hundred and twenty-five percent (125%) of the Base Rent as such was in effect during the last month of the Lease Term (as same may have been extended or renewed.) Notwithstanding common and/or statutory law regarding month-to-month tenancies, Landlord and Tenant agree that in the event of a holdover by Tenant, sixty (60) days' notice given by either party shall be required to terminate the tenancy created by such holding-over. This amount was negotiated and agreed upon by Landlord and Tenant as a material provision of this Lease and it is understood and agreed to be a reasonable and justifiable charge in the event Tenant shall hold over. Nothing in this Section shall be deemed, interpreted or construed as Landlord's consent to any such holding over after the expiration of the term of this Lease, unless Landlord has given its prior written consent and approval to such holding over.

25. END OF TERM

Upon the expiration or other termination of the term of this Lease, Tenant shall quit the Demised Premises and surrender same to Landlord, in good order and condition, ordinary wear and tear and damage or destruction by fire or other casualty excepted, or as mutually agreed to in writing by both parties prior to the expiration herein. Tenant shall have no obligation to restore the Demised Premises to the condition as existed prior to any work, improvements, or alterations which Landlord or Tenant may have performed pursuant to the terms of this Lease.

26. TENANT SIGNAGE

Tenant shall have the right to display its signage in two (2) locations on the Building and shall be entitled to display its signage at each topmost position located on all existing and future pylon and monument signs servicing the Shopping Center, wherever such pylon and monument signs may be located (such signs collectively referred to herein as the "Shopping Center Sign"). Notwithstanding anything contained in this Section 26 to the contrary, Tenant shall reimburse Landlord for the reasonable, actual cost incurred by Landlord in repairing, updating and redesigning the Shopping Center Sign in an amount equal to Tenant's pro rata share of the Shopping Center Sign based on the total square footage of all panels on the Shopping Center Sign compared with the total square footage of Tenant's panels on the Shopping Center Sign. In each case, the Tenant's rights to place signage on the Building and on the Shopping Center Sign will be subject to the procurement, by Tenant (in the case of any Building signage) and by Landlord (in the case of the Shopping Center Sign) of all necessary Approvals from all applicable Authorities. Notwithstanding the foregoing, the Landlord represents and warrants that applicable law permits signage to be installed on the front of the Demised Premises and on the side of the Building adjacent to the Demised Premises. In addition, the Landlord represents and warrants that applicable law permits the placement of a pylon or monument sign for the Shopping Center adjacent to Gravois Road. In addition to the foregoing, Tenant shall have the right to display its identification signage on all interior walls of the Building and on other structures located within the Shopping Center at such points deemed reasonably necessary or desirable by Tenant to direct the public to the Demised Premises, subject only to the Tenant's procurement of any applicable Approvals from applicable Authorities. All tenant identification signage on or within the Demised Premises and Shopping Center shall fully comply with any and all applicable codes, statutes, regulations and other mandates promulgated by applicable Authorities and shall be fabricated, installed, maintained and repaired at Tenant's sole expense. Without limiting the generality of the foregoing, Tenant shall be entitled to display its identification signage on the Building and elsewhere within the Demised Premises in the maximum size and quantity permitted by applicable law. Except as otherwise set forth herein to the contrary, the costs associated with any signage (including without limitation, the costs of obtaining all permits and licenses required by law for the display of such signage) shall be the sole responsibility of the Tenant. Subject to approval by local authorities, if required, Tenant's sign panels on the pylon signs, monument signs, building and all other structures shall have the characteristics set forth on Exhibit F attached hereto, which such characteristics are hereby approved by Landlord for all purposes. Additionally, Tenant shall have the right to place on or within the Demised Premises at locations selected by Tenant temporary "grand opening" and/or "pre-sale" signs advertising its business, its sale of memberships and such other promotions as Tenant may be offering; provided however, that the display of such temporary "grand opening" and/or "pre-sale" signage shall be subject to all applicable zoning laws or ordinances. Tenant shall also have the right to display such signs and other displays within the Demised Premises as Tenant deems necessary or desirable for the operation of its business with the Demised Premises. Without limiting the generality of the foregoing, Landlord acknowledges and agrees that Tenant shall have the right to display neon and similar type signage and lighting as well as televisions, monitors and similar electronic media on and within the Demised Premises that may be visible from the exterior of the Demised Premises, subject to all applicable zoning laws or ordinances.

## 27. EXCLUSIVE USE

Landlord agrees that subsequent to the date of execution of this Lease, Landlord will not enter into a lease of space for any portion of the Shopping Center or any Landlord Adjacent Property or any other agreement that permits the premises so leased, used or occupied to be leased, used or occupied as a Health Club Facility (defined below). If any tenant or other occupant of the Shopping Center or

any Landlord Adjacent Property uses the premises leased to or occupied by it in whole or in part as a Health Club Facility, Tenant may notify Landlord in writing of such prohibited use and may require that Landlord prohibit the continuation of the prohibited use. Additionally, if Landlord (or any person or entity in control of or in common control with Landlord or any of its affiliates) at any time owns or leases real property located within a three (3) mile radius of the Demised Premises boundaries (such real property referred to herein as the "Landlord Property"), Landlord (or any person or entity in control of or in common control with Landlord or any of its affiliates) shall not enter into any lease or other occupancy agreement with any person or entity for the use or operation of a Health Club Facility on the Landlord Property. For purposes of this Section, a "Health Club Facility" shall be deemed to be any health and physical exercise oriented business and shall include, without limitation, (i) a weight reducing salon; (ii) a facility offering physical or rehabilitative therapy (excluding, for the purpose of this Section however, any medical or physician supervised health care facility, which may include, other than as a primary use thereof, the provision of physical or rehabilitative therapy by physicians or other licensed practitioners; *provided, however*, that such therapy shall not involve the use of exercise or fitness equipment for other than diagnostic purposes); (iii) a personal training facility; (iv) any facility providing martial arts, yoga, pilates or similar holistic or meditative exercise activities; (v) a tanning salon; and/or (vi) a health and fitness club, any of which offers services such as those expressly identified as permitted uses under this Lease. The foregoing exclusive use prohibition shall not be deemed to apply to child-care facilities, retail uses, restaurants and/or juice bar/snack bar facilities, personal amenity facilities (fingernail, hair or spas related thereto and not for the purpose of a physical fitness facility or for providing physical fitness services.) If Landlord breaches this covenant and fails to cure such default within five (5) days after delivery of notice thereof from Tenant, Tenant may, in its sole discretion, have all rights and remedies available to it pursuant to the provisions of this Lease, at law or in equity (including, without limitation, the right of injunction).

## 28. PROHIBITED USES

During the Term of this Lease (including any renewal thereof), Landlord agrees that it shall **not** use, permit the use of or enter into any lease, occupancy agreement, construction or sales agreement or other similar agreement with respect to all or any portion of the Shopping Center or any Landlord Adjacent Property for the following uses: any large scale entertainment or recreational facility (including, but not limited to, a theatre, cinema, bowling alley, skating rink, dance hall or massage parlor); training or educational facility, including school or college (including without limitation, beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers); adult oriented business (including without limitation, adult bookstore, adult video retail or rental store, massage parlors, lingerie or similar modeling facilities, adult novelty sales, sex toy sales, tanning facilities or cabarets); kennel/boarding facility; boat, automobile, truck, motorcycle, pleasure craft, recreational or other vehicle sales, leasing, rental or display facility; industrial or similar uses; retirement, convalescent, nursing home or assisted living centers.

## 29. MISCELLANEOUS

A. Successors and Assigns: Except as hereinabove expressly otherwise provided, this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

B. Notices: Any notice or demand required or permitted under this Lease shall be deemed to have been given on the second business day after being deposited in the United States mail,

registered or certified mail, return receipt requested, postage prepaid, or on the next business day after being sent by overnight express courier service, to Landlord or Tenant at the following addresses (or at such other addresses as the parties hereto may specify in accordance with these notice provisions), or upon receipt if personally delivered by hand:

To Landlord: Scannell Properties #62, LLC  
800 E. 96<sup>th</sup> Street, Suite 175  
Indianapolis, IN 46240  
Attn: Chief Financial Officer  
(317) 843-5959  
(317) 843-5957 fax

To Tenant: Gold's St. Louis LLC  
125 E. John Carpenter Freeway  
Suite 1300  
Irving, Texas 75062  
Attn: Real Estate Dept.  
(214) 296-5077  
(214) 296-5000 fax

With a copy sent contemporaneously and in similar manner to:

J. Bradley Greenblum, Esq.  
811 Barton Springs Road, Suite 500  
Austin, TX 78704  
(512) 610-6602  
(512) 391-0919 fax

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

C. Estoppel Certificates: No more than twice a year and subject to the execution and delivery of non-disturbance agreements in forms reasonably satisfactory to Tenant by and from all Mortgagees as required above, Tenant shall, from time to time, within fifteen (15) days after written request from Landlord or any Mortgagee, execute, acknowledge and deliver, in recordable form, a certificate certifying, to the extent true, that this Lease, as the Lease may have been amended, is in full force and effect; that the Term has commenced and the full amount of the rent then accruing hereunder; the dates to which the Base Rent and Additional Rent have been paid; the amount, if any, that Tenant has paid to Landlord as a security deposit; that no Base Rent under this Lease has been paid more than thirty (30) days in advance of its due date; that the address for notices to be sent to Tenant is as set forth in this Lease (or has been changed as set forth in the certificate); that Tenant has no charge, lien, or claim of offset under this Lease or otherwise against Base Rent or other charges due or to become due hereunder except as set forth in the certificate; that, to the knowledge of Tenant, Landlord is not then in default under this Lease except as set forth in the certificate; and such other matters as may be reasonably requested by Landlord or any Mortgagee. Landlord shall, from time to time, within fifteen (15) days after written request from Tenant, execute, acknowledge and deliver, in recordable form, certificates containing information similar to the foregoing information.

D. Captions and Headings: The captions and headings throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of, or the scope or intent of, this Lease nor in any way affect this Lease.

E. Severability: In the event any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Lease. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Lease, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and as shall be deemed valid and enforceable.

F. Governing Law: This Lease and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the State of Missouri applicable to contracts made and to be performed therein (excluding choice-of-law principles). Each party hereto hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Missouri in any action or proceeding brought to enforce or otherwise arising out of or relating to this Lease, and hereby waives any objection to venue in any such court and any claim that such forum is an inconvenient forum.

G. Attorneys' Fees: In the event Landlord or Tenant institutes legal action as a result of a default by the other or the breach of any covenant, agreement or condition herein required to be observed or performed hereunder, the party prevailing in such legal action, in addition to all other relief awarded by the court, shall be reimbursed by the other for its reasonable attorneys' fees plus any court fees, reasonable service of process fees, reasonable witness fees, reasonable recorder's fees, and any and all other reasonable additional costs that the other may have incurred as a consequence of such legal action. Landlord and Tenant hereby waive a trial by jury of any and all issues arising in any action or proceeding between the parties hereto (or their successors) in connection with this Lease or any of its provisions.

H. Brokers: Landlord shall pay a commission to Lee & Associates per separate agreement. Landlord warrants that (i) no other broker or other party is acting as agent for Landlord in this transaction; and (ii) Landlord shall hold Tenant harmless from and against any and all costs, expenses or liability resulting from compensation, commissions and/or charges claimed by any other broker or agent claiming through its relation with Landlord with respect to this Lease or the negotiation thereof.

I. Resolutions: Landlord and Tenant shall provide each other with copies of all appropriate resolutions from the entity through which they transact business, including any limited liability company or corporation, ratifying, affirming, and authorizing the execution of this Lease upon the terms and conditions obtained herein on behalf of Landlord and Tenant, and recognizing the signatory authority of the individual or individuals executing this Lease on behalf of Landlord or Tenant.

J. Complete Agreement: It is understood and agreed that this Lease Agreement and the exhibits, addenda and riders, if any, attached hereto, contain the entire agreement between the parties, which shall not be modified in any manner except by an instrument in writing executed by the parties hereto.

K. Time is of the Essence: Time shall be of the essence for the performance of all agreements and obligations by Landlord and Tenant hereunder. If any date for performance falls on a Saturday, Sunday or legal holiday recognized in the metropolitan area in which the Demised Premises are located, such date for performance shall be extended to the next non-holiday workday.

L. Force Majeure: Whenever a period of time is herein prescribed for the taken of any action by Landlord or Tenant, such party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strike, riots, acts of God, unforeseeable shortage of labor or materials (which shall exclude price disputes), war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the reasonable control of such party (all of which is and shall be referred to herein as "Force Majeure").

M. Construction: Any word contained in the text of this Lease shall be read as the singular or plural, or in the masculine, feminine or neuter gender, as may be applicable in the particular context.

N. Effectiveness of this Agreement: Neither the negotiation of the terms of this Lease nor its submission thereof for examination or signature by Tenant or Landlord shall constitute a reservation of the Demised Premises or other space, or an option for lease, or an offer or agreement to enter into a lease, and this agreement shall not be effective as a lease or otherwise until executed and delivered by both Landlord and Tenant.

O. Guaranty. Tenant has agreed to procure from Guarantor, and deliver to Landlord, contemporaneously with its execution and delivery of this Lease, a guaranty of all of its obligations under this Lease, in the form attached hereto as Exhibit G (the "Guaranty").

P. Presale Space. Landlord shall supply to Tenant an area within the parking lot of the Shopping Center for the temporary installation of a trailer for Tenant's use as a "membership sales" area (such space referred to herein as the "Tenant Membership Space"). At any time from and after the date hereof and prior to the date on which the Demised Premises are opened to the public for business, Tenant shall have the right to occupy the Tenant Membership Space free of rent; provided however, that Tenant shall pay all costs associated with the furnishing of a trailer, furnishings for the Tenant Membership Space and the costs of utilities that may be supplied to the Tenant Membership Space. Landlord will have no obligation to furnish any utility services to or for the Tenant Membership Space, provided however, that Landlord will cooperate with Tenant in Tenant's efforts to procure such utility services for the Tenant Membership Space. The size and location of the Tenant Membership Space will be as designated by Tenant, subject to Landlord's consent, which will not be unreasonably withheld, conditioned or delayed. Tenant's right to occupy and use the Tenant Membership Space shall automatically expire once the Demised Premises become open for business to the public.

Q. Tenant's Systems. Landlord grants to Tenant an irrevocable license, coterminous with the Term (and any renewals thereof), for the installation, maintenance, repair and replacement, at Tenant's sole cost and expense, of satellite and telecommunications equipment, heating, ventilating and air conditioning ("HVAC") equipment; signage; security lighting and similar equipment and/or fixtures for its sole use on that portion of the roof of the Building that is located directly above the Demised Premises, together with such appurtenant cables, lines, pipes, conduits, wires and other installations necessary for the operation of such equipment and fixtures from and/or within the Demised Premises (such equipment and/or fixtures collectively referred to herein as the "Tenant Systems"). Landlord and Tenant acknowledge and agree that the Tenant Systems will only benefit and/or service the Demised Premises and not the space of other tenants that may be located in or about the Building.



The installation, construction, maintenance, use, repair, replacement and/or removal of any Tenant Systems component shall be performed by Tenant (or on Tenant's behalf) in accordance with all applicable governmental laws, including, without limitation, all building codes, zoning ordinances and telecommunication regulations. The installation, construction, maintenance, use, repair, replacement and/or removal of any Tenant Systems component shall be performed in a manner so as to minimize disruption to other tenants or occupants of the Shopping Center. All plans and specifications for the installation of any Tenant System shall be subject to Landlord's prior written consent, which such consent shall not be unreasonably withheld, conditioned or delayed. In no event shall Tenant be permitted to penetrate the roof without obtaining Landlord's prior written consent thereto, which such consent shall be subject to any conditions that may be required to avoid abrogation of any roof warranty, but which consent shall not otherwise be unreasonably withheld, conditioned or delayed. Except as otherwise provided to the contrary in this Lease, Tenant shall be responsible for the repair of any damage caused to the roof of the Building to the extent such damage is caused by the installation, construction, maintenance, repair, replacement and/or removal of any Tenant Systems component by Tenant or its contractors, representatives or employees. Landlord agrees that, subject to the repair and maintenance obligations provided elsewhere in this Lease regarding the roof and walls of the Demised Premises, no person or entity other than Tenant, Landlord and/or their respective contractors or employees (as applicable) shall have any right to access or use that portion of the roof of the Building that is located directly above the Demised Premises. Landlord shall be solely responsible for, and shall indemnify and hold Tenant harmless against, any loss or damage arising out of the installation, construction, maintenance, repair, replacement and/or removal of any utility line or similar structure on, across or within the roof of the Building conducted by or on behalf of Landlord.


R. Withdrawal of Offer. In the event that Tenant has signed this Lease and delivered it to Landlord, and Landlord does not, within seven (7) days after receipt of the Lease, return to Tenant a fully signed and executed counterpart hereof, then Tenant shall be deemed to have withdrawn its offer of this Lease from Landlord and this Lease shall be null and void and of no effect or force.

**[SIGNATURES ON NEXT PAGE]**

**WITNESS** the hands and seals of the parties hereto the day and year first above written.

**LANDLORD:**


SCANNELL PROPERTIES #62, LLC,  
an Indiana limited liability company,

By:   
Name: DOUGLAS SOPER  
Title: MANAGER

**TENANT:**

GOLD'S ST. LOUIS, LLC,  
a Delaware limited liability company

By: Gold's Holding Corp.  
a Delaware corporation,  
its general partner

By:   
Name: RANDALL R. SCHULTZ  
Title: VP & CFO

|                         |  |
|-------------------------|--|
| <b><u>Exhibit A</u></b> | Legal Description for Land                             |
| <b><u>Exhibit B</u></b> | Site Plan of the Shopping Center                       |
| <b><u>Exhibit C</u></b> | Construction Rider                                     |
| <b><u>Exhibit D</u></b> | Excluded Costs   |
| <b><u>Exhibit E</u></b> | Subordination Non-Disturbance and Attornment Agreement |
| <b><u>Exhibit F</u></b> | Tenant Signage Characteristics                         |
| <b><u>Exhibit G</u></b> | Guaranty   |

## EXHIBIT A

### LEGAL DESCRIPTION FOR LAND

A tract of land in U.S. Survey 373, Township 44 North, Range 5 East, situated in the City of Fenton, St. Louis County, Missouri and further described as follows:

Beginning at a point in the common line of parcels of land above identifies as tract "A" and tract "D", said point being also in the Northern line of a 12 foot strip described in Book 6372 page 279 of the St. Louis County Records for the widening of Gravius Road 60 feet wide (Old State Highway 30); thence North 10 degrees 56 minutes 14 seconds West, 221.33 feet along the said common line to a point; thence North 22 degrees 03 minutes 34 seconds West, 330.55 feet to a point being the common corner of the above described tracts "D" and "B"; thence North 44 degrees 13 minutes 20 seconds West, 210.73 feet to a point, said point being in the Southern Right-of-Way of New State Highway 30, thence North 59 degrees 01 minute 24 seconds East 40.38 feet to a right-of-way monument, said monument being at the centerline station 461 + 90,226 feet left of the said centerline; thence North 65 degrees 02 minutes 08 seconds East 200.85 feet to a right-of-way Monument, said monument being a centerline station 459 + 80,200 feet left of the said centerline; thence North 71 degrees 57 minutes 32 seconds East, 4.74 feet to a point, said point being in the said Southern right-of-way and being the common corner of the above described tract "B" and "C"; thence North 71 degrees 57 minutes 32 seconds East 332.49 feet to a point in the said Southern right-of-way; thence departing from the said Southern right-of-way, South 22 degrees 07 minutes 15 seconds East 234.46 feet to a point, said point being the Eastern common corner of the above described tract "C" and "D"; thence continuing South 22 degrees 06 minutes 00 seconds East along the Eastern line of tract "D", 363.59 to a point in the Northern line in a tract to Fred A. Henze and described in Book 7417 page 1948 of the St. Louis County Records; thence South 70 degrees 47 minutes 00 seconds West along the said Northern line, 143.86 feet to a point; thence continuing along said Northerly line South 74 degrees 11 minutes 00 seconds West 56.35 feet to a point; thence along the Western line of said Henze Tract South 22 degrees 03 minutes 18 seconds East 187.93 feet to a point in the said Northern line of the 12 foot widening strip; thence South 74 degrees 11 minutes 00 seconds West along the said Northern line 343.17 feet to the point of beginning.

**EXHIBIT B**

**SITE PLAN OF THE SHOPPING CENTER**

The attached Site Plan is preliminary and will be replaced by a definitive Site Plan that is mutually acceptable to the parties within 15 days following the date of execution of this Lease.



## EXHIBIT C

### CONSTRUCTION RIDER

This Construction Rider sets forth the terms and conditions relating the performance of the Landlord's Work and the construction of the Improvements pursuant to the agreed upon Plans and Specifications (as defined herein). Any terms with initial capitalized letters not otherwise defined herein shall have the same meanings given them in the Lease.

1. **Improvements:** Landlord agrees, at Landlord's sole cost and expense, to construct the following improvements (the "Improvements") in accordance with final Plans and Specifications approved in the manner set forth in Section 2.2, below:

1.1 Renovation and rehabilitation of an existing structure to accommodate a fitness and related center (the "Demised Premises") comprising approximately 41,624 square feet within a building (the "Building") comprising approximately 86,961 square feet;

1.2 The construction, renovation and/or rehabilitation of all on-site improvements, including (a) the Building; (b) the parking lot and related facilities; (c) other improvements, including but not limited to sidewalks, curbs, gutters, service drives and parking areas with asphaltic and/or concrete paving, striping, traffic directional arrows and signs, pedestrian controls, concrete bumpers, parking lot lighting, surface drainage facilities and landscaped areas and plantings, all in compliance with the final approved Plans and Specifications; and

1.3 The construction, renovation and/or rehabilitation of all off-site improvements, including but not limited to, extension of utilities, i.e. sewers, water service, drainage facilities, paving, curbs, curb cuts, and sidewalks, road improvements and any additional off-site improvements as required by local jurisdiction.

1.4 Unless the Plans and Specifications provide to the contrary, the Improvements shall include, at a minimum:

1.4.1 Outside walls, core walls and columns;

1.4.2 Broom clean, unfinished concrete floors throughout the Demised Premises;

1.4.3 Ceiling grid system and 2 foot by 2 foot ceiling tiles stacked on floor;

1.4.4 Electrical service (1100 AMPS at 277/480-volt) stubbed and sub-metered at the rear of the Demised Premises at a location reasonably acceptable to Tenant;

1.4.5 Two inch (2") water line stubbed and sub-metered to the Demised Premises at a location reasonably acceptable to Tenant;

1.4.6 Six inch (6") waste water line stubbed and sub-metered to the Demised Premises at a location reasonably acceptable to Tenant;

1.4.7 Sprinkler lines stubbed to the Demised Premises at locations reasonably acceptable to Tenant and in full compliance with all applicable building and safety codes, ordinances and regulations;

**1.4.8** New heating, ventilation and air conditioning unit(s) comprising either a 180 ton unit (or several units equaling one ton per 225 square feet of space within the Demised Premises) with a minimum SEER rating of 12;

**1.4.9** Stairwells completed to Building Standard between all floors comprising the Demised Premises (if more than one floor);

**1.4.10** Building Standard metal elevator doors and elevator frames and jambs installed (if Demised Premises constitute more than one floor);

**1.4.11** Building Standard passenger elevators sufficient to provide passenger and freight service (if Demised Premises constitute more than one floor);

**1.4.12** Access at the Building core to domestic cold water, waste and vent systems;

**1.4.13** A gas main riser stubbed and sub-metered to the Demised Premises at a location reasonably acceptable to Tenant;

**1.4.14** The installation, construction, lighting and finish of all pylon and monument sign structures servicing the Shopping Center on which Tenant shall display its signage;

**1.4.15** The lighting of all parking areas and walks located within the Shopping Center in a manner consistent with lighting typically provided in first-class shopping centers located in the metropolitan area in which the Demised Premises are located and in compliance with all building codes and applicable laws, statutes and other mandates issued by all governmental and quasi.-governmental agencies having jurisdiction over the Shopping Center.

**1.4.16** The completion of all landscaping (including without limitation, the installation of irrigation and sprinkler systems) within a 350 foot radius of the main entrance of the Demised Premises.

**1.4.17** The removal of all construction debris, equipment, supplies and trailers from all areas of the Shopping Center located within a 350 foot radius of the main entrance to the Demised Premises.

The work described in this Section 1 (including the matters set forth in the Plans and Specifications referenced and incorporated herein), together with the design related services and other work of Landlord otherwise described in this Construction Rider will be referred to herein as the "Landlord's Work".

Notwithstanding anything to the contrary contained herein, and without limitation, the parties acknowledge and agree that the Landlord's Work shall not include: (i) refrigerators, freezers, blenders, beverage and/or food coolers, water filters, ice machines, microwave ovens or any other kitchen appliances; (ii) exercise equipment, free standing basketball goals, and scoreboards; (iii) tanning beds and tanning equipment; (iv) cabling/wiring for televisions, speakers and related audio-video equipment (although the Landlord's Work will include appropriate conduit and boxes for Tenant to pull its wiring); (v) laundry machines and dryers; (vi) telephone equipment, computer equipment, copiers, fax machines and other office equipment and related cabling/wiring (although the Landlord's Work will include appropriate conduit and boxes for Tenant to pull its wiring); (vii) office, lounge and locker room furniture

and benches; (viii) merchandise display fixtures and floor fixtures in sales areas; and (ix) exterior (building and monument/pylon) and interior brand signage.

**2. Plans and Specifications:** The above referenced Improvements shall be constructed in accordance with plans and specifications (the "Plans and Specifications") to be prepared by Precept Design, LLC or such other architect reasonably acceptable to Tenant and Landlord (the "Architect") based upon and consistent with the proto-type plans and specifications provided to or to be provided to Landlord by Tenant (the "Tenant's Design Specifications"). The Architect either has been or will be employed by Landlord and will prepare the proposed Plans and Specifications to Tenant's reasonable satisfaction using its professional judgment and expertise, and the Architect will be responsible for identifying any and all design, engineering or legal issues in the Tenant's Design Specifications in the process of preparing the Plans and Specifications. In this regard, notwithstanding the fact that the Tenant has provided the Tenant's Design Specifications, Tenant will have no responsibility or liability for the design or structural integrity of the Improvements, will not be deemed to have made any representation or warranty as to the adequacy of the Tenant Design Specifications for their intended purposes, and will not have any responsibility for any errors or omissions on the part of the Architect in connection with the Plans and Specifications.

**2.1** Tenant has delivered or will deliver to Landlord concurrently with the execution of this Lease, for submittal to Architect, the Tenant Design Specifications and related information, drawings and proto-type plans and specifications outlining, in reasonable detail, Tenant's requirements as to the interior layout of Building, applicable construction standards, and sound engineering practices. Architect shall promptly prepare Plans and Specifications based upon the Tenant Design Specifications, information furnished by the Tenant and upon the description of the Improvements and the work to be done by Tenant under Section 7.2 of this Construction Rider. Such Plans and Specifications shall be completed by Architect on or before the expiration of thirty (30) days following the date on which Landlord delivers the Tenant Design Specifications and related information to Architect. Landlord shall submit the Tenant Design Specifications to Architect no later than the later of (i) receipt thereof from Tenant; or (ii) date on which the Lease is executed by both Landlord and Tenant.

**2.2** In the preparation of the Plans and Specifications, Architect shall consult and cooperate with Tenant to the fullest extent necessary or desirable to produce Plans and Specifications consistent with the requirements of the Lease, the Tenant Design Specifications, this Construction Rider and other requirements of Tenant, and shall promptly furnish such prints as Tenant may require from time to time to coordinate the Landlord's Work in an efficient and orderly manner. The Plans and Specifications shall include not only those Improvements to be made to and within the Demised Premises, but also those Improvements to be made within the Shopping Center (excluding any interior finish improvements for any space in the Building other than the Demised Premises). When the proposed Plans and Specifications have been completed they shall be submitted to Tenant by Landlord with a request for Tenant's final approval (the "P & S Approval Request"). Upon receipt of the P & S Approval Request, Tenant will review and either approve or disapprove the proposed Plans and Specifications. If approved, Tenant will indicate its approval of the proposed Plans and Specifications by executing such Plans and Specifications through one of its authorized representatives. In this regard, the proposed Plans and Specifications submitted to Tenant will be deemed approved by Tenant if Tenant fails to give Landlord written notice identifying its objections to the proposed Plans and Specifications within twenty (20) business days following its receipt of the Plans and Specifications and initial P & S Approval Request. Once the proposed Plans and Specifications are approved or are deemed approved by Tenant in the manner provided herein, those Plans and Specifications shall become the approved Plans and Specifications for the construction of the Improvements, including on and off-site improvements as required by this Construction Rider. If Tenant does give Landlord written notice



identifying objections to the proposed Plans and Specifications within the time period provided herein, Landlord will timely coordinate efforts with the Architect to make appropriate and responsive revisions to the proposed Plans and Specifications, and will re-submit a revised version of the proposed Plans and Specifications to Tenant, with a new P & S Approval Request, as soon as possible. Landlord and Tenant agree that time is of the essence in this project and mutually agree to cooperate with one another in achieving the final approved Plans and Specifications as quickly as possible. Tenant agrees that its approval of the Plans and Specifications will not be unreasonably withheld, conditioned or delayed.

**2.3** Notwithstanding any provision set forth herein to the contrary, Tenant's approval of the Plans and Specifications constitutes only a determination that Tenant's Design Specifications have been incorporated therein. Tenant's approval shall not be construed as a determination of compliance with building codes, legal ordinances, or as a detailed check of architectural drawings and specifications and Landlord shall continue to remain solely responsible for such matters. In addition, Landlord shall at all times ensure that the Plans and Specification incorporate all specifications (and materials) required by the Tenant Design Specifications. Landlord shall not be permitted to deviate from the Tenant Design Specifications unless (i) Landlord provides Tenant with a written memorandum identifying in detail those deviations as a part of Landlord's P & S Approval Request, and (ii) Tenant approves such deviation(s) in writing (which approval will not be unreasonably withheld, conditioned or delayed.)

**3. Tenant Reimbursement.** Tenant has agreed to pay the Tenant's Contribution (as herein defined), in accordance with the provisions of this paragraph. In this regard, the Tenant will be obligated to contribute the sum of Two Million Dollars (\$2,000,000.00) (the "Tenant's Contribution") towards the cost of the Landlord's Work. Twenty five percent (25%) of the Tenant's Contribution shall be payable by Tenant to Landlord within thirty (30) days following execution of the Lease (the "Initial Tenant Contribution Date"). Thereafter, Tenant will be obligated to pay an additional Twenty five percent (25%) of the Tenant's Contribution to Landlord on the following schedule:

| Number of Days Following the Initial Tenant Contribution Date | Aggregate Amount of Tenant Contribution Paid by Tenant to Landlord |
|---|--|
| 30  | 50%  |
| 60  | 75%  |
| 90  | 100%   |

**4. Project Schedule.** The Landlord has established a preliminary schedule for the completion of the Work, a copy of which is attached hereto as **Schedule I** (the "Project Schedule"). The Project Schedule has been prepared to correspond with the Target Commencement Date that is specified in Section 1(C) of the Lease.

**5. General Contractor:** The Landlord will select a general contractor (the "Contractor") for the project and will be solely responsible for the supervision of the Landlord's Work performed by the Contractor. Landlord and Tenant shall use all good faith efforts to coordinate the efforts of the Contractor with the efforts of the contractor selected by Tenant to perform the work to be performed by Tenant to or within the Improvements and/or the Demised Premises.

**6. Construction:**

**6.1** Landlord shall be responsible for procuring all permits and approvals from all applicable Authorities as necessary and required for the Landlord's Work (the "Approvals"). Landlord will commence construction on or before the expiration of thirty (30) days following the date on which Tenant delivers to Landlord an executed P & S Approval Request and shall diligently pursue the completion of such construction in accordance with the approved Plans and Specifications and this Construction Rider and in accordance with the final, definitive Project Schedule.

**6.2** After commencement of construction, Landlord shall exercise all commercially reasonable efforts to complete the Improvements by the Target Commencement Date specified in Section 1(C) of the Lease, as contemplated in Section 3(A) of the Lease. Landlord shall provide Tenant with written documentation claiming any condition of Force Majeure or Tenant Delay within ten (10) business days following the date(s) on which such conditions of Force Majeure or Tenant Delay existed. The Project Schedule shall be adjusted on a day for day basis to account for each condition of Force Majeure and/or Tenant Delay. No adjustment to the Project Schedule will be permitted unless Landlord timely provides such documentation to Tenant.

**6.3** All aspects of the Landlord's Work conducted and completed by Landlord shall comply with applicable laws, ordinances, rules, orders and regulations promulgated by all governmental or quasi-governmental agencies having jurisdiction over such Landlord's Work.

**6.4** The time limits set forth in the Project Schedule shall be extended by a period of time equal to the time during which, after commencement of construction, completion is delayed by Force Majeure. Tenant, in no event, shall be responsible for any cost or expense caused by such delay and all such costs or expenses shall be paid by Landlord, except that any increased costs or expenses due solely to any unreasonable delay caused by Tenant (and documented by Landlord as a Tenant Delay) shall be paid by Tenant.

**6.5** No material changes, modifications or alterations to the approved Plans and Specifications may be made without the prior written consent of Landlord and Tenant (which consent shall not be unreasonably withheld, conditioned or delayed by either Party).

**6.6** During construction, Tenant and its representatives shall at all times have access to the project for the purpose of making inspections of the Landlord's Work in progress. Nothing herein contained shall be construed as an obligation upon Tenant to make such inspections and it is expressly agreed that it is solely Landlord's obligation to ensure that the construction is completed in compliance with this Construction Rider, the approved Plans and Specifications and with all laws, statutes, regulations, codes and other applicable governmental and quasi-governmental mandates. Tenant shall have the right to conduct a final inspection of the improvements with Architect and/or with an architect employed by Tenant at Tenant's sole cost and expense.

**6.7** The Landlord's Work shall be considered completed only when (i) all such Landlord's Work is fully completed in accordance with this Construction Rider, the approved Plans and Specifications and in compliance with and with all Approvals and all applicable laws, statutes, regulations, codes and other applicable governmental and quasi-governmental mandates, and (ii) Landlord has delivered to Tenant (a) the Architect's certificate of substantial completion that the Landlord's Work is complete; and (b) any and all certificates of occupancy (whether temporary or permanent) or like documents required by the applicable Authorities required for Tenant's use, possession and occupancy of the Demised Premises for Tenant's intended purposes.

The Improvements will be deemed to be "operationally complete" at the stage of the Landlord's Work when the Improvements are sufficiently complete so that Tenant can fully occupy and utilize the Demised Premises for its intended use, including but not limited to, the Building, parking lot, walkways, landscape areas, and all associated improvements. Landlord's completion of the requirements of the immediately preceding sentence shall constitute "Substantial Completion" of the Improvements. By accepting possession of the Demised Premises while the Improvements are only "operationally complete," Tenant does not waive any failure of Landlord to complete all of the Landlord's Work in accordance with the Plans and Specifications and this Construction Rider and in compliance with the Approvals and with all laws, statutes, regulations, codes and other applicable governmental and quasi-governmental mandates.

Upon receipt of the certificate of occupancy (temporary or final) and the executed Architect's certificate of substantial completion, a designated representative for the Tenant will make an inspection of the Work to determine if the Demised Premises are operationally complete. Landlord, at Landlord's sole cost and expense, shall immediately correct any non-conforming or defective conditions identified by Tenant and/or Tenant's representative so as to avoid delay in the performance of Tenant's work within the Demised Premises.

**6.8** Subject to the provisions of Section 1(C) of the Lease, Tenant and Tenant's contractors shall have the right to enter the Building at any time prior to the Commencement Date of the Lease for the purpose of installing Tenant's FF&E and other work of Tenant described in Section 7.2 of this Construction Rider, so long as such entry and installation does not unreasonably interfere with completion the Improvements. Landlord and Tenant (and their respective representatives, agents, contractors and subcontractors) shall use all good faith efforts to coordinate with one another so as to ensure the timely and efficient construction and finish-out of the Improvements on the Demised Premises. Notwithstanding the foregoing, if Landlord incurs additional costs or expenses to perform the Landlord's Work as a result of (i) Tenant's failure to comply with the provisions of this Construction Rider and/or the Plans and Specifications (as applicable); (ii) the existence of any defective or non-conforming work performed by Tenant (under Section 7.2, below); or (iii) Tenant Delays, Tenant shall be solely responsible for the payment of such additional costs and expenses. All such additional costs and expenses shall be payable by Tenant to Landlord within thirty (30) days following Landlord's delivery of written demand therefore to Tenant, together with copies of documentation reasonably substantiating such additional costs and expenses.

**6.9** Landlord agrees to obtain from its Contractor a minimum one-year written warranty (commencing upon the Commencement Date of the Lease) against defects in materials or workmanship. Concurrently with Tenant's acceptance of the Landlord's Work pursuant to Section 6.7 of this Construction Rider, or as soon thereafter as is reasonably possible, Landlord shall deliver to Tenant, copies of all such warranties relating to those items Tenant is obligated to maintain and repair under the provisions of this Lease. Landlord agrees to fully cooperate with Tenant in enforcing all such warranties.

Landlord warrants to Tenant that all materials and equipment furnished for this project will be new unless otherwise specified in a writing previously approved and executed by Tenant, and that all work will be good quality, free from faults and defects, in conformance with this Construction Rider, the Plans and Specifications and in compliance with the Approvals and with all laws, statutes, regulations, codes and other applicable governmental and quasi-governmental mandates.

**6.10** Upon Substantial Completion of the Landlord's Work, Landlord, at Landlord's sole cost and expense, shall provide Tenant with complete and accurate copies of all shop drawings, cut sheets,

equipment and manufacturer's warranties and/or other construction submittals received by Landlord or prepared or used by Contractor during the course of construction in the form of a standard close-out binder. Landlord shall obtain and deliver to Tenant such other construction documentation reasonably requested by Tenant.

**7. Landlord's and Tenant's Work:**

**7.1** The approved Plans and Specifications shall set forth in detail all of the Landlord's Work required to be performed by Landlord and all details required to complete the Improvements comprising the Landlord's Work, all of which will be performed and constructed at Landlord's expense and direction, subject to the terms of this Construction Rider.

**7.2** Tenant shall furnish, at its own cost and expense, the items and/or perform the work, if any, specified on Schedule II, attached hereto. Notwithstanding the foregoing sentence to the contrary, if Tenant incurs additional costs or expenses to perform the work as set forth on Schedule II as a result of (i) Landlord's failure to comply with the provisions of this Construction Rider and/or the Plans and Specifications; (ii) the existence of any defective or non-conforming item of Landlord's Work performed by Landlord; or (iii) properly and timely documented delays caused by Landlord ("Landlord Delays") or conditions of Force Majeure, Landlord shall be solely responsible for the payment of such additional costs and expenses. All such additional costs and expenses shall be payable by Landlord to Tenant within thirty (30) days following Tenant's delivery of written demand therefore to Landlord, together with copies of documentation reasonably substantiating such additional costs and expenses.

SCHEDULE I

PROJECT SCHEDULE

**Gold's Gym - Hackman Site  
Fenton, MO**

**Preliminary Schedule  
July 20, 2006**

| <u>Activity</u>                         | <u>Working Day<br/>Duration</u> | <u>Start</u> | <u>Finish</u> |
|---|---------------------------------|--------------|---------------|
| <b>Building Permit</b>                  |                                 |              |               |
| Prepare Architectural Drawings          | 30                              | 07/17/06     | 08/25/06      |
| Prepare Structural Drawings             | 30                              | 07/17/06     | 08/25/06      |
| Prepare MEP Drawings                    | 30                              | 07/17/06     | 08/25/06      |
| Submit Drawings Building Permit         | 1                               | 08/25/06     | 08/25/06      |
| Review Drawings                         | 55                              | 08/28/06     | 11/10/06      |
| Obtain Building Permit                  | 1                               | 11/10/06     | 11/10/06      |
| <b>General Contractor Selection</b>     |                                 |              |               |
| Bidding                                 | 20                              | 08/28/06     | 09/22/06      |
| Scope Review                            | 15                              | 09/25/06     | 10/13/06      |
| Award Contract                          | 1                               | 10/13/06     | 10/13/06      |
| Mobilize On-Site                        | 20                              | 10/16/06     | 11/10/06      |
| <b>Building Construction - 6 months</b> |                                 |              |               |
| Interior Build-Out                      | 100                             | 11/13/06     | 03/30/07      |
| Tenant FF&E                             | 20                              | 03/05/07     | 03/30/07      |

**SCHEDULE II**

**TENANT'S WORK**

Tenant to determine if it will be performing any Tenant work within Thirty (30) days following the date of this Lease.

## EXHIBIT D

### EXCLUDED COSTS

The following costs and expenses shall constitute Excluded Costs and shall not be included in Common Area Costs or otherwise included in Operating Expenses under the Lease:

- (a) Any ground lease rental payable by Landlord;
- (b) Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles (collectively referred to herein as "Capital Items") other than replacing and/or adding improvements mandated by any governmental authority (to the extent that mandate is first applicable to the Shopping Center after the Commencement Date), and any repairs or removals necessitated thereby, in each and any such case, amortized over their useful life as determined in accordance with generally accepted accounting principles, consistently applied.
- (c) Rentals for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased, rather than rented, would constitute a Capital Item that is specifically excluded in (b) above (excluding, however, equipment not affixed to the Building that is used in providing janitorial or similar services);
- (d) Costs incurred by Landlord for the repair of damage to the Shopping Center and/or any improvements thereon to the extent that Landlord is reimbursed by insurance proceeds or to the extent covered by the deductible amount of any such insurance coverage and the costs of all capital repairs, regardless of whether such repairs are covered by insurance;
- (e) Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant or other occupants' improvements in the Shopping Center or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of all or any portion of the Shopping Center;
- (f) Depreciation, amortization and interest payments other than those specifically identified in (b) above and those relating to materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party ("Third Party MTSE") where such depreciation, amortization and interest payments of such Third Party MTSE would otherwise have been included in the charge for such third party's services, all as determined in accordance with generally accepted accounting principles, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;
- (g) Marketing costs, including without limitation, leasing commissions, attorneys' fees incurred in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease or assignment negotiations, and transactions with present or prospective tenants or other occupants of the Shopping Center;



- (h) Expenses incurred in connection with services or other benefits that are not provided on a non-discriminatory basis (cost and availability) to all tenants of the Shopping Center;
- (i) Costs incurred by Landlord and attributable in whole or in part to any default by Landlord or any tenant under the terms and conditions of any lease of space in the Shopping Center;
- (j) Overhead and profit increments paid to Landlord or to subsidiaries or affiliates of Landlord for goods and services in the Shopping Center to the extent the same exceeds the costs of such goods and services if rendered by unaffiliated third parties on a competitive basis;
- (k) Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Shopping Center or any portions thereof (except as permitted in (b) above);
- (l) Landlord's general corporate overhead and general and administrative expenses including, without limitation (i) costs and fees incurred in connection with accounting and legal matters; (ii) costs and expenses of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Shopping Center; (iii) costs and expenses incurred in connection with any disputes arising between Landlord and any employee of Landlord (if any) or between Landlord and the Shopping Center management; (iv) entertainment, dining or travel costs and expenses incurred for any purpose whatsoever; (v) costs of any magazine, newspaper, trade, online services or other subscriptions; (vi) costs and expenses incurred in connection with any training or incentive programs; (vii) costs associated with any "in-house" legal and/or accounting activities and (viii) outside fees, costs and expenses incurred by Landlord in connection with disputes with other tenants;
- (m) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord on or in any parking facilities located on the Shopping Center and/or wherever Tenant or its patrons are granted parking privileges, and all fees paid to any parking facility operator (on or off site);
- (n) Advertising and promotional expenditures, including flowers, balloons, or other gifts provided to any entity including, but not limited to, tenants, employees, vendors, contractors, prospective tenants and agents, and costs and expenses incurred in connection with any "tenant relations" parties, events or promotions; provided, however, that Common Area Costs will include costs incurred in the operation, repair and maintenance of the Shopping Center Sign, excluding any installation, maintenance, repair, replacement and other costs incurred in connection with any individual tenant's sign panel located on the Shopping Center Sign;
- (o) The cost of any electric power used by any tenant other than Tenant in the Shopping Center in excess of the Building-standard amount, or electric power costs for which any tenant directly contracts with the local public service company or of which any tenant is separately metered or sub-metered and pays Landlord directly;
- (p) All costs and expenses (including penalties or damages incurred for non-compliance) incurred in connection with upgrading the Shopping Center or any portions thereof to comply with life, fire and safety codes, ordinances, statutes or other laws in effect prior to the Commencement Date of the Lease including, without limitation, the American with Disabilities Act;
- (q) All costs and expenses incurred by Landlord for which Landlord has been compensated by the payment of a management fee or other assessment or by payment under any insurance policy;

- (r) All costs, expenses, damages or losses arising in whole or in part from the negligence or willful misconduct of Landlord or other tenants of the Shopping Center and/or their respective agents, employees, vendors, contractors, licensees, concessionaires, patrons or representatives;
- (s) Notwithstanding any contrary provision set forth in this Lease (including without limitation, any provision relating to capital expenditures) any and all costs arising from the presence of Hazardous Materials in or about the Demised Premises, the Building and/or the Shopping Center, including, without limitation, costs and expenses incurred in connection with any environmental clean-up, response action, or remediation on, in, under or about the Shopping Center (or any portion thereof) and all costs and expenses associated with the defense, administration, settlement, monitoring or management of any such remediation efforts;
- (t) Costs and expenses incurred or expended in connection with any charitable or political contributions made by or on behalf of Landlord;
- (u) Costs and expenses incurred in connection with any mandatory or voluntary special assessment on the Shopping Center (or any portion thereof) imposed by any transit district authority or any other applicable Authorities;
- (v) Costs and expenses incurred in connection with sculptures, paintings or other objects of art located on or about the Shopping Center;
- (w) Costs and expenses (including all attorneys' fees and costs of settlement judgments and payments) arising in connection with any potential or actual claims, disputes or potential disputes, litigation or potential litigation or arbitration or potential arbitration involving Landlord and/or the Shopping Center, including, without limitation, any claims disputes or potential disputes, litigation or potential litigation or arbitration or potential arbitration with any ground lessor, mortgagee, or tenant;
- (x) Costs and expenses of "tap fees" and/or any sewer or water connection fees for the benefit of any particular tenant in the Shopping Center;
- (y) All costs and expenses incurred by Landlord for use of any portions of the Shopping Center to accommodate events including, but not limited to, shows, promotions, kiosks, displays, filming, photography, private events or parties, ceremonies, and advertising beyond the normal expenses otherwise attributable to providing services for normal Shopping Center operations during standard Shopping Center hours of operation;
- (z) Costs and expenses attributable to "validated" parking for any entity;
- (aa) "Finders fees," brokerage commissions, job placement costs or job advertisement costs and expenses incurred by Landlord;
- (ab) Costs and expenses associated with any and all "above-standard" cleaning activities, including, but not limited to, construction cleanup or special cleanings associated with parties or events and specific tenant requirements in excess of services, if any, provided to all tenants on a non-discriminatory basis, and all trash collection, removal, hauling and dumping activities related to such above standard cleaning activities;
- (ac) Real Estate Taxes or Insurance Premiums;

- (ad) Rentals and other related expenses incurred in leasing HVAC systems, elevators or other equipment ordinarily considered to be Capital Items, except for (a) expenses incurred in connection with making minor repairs to the Shopping Center systems and keeping such systems in operation while minor repairs are being made; and (b) costs of equipment not affixed to the Shopping Center that are used in providing janitorial or similar services; and
- (ae) Tax penalties and charges incurred as a result of Landlord's negligence, inability or unwillingness to make payments or to file any tax or informational returns when due; and
- (af) Costs and expenses incurred in connection with the repair of latent defects in the base, shell or core of any improvements installed in the Shopping Center by Landlord or on Landlord's behalf.

## EXHIBIT E

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2006, by and between **Southwest Bank of St. Louis**, a national banking association ("Lender"), **Scannell Properties #62, LLC**, an Indiana limited liability company ("Landlord") and **Gold's St. Louis, LLC**, a Delaware limited liability company ("Tenant").

#### **RECITALS:**

- A. Landlord is the owner of that certain real property and improvements having an address of 635 Gravols Road, Fenton, Missouri (such real property and improvements collectively referred to herein as the "Shopping Center"). Tenant has demised a portion of the Shopping Center (the "Premises") pursuant to that certain Lease Agreement dated effective \_\_\_\_\_, 2006 by and between Landlord and Tenant (the "Lease")
- B. This Agreement is being executed by the parties in connection with a certain loan (the "Loan") made by Lender to Landlord, and secured in part, by a Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of \_\_\_\_\_, 2006 creating a lien against the Premises (such document referred to herein as the "Mortgage"). All documents executed in connection with the Loan, including the Mortgage, shall be collectively referred to herein as the "Loan Documents."

#### **AGREEMENT**

In consideration of the foregoing, the mutual obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, Lender, Landlord and Tenant, each intending to be legally bound, agree as follows:

- 1. Subject to the satisfaction by Lender of its obligations hereunder, all terms and conditions set forth in the Lease and all rights, options, liens and charges created thereby are and shall be subject and subordinate in all respects to the Loan Documents and to all present or future advances under the obligations secured thereby and to all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time.
- 2. If Lender exercises any of its rights under the Loan Documents as against Landlord's interest in any portion of the Shopping Center, including but not limited to, an entry by Lender onto any portion of the Shopping Center (including the Premises) pursuant to the provisions set forth in the Loan Documents, a foreclosure of any liens created by the Loan Documents, a power of sale authorized by one or more of the Loan Documents and/or the exercise of any other such right:
  - (a) the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, and shall be subject to all of the terms, covenants and conditions set forth in the Lease; and

(b) Lender shall not disturb Tenant's rights under the Lease, including without limitation, Tenant's right of quiet possession of the Premises, so long as Tenant is not in default beyond any applicable grace period of any material term, covenant or condition required to be performed or observed by Tenant as set forth in the Lease.

3. If Landlord exercises any power of sale or foreclosure right available to it pursuant to the Loan Documents (or if Landlord accepts a deed in lieu of the exercise of such power of sale or foreclosure right), Tenant will attorn to and recognize Lender as "Landlord" under the Lease for the remainder of the Lease term (including any extension periods that have been or hereafter will be exercised by Tenant) upon the same terms and conditions as are set forth in the Lease, and Tenant shall pay and perform all obligations of "Tenant" as set forth in the Lease.

4. If Lender succeeds to the interest of Landlord under the Lease:

(a) Lender shall not be liable for any act, omission, neglect or default or any prior landlord under the Lease (including, without limitation, the then defaulting Landlord), save and except to the extent such act, omission, neglect or default continues after Lender's succession to Landlord's interest in the Lease and/or Lender's ownership or operation of all or any part of the Shopping Center.

(b) Lender shall not be subject to any claim, defense, counterclaim or offset that Tenant may have against any prior landlord under the Lease (including, without limitation, the then defaulting Landlord), save and except to the extent the condition or matter giving rise to such claim, defense, counterclaim or offset continues to exist after Lender's succession to Landlord's interest in the Lease and/or Lender's ownership or operation of all or any part of the Shopping Center.

(c) Lender shall not be bound by any payment of rent or additional rent that Tenant might have made to any prior landlord under the Lease (including, without limitation, the then defaulting Landlord) more than thirty (30) days in advance of the due date for such rent.

(d) Landlord shall not be bound by any material amendment or modification to the Lease made without Lender's prior written consent (which such consent shall not be unreasonably withheld, conditioned or delayed) provided that such material amendment or modification is made after the date on which Tenant receives a fully executed copy of this Agreement.

5. Provided that Tenant's right of quiet possession of the Premises under the Lease is not and shall not be disturbed or otherwise limited, negated or affected, Lender may name Tenant in any foreclosure or other action or proceeding initiated by Lender so as to permit it to exercise any foreclosure or other remedy available to it under the Loan Documents. Subject to the provisions set forth in this Agreement, Lender shall have the right, without obtaining Tenant's consent, to foreclose on any lien created under the Loan Documents (or to accept a deed in lieu of such foreclosure) or to exercise any other remedies available to it under the Loan Documents.

6. Tenant shall provide Lender with copies of all notices given by Tenant to Landlord upon Landlord's default(s) under the Lease, in the same manner and at such times Tenant gives any such notice of default to Landlord. Lender shall have the right (but not obligation) to remedy any Landlord default under the Lease and shall have the same notice and cure periods specified for Landlord under the Lease in which to do so. Tenant shall accept performance by Lender of any term, covenant or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord.

7. Neither Lender (nor its designee) shall become liable under the Lease unless and until Lender (and/or its designee) become(s) succeeds to the interest of Landlord under the Lease or otherwise becomes the owner and/or operator of all or any portion of the Shopping Center.

8. Tenant acknowledges the execution of the Loan Documents by Landlord in favor of Lender in connection with the Loan. Tenant acknowledges that the interest of Landlord under the Lease has been assigned to Lender solely to secure the repayment and performance of obligations required to be made by Landlord under the Loan Documents, and that Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof by virtue of any assignments made by Landlord to Lender in the Loan Documents.

9. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of either (a) actual receipt (with confirmation receipt executed by recipient); (b) two (2) business days following the date on which such notice is deposited in a United States Postal Service Depository, postage prepaid, certified or registered mail, return receipt requested; or (c) actual receipt is sent via recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

If to Lender: Southwest Bank of St. Louis

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy sent contemporaneously and in similar manner to:

Southwest Bank of St. Louis

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Tenant: Gold's St. Louis LLC  
125 East John Carpenter Freeway  
13<sup>th</sup> Floor  
Irving, TX 75062  
Attn: Real Estate Department

With a copy sent contemporaneously and in similar manner to:

J. Bradley Greenblum, Esq.  
811 Barton Springs Road  
Suite 500  
Austin, Texas 78704

If to Landlord: Scannell Properties #62, LLC  
800 East 96<sup>th</sup> Street  
Suite 175  
Indianapolis, Indiana 46240  
Attn: General Counsel

10. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their respective successors and assigns. The term "Tenant" as used herein includes any successor and assigns of the named Tenant herein.

11. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

12. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against whom enforcement of the termination, amendment, supplement, waiver or modification is sought.

13. The provisions of this Agreement shall be construed in accordance with the laws of the State of which the Premises are located.

[execution pages to follow]

EXECUTED as of the date first above written.

**LENDER:**

Southwest Bank of St. Louis  
a national banking association

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

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

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

**TENANT:**

GOLD'S ST. LOUIS LLC,  
a Delaware limited liability company

By: Gold's Holding Corp.  
a Delaware corporation  
Its General Partner

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

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

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

**LANDLORD:**

SCANNELL PROPERTIES #62, LLC,  
an Indiana limited liability company

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

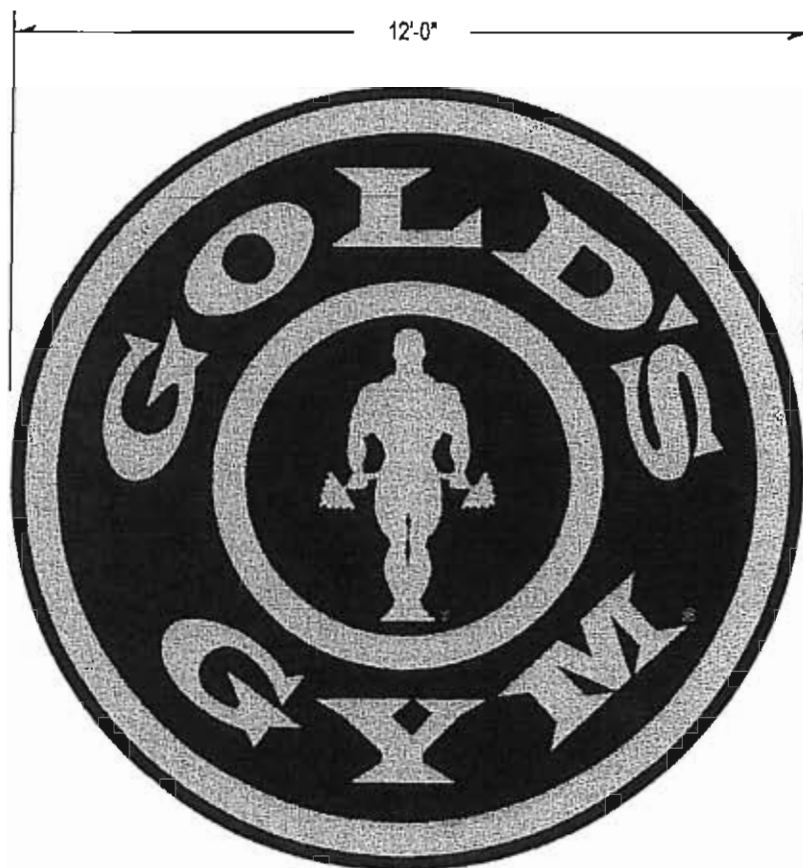
Name: \_\_\_\_\_

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



EXHIBIT F

TENANT'S SIGNAGE CHARACTERISTICS



Wall Sign • Front View

Scale 3/8" = 1' For Production

#### SPECIFICATIONS FOR FABRICATION AND SHIP:

- Internally illuminated cabinet built to UL specification
- Quantity: ONE (1)
- Overall height of sign: 12' - 0" / Overall length of sign: 12' - 0"
- Total square feet: 144 SQ.FT.
- Aluminum construction
- Lexan: 3/16"
- Retainer: 2 1/2"
- H.O. Fluorescent Illumination
- Primary electrical requirement:  
120 volt (Installed within six feet of sign by others)  
Timer or photo-cell (Installed by others)

#### COLOR AND NEON SPECIFICATIONS:

- Cabinet painted with two-stage automotive acrylic
- Returns: BLACK
- Interior painted for Increased Illumination: WHITE
- 3/16" WHITE LEXAN face
- First-surface translucent vinyl graphics  
3M™ 3630-015 YELLOW  
3M™ 7725-12 BLACK
- Retainer: Black

#### OTHER COMPONENTS /

#### SPECIAL CONSTRUCTION CONSIDERATIONS:



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9129 Merric Blvd. • Austin • Texas 78758  
800.327.1104 • p.512.494.0002 • f.512.494.0003  
www.stsigns.com

Client Name:  
**GOLD'S GYM**

Location:  
902 W. Central Expressway  
Killeen, TX

Start Date: 2/22/2006  
Last Revision: 3/07/2006  
Job#: 11203  
Drawing#: 11203iv2s1  
Page: 1 of 2

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

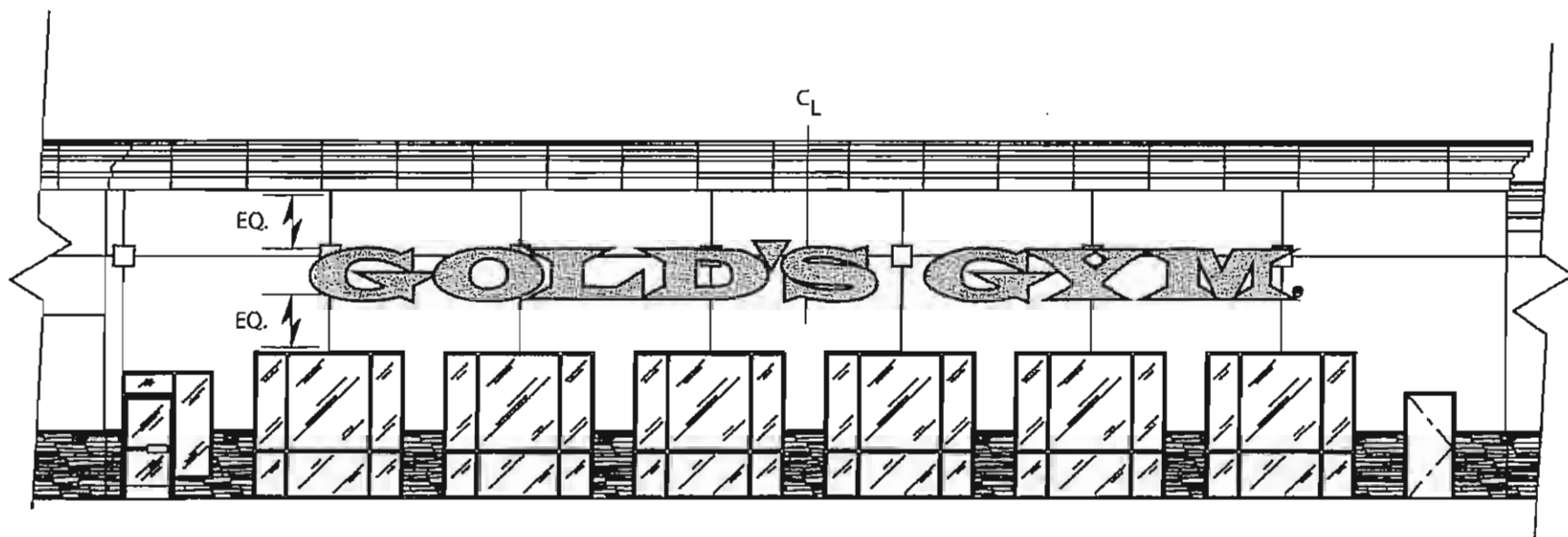
• \_\_\_\_\_  
Client Approval

• \_\_\_\_\_  
Landlord Approval

Sales Rep:  
Robert McDonald  
Designer:  
*Nash*



Face-Illuminated, Individually Mounted Channel Letters • Gold's Gym



**A** Proposed Signage • Elevation Rendering  
Scale 1/16" = 1' For Production

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800.327.1104 • p.512.494.0002 • f.512.494.0003  
www.stsigns.com

Client Name:  
**GOLD'S GYM**

Location:

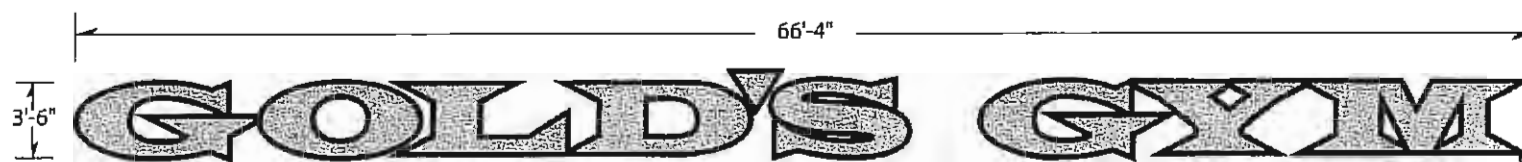
APPROVAL: I have reviewed and approved the sign details on this drawing for fabrication and installation.  
Client Approval

Landlord Approval

Sales Rep:  
STI  
Designer:

DESIGNER  
*Handwritten Signature*  
LISTED  
IIDA AIA

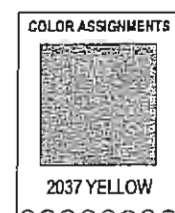
# Face-Illuminated, Individually Mounted Channel Letters • Gold's Gym



**A** Channel Letters • Individually Mounted  
Scale 1/8" = 1' For Production

## SPECIFICATIONS FOR FABRICATION AND SHIP:

- Internally illuminated channel letters built to UL specification
- Quantity: ONE (1)
- Overall height of sign: 3' - 6" / Overall length of sign: 66' - 4"
- Total square feet: 232.166 sq.ft.
- Aluminum construction: backs .063 / returns .040 / depth 5"
- Plex face: 3/16"
- Trim cap: 1"
- Mounting method:  
individually (remote transformers) with back panel
- Primary electrical requirement:  
120 volt (installed within six feet of sign by others)  
Timer or photo-cell (installed by others)

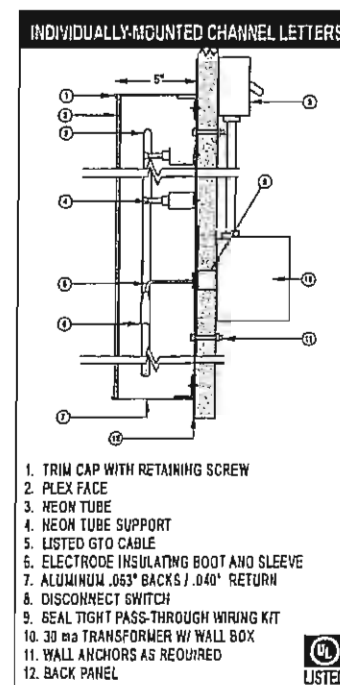


## COLOR AND NEON SPECIFICATIONS:

- Channel letters painted with two-stage automotive acrylic
- Returns: BLACK
- Interior painted for increased illumination: white
- Plex face color: 2037 YELLOW
- Trim cap: BLACK
- .090" back panel: BLACK
- Neon: Number of strokes: 1 - 5 / size: 15mm / color: 6500 white

## OTHER COMPONENTS / SPECIAL CONSTRUCTION CONSIDERATIONS:

- Routed aluminum back panel, painted BLACK



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www.stsigns.com

Client Name:  
**GOLD'S GYM**

Location:

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

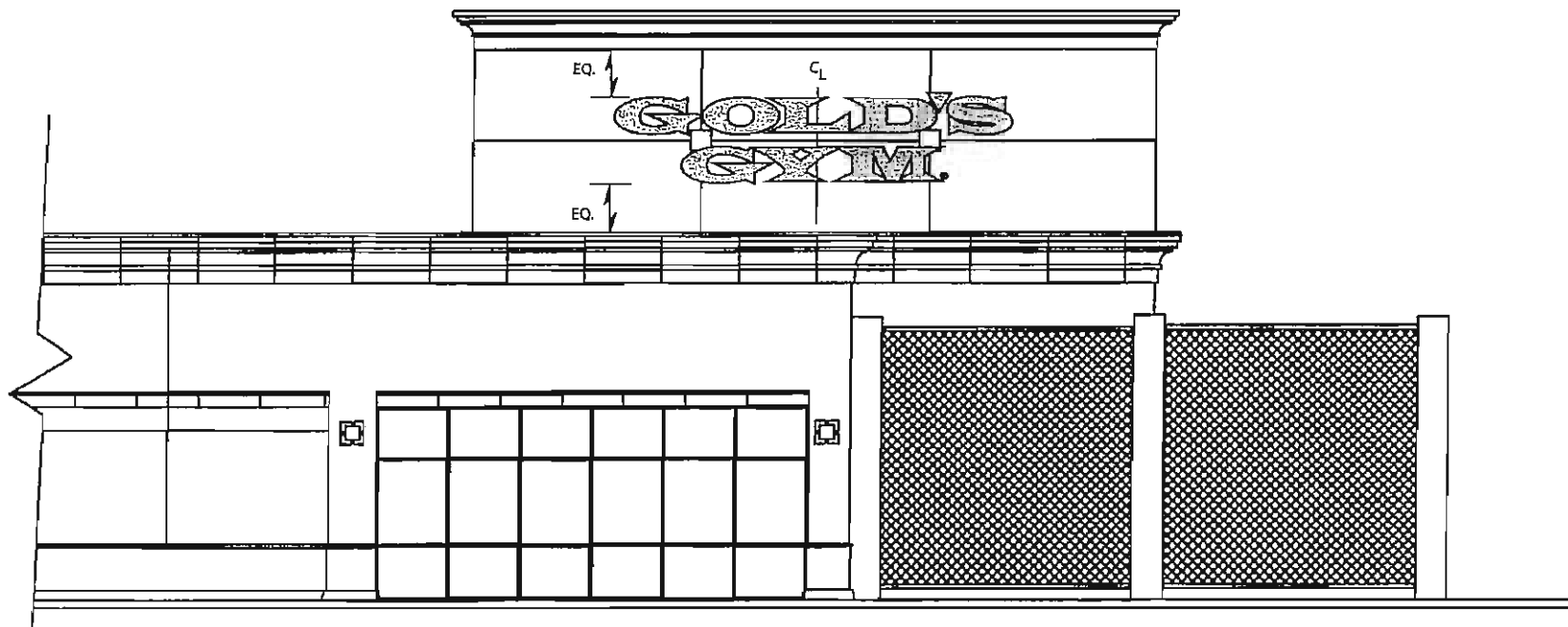
• Client Approval.....

• Landlord Approval.....

Sales Rep.  
STI  
Designer:

*[Signature]*





B

Channel Letters • Elevation Rendering

Scale 3/32" = 1' For Production

**SIGN | TECH**  
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www.stisigns.com

Client Name:

**GOLD'S GYM**

Location:

Page: 2 of 2

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

Client Approval

Landlord Approval

Sales Rep:

STI

Designer:

*Nando*





EF Banner • Front View  
SCALE: 1/4" = 1' 0" • For Production



EF Banners • Elevation Rendering  
SCALE: N.T.S. • For Production

**SPECIFICATIONS FOR FABRICATION:**

- 13 oz. nylon banner stock
- Grommets every 2 feet and vinyl graphics
- Quantity: ONE (1)
- Overall height of sign: 5' - 1"
- Overall length of sign: 40' - 0"
- Total square feet: 203.33 sq.ft.
- Banner Substrate: Yellow
- Vinyl: 3M 7725-12 BLACK, 3M 7725-10 WHITE



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www.stsigns.com

Client Name:  
**GOLD'S GYM**

Location:

Drawing#: 11217efv2s1

Page: 1 of 1

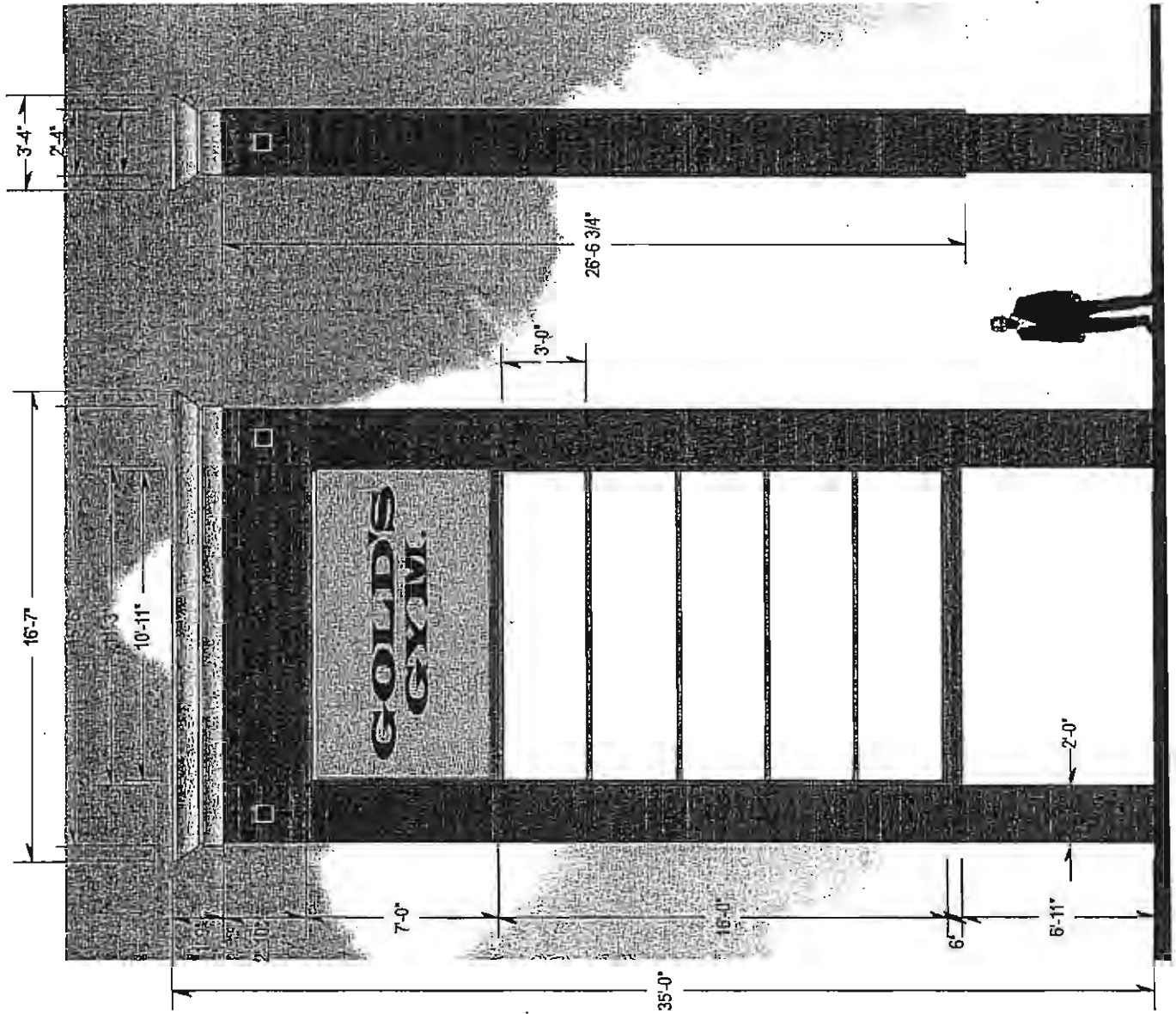
APPROVAL: I have reviewed and approved the sign details on this drawing for fabrication and installation.

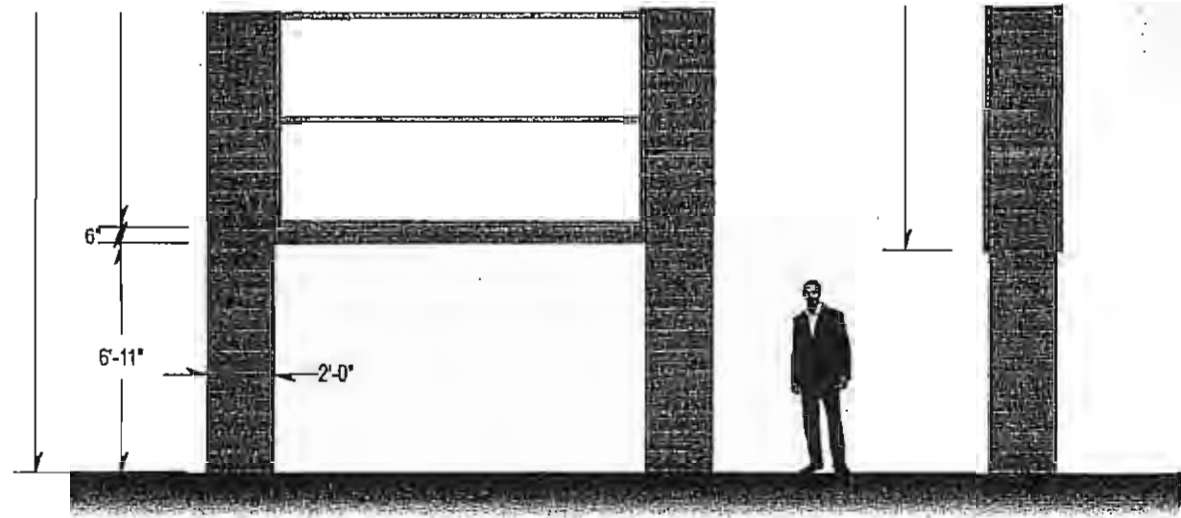
CLIENT APPROVAL

LANDLORD APPROVAL

Sales Rep:  
STI  
Designer:  
*Nash*







**A** D.F. Illuminated Pylon Sign • Elevation  
Scale 3/16" = 1' For Production

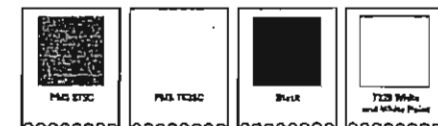
#### SPECIFICATIONS FOR FABRICATION AND INSTALLATION:

- Internally illuminated Pylon Sign, built to UL specifications
- Quantity: . Two (2)
- Custom aluminum construction type w/ air vents
- Top ID Panel to be routed aluminum, backed with 7328 white plex w/ overlaid 3M Black Perforated vinyl
- Overall length of sign: 16' - 7"
- Overall height of sign: 35' - 0"
- Total square feet: 580.42 sq.ft.
- Cabinet depth: 2' 4"
- Retainer size: 2"
- ANCHOR TENANT Face: Flex material w/ overlaid vinyl to tenant specs
- TENANT Faces: 7328 WHITE acrylic w/ overlaid vinyl to tenant specs
- Mounting method: double pole w/ aluminum pole covers
- Pole cover accents and accent squares to be 1/2" Sintra
- Illuminated with high output fluorescent lamps / ballasts (12" centers)
- Primary electrical requirement:  
120 volt (Installed within six feet of sign by others)  
Timer or photo-cell (Installed by others)

#### COLOR SPECIFICATIONS:

- Cabinet painted with two-stage automotive acrylic PMS 875C w/ stucco finish
- Interior painted for increased illumination: white
- Face colors: 7328 WHITE
- Face graphics: translucent vinyl per customer's identity
- Other accents: Top accent painted PMS 7528C / Pole cover accent squares to be painted White (bottom) and Black (top)

#### SPECIAL CONSIDERATIONS



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www.signtech.com

Waco Center  
200 New Road  
Waco, TX 76710

Start Date: 3/2/06  
Last Revision: 3/20/06  
Job#: 11293  
Drawing#: 11293av3s1  
Page: 1 of 1

Client Approval

Landlord Approval

Sales Rep:  
Robert McDonald  
Designer:  
Ky



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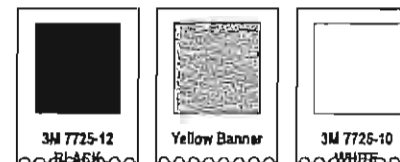
DE Banner • Front View  
SCALE: 1/4" = 1' 0" • For Production



DE Banner • Elevation Rendering  
SCALE: N.T.S. • For Production

#### SPECIFICATIONS FOR FABRICATION:

- 13 oz. nylon banner stock
- Grommets every 2 feet and vinyl graphics
- Quantity: ONE (1)
- Overall height of sign: 6' - 0"
- Overall length of sign: 27' - 0"
- Total square feet: 162.00 sq.ft.
- Banner Substrate: Yellow
- Vinyl: 3M 7725-12 BLACK, 3M 7725-10 WHITE
- Installed on existing, df pylon sign



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www.stisigns.com

Client Name:  
**GOLD'S GYM**

Location:

Drawing#: 11219dev2s1

Page: 1 of 1

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

CLIENT APPROVAL

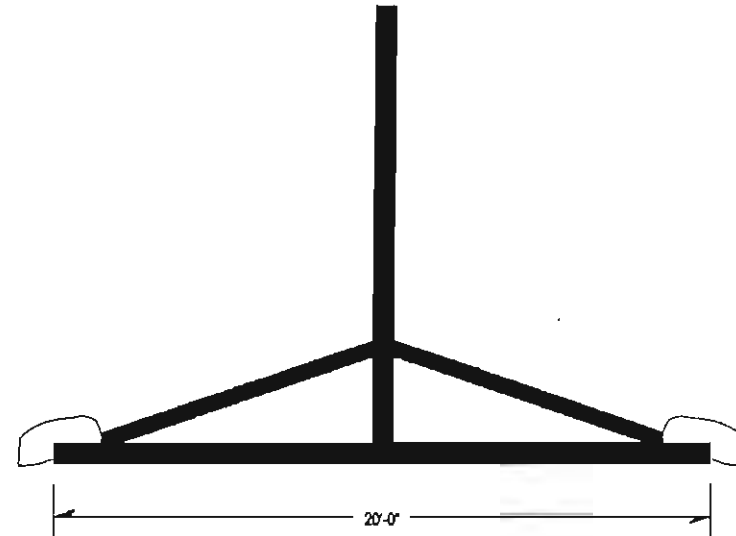
LANDLORD APPROVAL

Sales Rep:  
STI

Designer:  
*Nanda*



# MDO Sign w/ Banner Graphics On "T" Frame • Gold's Gym



**J** MDO Sign w/ banner graphics • Front View  
Scale 1/4" = 1' For Production / Presentation

## SPECIFICATIONS FOR FABRICATION AND INSTALLATION:

- Quantity: one (1) sign with two (2) panel
- Overall height of sign panel: 8' - 0" / Overall length of sign: 16' - 0"
- Total square feet: 128
- MDO Panel primed backing w/ stretched banner graphics for reuse
- Mounted w/ 6" square tubing and reinforced w/ steel angle structure counterweighted w/ four 100 lb. sandbags per side

## COLOR AND NEON SPECIFICATIONS:

- Sign painted with two-stage automotive acrylic
- Face Colors: Yellow Banner
- Vinyl: 3M Black, 3M 7725-53 Cardinal Red, and 3M White

## OTHER COMPONENTS / SPECIAL CONSTRUCTION CONSIDERATIONS:



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www.stisigns.com

Gold's Gym

Last Revision:  
Job#: 11203  
Drawing#: 11203jv1s1  
Page: 1 of 1

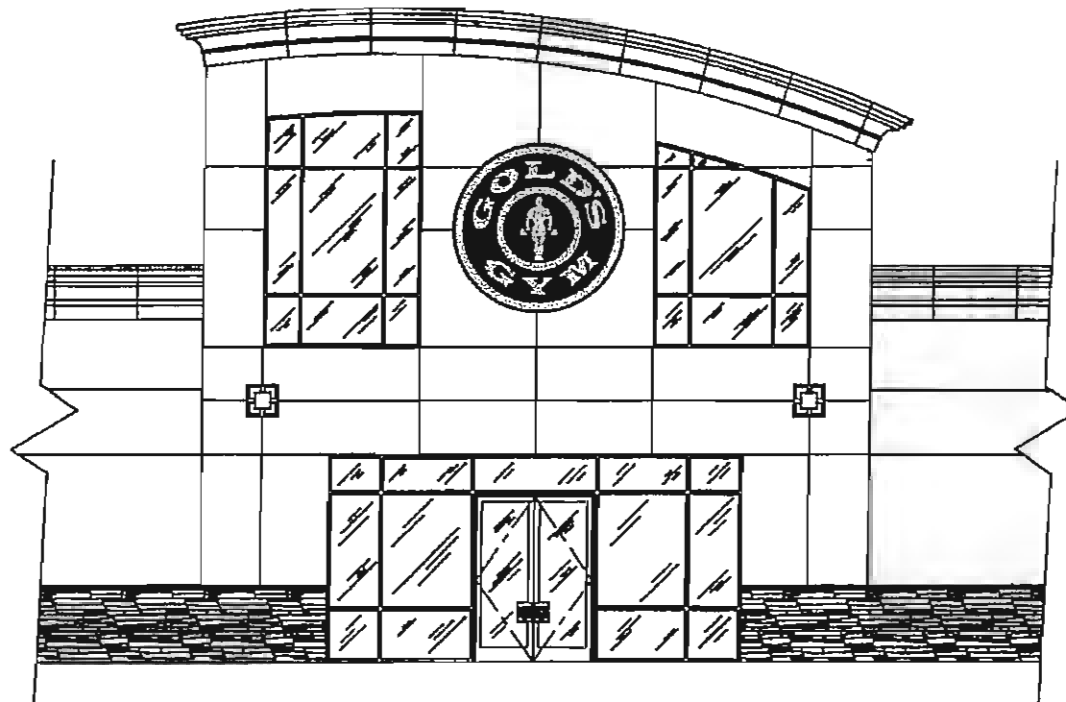
APPROVAL: I have reviewed and approved the sign details on this drawing for fabrication and installation.

Client Approval

Landlord Approval

Sales Rep:  
Robert McDonald  
Designer:  
Ky





**C** Cabinet • Elevation Rendering  
Scale 3/32" = 1' For Production

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800.327.1104 • p.512.494.0002 • f.512.494.0003  
www.stisigns.com

Client Name:  
**GOLD'S GYM**

Location:

Page: 2 of 2

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

• Client Approval

• Landlord Approval

Sales Rep:  
STI  
Designer:

*Nash*





**C** Wall Sign • Front View  
Scale 3/8" = 1' For Production

#### SPECIFICATIONS FOR FABRICATION AND SHIP:

- Internally illuminated cabinet built to UL specification
- Quantity: ONE (1)
- Overall height of sign: 10' - 6" / Overall length of sign: 10' - 6"
- Total square feet: 110.25 SQ.FT.
- Aluminum construction
- Lexan: 3/16"
- Retainer: 2 1/2"
- Mounting method: individually (self contained)
- H.O. Fluorescent Illumination
- Primary electrical requirement:  
120 volt (installed within six feet of sign by others)  
Timer or photo-cell (installed by others)

#### COLOR AND NEON SPECIFICATIONS:

- Cabinet painted with two-stage automotive acrylic
- Returns: BLACK
- Interior painted for increased illumination: WHITE
- 3/16" WHITE LEXAN face
- First-surface translucent vinyl graphics  
3M™ 3630-015 YELLOW  
3M™ 7725-12 BLACK
- Retainer: Black



#### OTHER COMPONENTS / SPECIAL CONSTRUCTION CONSIDERATIONS:

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800.327.1104 • p.512.494.0002 • f.512.494.0003  
www.stsigns.com

Client Name:  
**GOLD'S GYM**

Location:

Drawing#: 11217cv2s1

Page: 1 of 2

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

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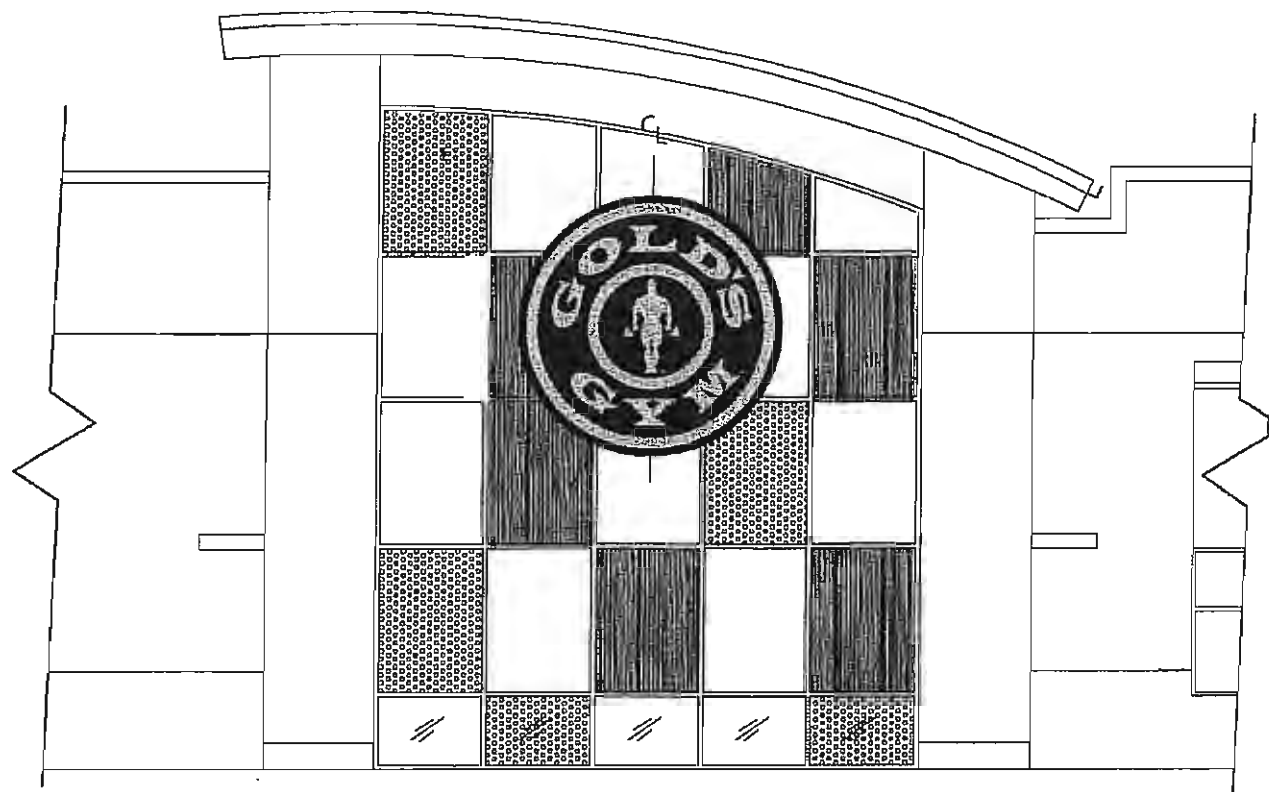
• Client Approval

.....

• Landlord Approval

Sales Rep:  
STI  
Designer





1 Proposed Signage • Elevation Rendering  
Scale 1/8" = 1' For Production

**SIGN TECH**  
**INTERNATIONAL**

SIGN SOLUTIONS THAT WORK

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800.327.1104 • p.512.494.0002 • f.512.494.0003  
www.stsigns.com

Client Name:  
**GOLD'S GYM**

Location:  
902 W. Central Expressway  
Killeen, TX

Start Date: 2/22/2006  
Last Revision: 3/07/2006  
Job#: 11203  
Drawing#: 11203iv2e1  
Page: 2 of 2

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

Client Approval

Landlord Approval

Sales Rep:  
Robert McDonald  
Designer:  
*Nando*



## EXHIBIT G

### GUARANTY OF LEASE

THIS GUARANTY is given by **GOLD'S GYM INTERNATIONAL, INC.**, a Delaware corporation (hereinafter called the "Guarantor," whether one or more) to **SCANNELL PROPERTIES #62, LLC**, an Indiana limited liability company (hereinafter called the "Landlord");

#### **WITNESSETH:**

In order to induce the Landlord to demise to Gold's St. Louis, LLC, a Delaware limited liability company (hereinafter with its successors and assigns referred to as the "Tenant") certain premises (the "Premises") to be (or which have been) constructed on land situated at 635 Gravius Road, Missouri, and being described in and pursuant to a certain Lease Agreement dated as of July \_\_, 2006 (which Lease Agreement, together with any and all present and future modifications, amendments, renewals and extensions thereof, is hereinafter referred to as the "Lease"), Guarantor agrees as follows:

1. Guarantor does hereby jointly and severally unconditionally, irrevocably and absolutely guarantee to Landlord the full, prompt and complete payment by Tenant of the rent and all other sums which may now or hereafter be payable by Tenant under the Lease and the full, prompt and complete performance by Tenant of all and singular the terms, covenants, conditions and provisions in the Lease required to be performed by Tenant (collectively the "Obligations") without regard to any forbearance, delay, neglect, or failure on the part of Landlord in enforcing same.

2. Guarantor does hereby waive notice of the acceptance hereof and any and all other notices which by law are required to be given to the Tenant, and also waives any demand for or notice of default of the payment of rent and other sums which may be payable by the Tenant under the Lease and the performance of all and singular the Obligations; and Guarantor does further expressly hereby waive any legal obligation, duty or necessity for the Landlord to proceed first against the Tenant or to exhaust all or any remedies that the Landlord may have against the Tenant, it being agreed that in the event of the Tenant's default under the Lease, Landlord may proceed and have right of action solely against either the Guarantor or the Tenant, or jointly and severally against the Guarantor and the Tenant.

3. If the Tenant becomes insolvent, is adjudicated a bankrupt, or files a petition for reorganization, arrangement or similar relief under any present or future provision of any federal or state bankruptcy or similar law, or if any such petition filed by the creditors of the Tenant is approved by a court, or if Tenant seeks a judicial readjustment of the rights of its creditors under any present or future federal or state law, or if a receiver of all or part of its property and assets is appointed by any state or federal court, then, in any of such events, the Guarantor's liability under this Guaranty shall not be affected in any way thereby and, if in any such proceeding the Lease is terminated or rejected or the obligations of the Tenant thereunder are modified, then, at Landlord's option, Guarantor shall either (a) Immediately pay to the Landlord (i) an amount equal to all fixed, contingent and additional rent and other payments which have accrued and remain unpaid as of and including the date of such termination, rejection or modification, plus (ii) an amount equal to the amount of all fixed, contingent and additional rent and other payments which would have otherwise been payable under the Lease (absent such termination, rejection or modification) for the unexpired portion of the term thereby demised, less the then current rental value of the Premises for such unexpired portion of the term, as reasonably determined by Landlord, with the resulting sum being discounted to present value at the

higher of six percent (6%) or the prime rate charged by Citibank, N.A. from the date of termination together with interest on the amounts designated in clause (i) and (ii) above at the rate of twelve percent (12%) interest from the date of such termination, rejection or modification to the date of payment; or (b) pay to Landlord, on a monthly basis (or with such other frequency or at such other intervals as is otherwise provided for under the Lease) an amount equal to all fixed, contingent and additional rent and other payments as and when the same become due under the Lease.

4. The Guarantor shall not be entitled to make any defense against any claim asserted by the Landlord in any suit or action instituted by the Landlord to enforce this Guaranty or the Lease or to be excused from any liability hereunder, and the Guarantor hereby expressly waives any defense in law or in equity which is not or would not be available to the Tenant, it being the intent hereof that the liability of the Guarantor hereunder is primary and unconditional.

5. The Guarantor hereby agrees that the covenants and provisions contained in the Lease may be altered, extended, changed, modified, renewed, released, or cancelled by the Landlord and the Tenant with or without release of the Tenant from liability or obligation, all without the consent of the Guarantor, and the Guarantor agrees that this Guaranty, and the liability of the Guarantor hereunder shall continue and in no way be affected, diminished or released thereby.

6. It is fully understood that until each and every one of the Obligations, and all covenants and agreements under this Guaranty is fully performed, the Guarantor's obligations hereunder shall not be released, in whole or in part, by any action or thing which might, but for this provision of this instrument, be deemed a legal or equitable discharge of a surety or guarantor, or by reason of any waiver, extension, renewal, modification, forbearance or delay or any other act or omission of the Landlord or its failure to proceed promptly or otherwise or by reason of any action taken or omitted by the Landlord, whether or not such action is taken or omitted by the Landlord, whether or not such action or failure to act varies or increases the risk of, or affects the rights or remedies of, the Guarantor, and the Guarantor hereby expressly waives and surrenders any defense to the Guarantor's liability hereunder based upon any of the foregoing acts, omissions, things, agreements or waivers, it being the purpose and intent of the parties hereto that the covenants, agreements and all obligations of the Guarantor hereunder are absolute, unconditional and irrevocable.

7. In the event it shall be asserted that the Tenant's obligations are void or voidable due to illegal or unauthorized acts by the Tenant in the execution of the Lease, the Guarantor shall nevertheless be liable hereunder to the same extent as the Guarantor would have been if the obligations of the Tenant had been enforceable against the Tenant.

8. In the event any suit or action is brought in connection with the enforcement of this Guaranty, the Guarantor shall pay reasonable attorneys' fees and all court costs reasonably incurred by the Landlord.

9. This Guaranty shall be binding upon the heirs, legal representatives, successors and assigns of the Guarantor, and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the Landlord.

10. The Guarantor will have no right of subrogation, reimbursement or indemnity whatsoever against Tenant, Guarantor hereby waiving any and all such rights, and no right of recourse to or with respect to any of Tenant's assets or property, or to any other collateral. Guarantor further agrees that any and all claims, setoffs or counterclaims of Guarantor against Tenant are hereby waived.

11. Landlord's rights hereunder shall be reinstated and revived, and this Guaranty shall be fully enforceable, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be returned or restored by Landlord upon the bankruptcy, insolvency or reorganization of the Tenant, the Guarantor or any other person, or as a result of any other fact or circumstance, all as though such amount had not been paid.

12. The undersigned officer of Guarantor personally represents and warrants that the Board of Directors of Guarantor, in a duly held meeting, has approved the execution and delivery of this Guaranty and has determined that this Guaranty may reasonably be expected to benefit the Guarantor.

13. This Guaranty shall be governed by and construed in accordance with the laws of the State in which the Premises is located, and the Guarantor hereby agrees and submits to the jurisdiction of any state or federal court situated in that State.

EXECUTED this \_\_\_\_\_ day of July, 2006.

GUARANTOR:

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

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

Printed Name: \_\_\_\_\_

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

Address: 125 East John Carpenter Freeway  
Thirteenth Floor  
Irving, Texas 75062  
Attn: Real Estate Dept.



# Exhibit B

# **AMENDED AND RESTATED SHOPPING CENTER LEASE**

Dated as of August 31, 2018

by and between

**RBR REAL ESTATE HOLDINGS, LLC**

as Landlord

and

**GOLD'S ST. LOUIS, LLC**

as Tenant

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# AMENDED AND RESTATED

## SHOPPING CENTER LEASE

THIS AMENDED AND RESTATED SHOPPING CENTER LEASE (the "Lease") is made and entered into as of the date first written above (the "Effective Date") by and between RBR REAL ESTATE HOLDINGS, LLC, a Texas limited liability company ("Landlord"), and GOLD'S ST. LOUIS, LLC, a Delaware limited liability company ("Tenant").

### RECITALS

WHEREAS, Landlord and Tenant are parties to that certain Lease Agreement for the Premises (as hereinafter defined) dated July \_\_, 2006 (the "Original Lease").

WHEREAS, Gold's Gym International, Inc., a Delaware corporation ("Guarantor") executed a Guaranty of Lease dated July \_\_, 2006 (the "Original Guaranty") guaranteeing Tenant's payment and performance under the Original Lease.

WHEREAS, Landlord and Tenant desire to amend and restate the Original Lease, pursuant to this Lease, and the Original Guaranty, pursuant to the Guaranty attached hereto as Exhibit C (the "Guaranty").

### ARTICLE I --DEFINITIONS

"Additional Rent" means any and all payments that Tenant is obligated to make to Landlord under the terms of this Lease other than Base Rent.

"Event of Default" is defined in **Section 14.01** of this Lease.

"Expiration Date" is defined in **Section 2.02(a)** of this Lease.

"Floor Area" means the aggregate floor area of any space within the Shopping Center measured to the outside faces of exterior walls and to the center of any interior walls.

"Guarantor" is defined in the Recitals.

"Hazardous Material" means any hazardous, radioactive or toxic substance, material or waste, including, but not limited to, those substances, materials and wastes (whether or not mixed, commingled or otherwise combined with other substances, materials or wastes) listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. Section 172.101) or by the Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), or substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) a petroleum product, crude oil or any fraction thereof, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, or listed pursuant to Section 307 of the Clean Water Act, (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.

"Permitted Use" means a health and fitness center offering such fitness programs and recreational facilities as Tenant may determine from time to time, which may include, but shall not be limited to, a jogging track, gymnasiums, running track, whirlpools, swimming pool, saunas, aerobics and/or floor exercise, group exercise classes, spin, yoga, pilates and similar meditative or holistic exercise, martial arts or similar pursuits, basketball and racquetball courts, free weights, exercise machinery and equipment, personal fitness training, child nursery

facilities, massage, physical and rehabilitative therapy, gym-related retail sales activities including but not limited to, vitamins, nutritional supplements, equipment, and apparel, personal enhancement amenities such as hair and nail cutting and care, restaurant and/or juice/snack bar facility and other usual amenities from time to time found in a modern fitness, nutrition, sports medicine, and health club facility, including any commercial office space which may be ancillary to its business, as permitted by any governmental authority (it being understood that (a) the foregoing list of specific programs, facilities and services is illustrative, and not exhaustive, (b) Tenant shall not be obligated to offer each item on such list to its customers or members, and (c) such items are subject to technological advancement), and any other retail use permitted by applicable law and not otherwise prohibited by this Lease.

"Original Guaranty" is defined in the Recitals.

"Original Lease" is defined in the Recitals.

"Premises" means that certain 41,624 square foot (approximately) retail space within the Shopping Center as shown on the Site Plan.

"Prime Rate" means, at any time, the rate of interest most recently published as the "Prime Rate" in the Money Rates section of The Wall Street Journal.

"Property" means the certain real property described on Exhibit "A" attached hereto and incorporated herein which is owned by Landlord.

"Rent" as used herein, shall mean collectively Base Rent and Additional Rent

"Rent Commencement Date" shall mean the Effective Date.

"Shopping Center" means the Property and all improvements constructed thereon.

"Site Plan" means that certain Site Plan of the Shopping Center attached hereto as Exhibit "B".

"Tenant Parties" shall mean Tenant's agents, employees, contractors or invitees.

"Tenant Protected Parking" means that portion of the Common Area identified on the Site Plan.

"Tenant's Proportionate Share": A percentage, computed on the ratio that the total Floor Area of the Premises bears to the total Floor Area of building(s) within the Shopping Center (which is approximately 86,931 square feet), subject to change from time to time.

"Term" and "Term of this Lease" are defined in **Section 2.02(a)** of this Lease.

## ARTICLE II --GRANT AND TERM

Section 2.01        Amendment and Restatement. The Original Lease is hereby amended and restated in its entirety by this Lease as of the Effective Date.

Section 2.02        Grant. Landlord does hereby demise and lease the Premises to Tenant, and Tenant does lease and take the Premises from Landlord. Landlord further grants to Tenant during the Term the non-exclusive right, privilege and easement in common with all other tenants of the Shopping Center, for Tenant and its licensees, employees, agents, customers and invitees, to use the Common Areas, and all access roads and parking spaces within the Shopping Center as shown on the Site Plan for pedestrian and vehicular ingress and egress to and from the Premises without payment of any fee or other charge being made therefor except as may be specifically set forth in this Lease. The foregoing grants and the leasehold estate created thereby include any rights contained in, and are subject to, any covenants, restrictions and easements of record, the terms and provisions of certain reciprocal easement and/or operating agreements now or hereinafter entered into by Landlord with the owners or lessees of the Property and/or adjacent properties, if any, and any restrictions otherwise set forth in this Lease.

Landlord represents that it has authority to enter into this Lease and that such covenants, restrictions and easements of record and the terms and provisions of any such reciprocal easement and/or operating agreements shall not materially interfere with Tenant's use of the Premises generally for the Permitted Use or materially increase Tenant's obligations or materially decrease Tenant's rights, as stated in this Lease. Landlord further represents that it shall not enter into any amendments or modifications to the REA or any other reciprocal easements and/or operating agreements that would interfere with Tenant's use of the Premises generally for the Permitted Use or increase Tenant's obligations or decrease Tenant's rights, as stated in the Lease, without the prior written consent of Tenant, which shall not be unreasonably withheld.

(a) Initial Term. The term of this Lease (the "Term" or the "Term of this Lease") shall commence on the Rent Commencement Date and shall expire on December 31, 2028 ("Expiration Date"), except as it may be extended as provided in **Section 2.02(b)** hereof or sooner terminated in accordance with the terms hereof. As used herein, "Term" and "Term of this Lease" refer to such initial term and to any extension thereof. Notwithstanding the foregoing, from and after the Effective Date, this Lease shall be in full force and effect, and Tenant shall perform and observe all of the terms, covenants, conditions, agreements and indemnities to be kept, performed or observed by Tenant (other than the payment of Rent) prior to the Rent Commencement Date.

(b) Options to Extend. Landlord grants to Tenant four (4) options to extend the Term for periods of five (5) years each. Each option can be exercised by Tenant giving Landlord notice of such exercise not less than 180 days before the expiration of the then-existing Term; provided, however, that no such exercise shall be effective if Tenant is in default under this Lease beyond applicable notice and cure periods at the time such notice is given or at the time such extended term would commence.

### ARTICLE III -- CONSTRUCTION OF IMPROVEMENTS

Section 3.01 Acceptance of Premises. Subject to the representations and warranties set forth in this Lease, Tenant accepts the Premises in their "As-Is" condition.

Section 3.02 Alterations. Except as expressly permitted herein, Tenant shall not construct any improvements after the initial improvements or make any structural alterations to the Premises without first obtaining the written consent of Landlord; provided that, Tenant may make non-structural alterations or improvements which cost less than \$50,000.00, without obtaining Landlord's consent. Landlord shall not unreasonably withhold, condition or delay its consent to any non-structural alterations. Landlord may withhold its consent to any structural alterations in its sole and absolute discretion.

Section 3.03 Landlord Representations. Landlord represents and warrants to Tenant that: (i) Landlord owns the Property, (ii) the Permitted Use is permitted by applicable zoning laws, (iii) the Permitted Use is not prohibited by any restrictions applicable to the Premises, (iv) the Property is free of any Hazardous Materials, (v) the Premises complies, in all material respects, with the ADA, all building, fire safety, health, land use, and other laws, ordinance, codes, rules, and regulations, and (vi) no party has any rights with respect to construction on the Property or the use of the Premises, except as disclosed to Tenant in writing.

### ARTICLE IV --RENT

Section 4.01 Base Rent. Except as otherwise specifically set forth in this Lease, Tenant shall pay to Landlord without any prior demand therefor and without any deduction or setoff whatsoever beginning as of the Rent Commencement Date, Base Rent ("Base Rent") as follows:

| <u>Period</u>  | <u>Annual Base Rent</u> | <u>Monthly Base Rent</u> |
|--|-------------------------|--------------------------|
| (i) Rent Commencement Date through December 31, 2018 | \$730,980.00            | \$60,915.00              |
| (ii) January 1, 2019 through December 31, 2023       | \$624,360.00            | \$52,030.00              |

|   |                |             |
|---|----------------|-------------|
| (iii) January 1, 2024 through December 31, 2028 | \$686,796.00   | \$57,233.00 |
| (iv) During the first renewal period            | \$755,475.60   | \$62,956.30 |
| (v) During the second renewal period            | \$831,023.20   | \$69,251.93 |
| (vi) During the third renewal period            | \$914,125.50   | \$76,177.12 |
| (vii) During the fourth renewal period          | \$1,005,538.00 | \$83,794.84 |

Base Rent for each month during the Term shall be due and payable monthly in advance on or before the first (1<sup>st</sup>) day of such month.

Section 4.02 Stipulation of Size. Regardless of the actual size of the Premises, the Floor Area of the Premises is deemed to be 41,624 square feet.

Section 4.03 Late Payments. In the event any payment of Base Rent, Additional Rent, and other sums due Landlord under this Lease is not received within five (5) days after it is due for any reason whatsoever, then in addition to the sums due Tenant shall pay interest thereon from the due date until paid by Tenant, at the rate of two percent (2%) above the Prime Rate, not to exceed the maximum rate of interest allowed by law in the state where the Shopping Center is located and a late fee of One Hundred and No/100 Dollars (\$100.00) to compensate Landlord for its administrative expenses in connection with such late payment. The interest and late fee shall be deemed to be Additional Rent.

#### ARTICLE V --CONDUCT OF BUSINESS BY TENANT

Section 5.01 Use of Premises. The Premises shall be used and occupied solely for the Permitted Use, and for no other use or purpose whatsoever without Landlord's prior written consent, such consent shall not be unreasonably withheld, conditioned or delayed provided that the proposed change of use does violate any then-existing restricted or exclusive uses affecting the Shopping Center.

Section 5.02 No Duty to Continuously Operate. Notwithstanding anything to the contrary herein, and provided that Tenant continues to pay Rent and perform its other obligations hereunder, Tenant may cease its operations at the Premises at any time.

Section 5.03 Compliance with Laws and Regulations. Tenant shall comply with all laws, ordinances, codes, orders and regulations applicable to the Premises or to Tenant's activities or business relating to the Premises. Tenant shall not, without Landlord's prior written consent, keep anything within the Premises or use the Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Premises or other parts of the Shopping Center. All property kept, stored or maintained within the Premises by Tenant shall be at Tenant's sole risk. Also, Tenant shall be responsible for compliance with the Americans with Disabilities Act as amended from time to time (the "ADA"), and related state and municipal laws and regulations, in all matters regarding both the interior configuration of the Premises and Tenant's business operations at the Premises. Landlord shall comply with all laws, ordinances, codes, orders and regulations, including the ADA, applicable to the Common Areas (as defined herein) of the Shopping Center.

Section 5.04 Exclusive Rights. Landlord (or any person or entity which controls, is controlled by, or is under common control with Landlord) shall neither (i) enter into any lease or other occupancy agreement covering the Landlord Property with any person or entity whose use of the property could compete with any use included in the Permitted Use, nor (ii) itself use the Landlord Property in a way that could compete with any use included in the Permitted Use. As used herein, "Landlord Property" means any real property owned or leased by Landlord, or any person or entity which controls, is controlled by, or is under common control with Landlord, located within three (3) miles of the Premises boundaries, including the remaining leasable space within the Shopping Center. The foregoing exclusive use prohibition shall not be deemed to apply to child-care facilities, retail uses, restaurants and/or juice bar/snack bar facilities, personal amenity facilities (such as, fingernail salons,



hair salons, or spas related thereto) which are not primarily a physical fitness facility or for providing physical fitness services. In the event of a breach of this covenant by Landlord, if Landlord fails to cure such default within five (5) days after notice from Tenant, all Rent shall abate until Landlord cures such default. Tenant shall also have all rights and remedies available to it at law or in equity (including, without limitation, the right of injunction).

## ARTICLE VI --UTILITIES

Section 6.01 Cost of Utilities. Tenant shall be solely responsible for and promptly pay all charges for heat, water (including sewage charges and/or taxes or other charges based on water consumption), gas, electricity or any other utility used or consumed in the Premises. Tenant shall pay the cost for all heating, air conditioning and ventilation ("HVAC") service provided to the Premises, including the cost of maintenance, repair and replacement of same as may be further described in Article IX of this Lease.

Section 6.02 Landlord's Obligations. Landlord shall provide to the Premises adequate utilities required for the Permitted Use (including but not limited to water, sewage, gas, electricity, including but not limited to electricity for heating, air conditioning and ventilation ("HVAC"), telephone and fire equipment). Landlord shall be responsible for all utility hook-up, tap, impact, lateral, system development and other fees and costs pertaining to the utilities. Landlord shall provide to the Premises a trash enclosure in a mutually agreed upon location which shall include a garbage bin and recycling bin that meet all applicable federal, state and local code requirements.

Section 6.03 Landlord's Right to Provide Utilities. Landlord may, if it so elects, furnish one or more utility services to Tenant, and in such event Tenant shall purchase the use of such services as are tendered by Landlord, and shall pay within 30 days of demand as Additional Rent the rates established therefore by Landlord which shall not exceed the rates which would be charged for the same services furnished directly by the local public utility companies. Landlord may at any time discontinue furnishing any such service without obligation to Tenant other than to connect the Premises to the public utility, if any, furnishing such service.

Section 6.04 Limitation on Liability. LANDLORD SHALL NOT BE LIABLE TO TENANT FOR DAMAGES IF THE FURNISHING OF ANY UTILITY SERVICE, TELEPHONE SERVICE OR OTHER SERVICE TO THE PREMISES SHALL BE INTERRUPTED, REDUCED, CURTAILED OR IMPAIRED UNLESS CAUSED BY LANDLORD, ITS AGENTS, EMPLOYEES OR CONTRACTORS.

## ARTICLE VII --TAXES AND REAL ESTATE CHARGES

Section 7.01 Personal Property Taxes. Tenant shall be liable for all taxes levied against personal property and trade fixtures and improvements placed by Tenant in the Premises.

Section 7.02 Real Estate Taxes. Tenant shall also be liable for Tenant's Proportionate Share of all "Real Estate Charges" (as defined below) related to the Shopping Center or Landlord's ownership of the Shopping Center. Tenant's obligations under this Section 7.02 shall be prorated during any partial year (i.e., the first year and the last year of the Term). Real Estate Charges shall include ad valorem taxes, general and special assessments, parking surcharges, any tax or excise on rents, any tax or charge for governmental services (such as street maintenance or police or fire protection) assessed against the Property or any improvements thereon and/or on the income of Landlord derived from the Shopping Center and any state or federal tax or charge which replaces or is substituted for or is in addition to or is levied, in whole or in part, in lieu of, in substitution for, or in addition to any of such above-described Real Estate Charges: provided, however, that Real Estate Charges shall not be deemed to include any franchise, estate, margin, inheritance or other general income tax, except for any state or federal tax or charge which replaces or is substituted for or is levied, in whole or in part, in lieu of, in substitution for, or in addition to any of such above-described Real Estate Charges. Landlord shall provide copies of any notices or correspondence related to the Real Estate Charges related to the Shopping Center promptly upon receipt thereof. Tenant may protest the Real Estate Charges imposed upon the Center in accordance with applicable statutory procedures and provided that Tenant shall not take any action: (a) which shall cause or allow the institution of foreclosure proceedings against the Shopping Center, (b) which shall result in the imposition of fines, penalties, or fees in addition to such Real Estate Charges, or (c) which shall subject Landlord to the risk of any civil or criminal liability. Any refund of Real Estate Charges shall reduce the Real Estate Charges. Landlord will reimburse Tenant for

any costs actually incurred by Tenant in protesting the Real Estate charges, only to the extent of the reduction in such Real Estate Charges, and provided that Tenant will pay its Pro Rata Share of such expenses.

Section 7.03      Adjustment. During each month of the Term of this Lease, at the same time and in the same manner as with the payment of monthly installments of Base Rent and Additional Rent, Tenant shall make a monthly payment to Landlord equal to one-twelfth (1/12) of Tenant's Proportionate Share of the Real Estate Charges related to the Shopping Center, which Landlord reasonably estimates will be due and payable for that particular year. Tenant's Proportionate Share of the initial Real Estate Charges is estimated to be \$2.20 per square foot of Floor Area of the Premises for the first calendar year. In the event Landlord does not otherwise notify Tenant of the monthly amounts to be paid under this Article VII, then Tenant shall continue to pay such monthly deposits in an amount equal to one-twelfth (1/12) of Tenant's Proportionate Share of the Real Estate Charges for the immediately preceding twelve (12) month period. The initial monthly Real Estate Charges are based upon Tenant's Proportionate Share of the estimated Real Estate Charges on the Shopping Center for the year in question, and the monthly Real Estate Charges are subject to increase at any time during the Term of this Lease as determined by Landlord to reflect an accurate amount of Tenant's Proportionate Share of the Real Estate Charges. The Real Estate Charges due from Tenant shall be reconciled annually. If Tenant's total Real Estate Charges are less than Tenant's actual proportionate share of the Real Estate Charges related to the Shopping Center, Tenant shall pay to Landlord within 30 days of demand the difference; if the total real estate payments of Tenant are more than Tenant's actual proportionate share of the Real Estate Charges related to the Shopping Center, Landlord shall retain such excess and such excess sum shall either (i) be credited against the next maturing installments due from Tenant to Landlord for Tenant's Proportionate Share of actual Real Estate Charges or (unless otherwise provided herein), or (ii) if no further installments are due from Tenant, be refunded by Landlord to Tenant.

#### ARTICLE VIII --THE COMMON AREA

Section 8.01      Common Area. The term "Common Area" is defined for all purposes of this Lease as that part of the Shopping Center intended for the common use of all tenants, including among other facilities (as such may be applicable to the Shopping Center), parking areas, private streets and alleys, landscaping and landscaped areas, irrigation systems, storm water drainage facilities, utilities to the extent not maintained by a utility provider, curbs, common loading areas, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, trash enclosures, public toilets, service halls and the like but excluding (i) space in buildings (now or hereafter existing) designated for rental for commercial purposes, as the same may exist from time to time, (ii) easements, streets and alleys maintained or controlled by a public authority, (iii) areas within the Shopping Center which may from time to time not be owned by Landlord (unless subject to a cross-access agreement benefiting the area which includes the Premises), and (iv) areas leased to a single-purpose user (such as a bank or a fast-food restaurant) where access is restricted. Finally, storm water drainage and outlet facilities and retention and detention areas and related facilities that may not be part of the Common Area but nevertheless serve the Shopping Center shall be deemed Common Area and shall be included for purposes of determining the Common Area Maintenance Charges (hereinafter defined), as will Real Estate Charges and insurance expenses related thereto. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, as well as the dimensions, identities, locations and types of any buildings, signs or other improvements in the Shopping Center, provided that such change does not materially adversely affect Tenant, the visibility of Tenant's storefront, or access to the Premises; and further provided that no changes may be made to parking spaces located within the area labeled "Tenant's Protected Parking" on the Site Plan without Tenant's prior written consent, such consent not to be unreasonably withheld.

Section 8.02      Use of Common Area. Tenant and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, its subtenants, licensees and concessionaires, shall have the nonexclusive right to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants in the Shopping Center and other persons permitted by the Landlord to use the same, and subject to such reasonable and non-discriminatory rules and regulations governing use as Landlord may from time to time prescribe.

Section 8.03      Common Area Maintenance. Landlord shall be responsible for the operation, management and maintenance of the Common Area, the manner of maintenance and the expenditures will be generally consistent with similar shopping centers within the same geographical area as the Shopping Center.

(a) In addition to the Rent and other charges prescribed in this Lease, Tenant shall pay to Landlord Tenant's Proportionate Share of all reasonable costs of operation and maintenance of the Common Area (including insurance thereon) (collectively, "Common Area Maintenance Charges") which may be incurred by Landlord in its discretion. Common Area Maintenance Charges shall include, without limitation, all sums reasonably expended in connection with: service and maintenance contracts, including, without limitation, windows and general cleaning, removing of snow, ice, debris and surface water, electronic intrusion and fire control and telephone alert systems; maintenance and repair of machinery and equipment used in the operation of the Shopping Center; maintenance and repair of storm, sanitary and other drainage or detention systems, sprinklers and other fire protection systems, irrigation systems, and electrical, gas, water, telephone and other utility systems; maintenance and repair of paving, curbs, sidewalks, walkways, roadways, parking surfaces (including repaving, sealing, striping and patching); maintenance and repair of lighting facilities; maintenance and repair of signage; all costs and expenses allocable to any applicable operating agreement benefiting the Property, if any; appeal or contest of Real Estate Charges; all costs and expenses of water or other common utilities; uniforms, supplies and materials used in connection with the operation and maintenance of the Shopping Center; seasonal decorations (but not sculptures or other art), an administrative fee not to exceed 5% of the total of all other Common Area Maintenance Charges, and the cost of Landlord's insurance maintained pursuant to **Section 10.01** and any deductible if and when paid.

(b) Notwithstanding anything to the contrary contained in this Lease, the following shall be excluded from the Common Area Maintenance Charges: (a) interest, amortization or other costs associated with any mortgage, loan or refinancing of all or any part of the Shopping Center or the sale of all or any portion of the Shopping Center; (b) ground rents paid by Landlord for the property on which the Shopping Center is located; (c) legal or other fees associated with the enforcement of leases against other tenants; (d) leasing commissions, attorney's fees and other expenses incurred in connection with the development or leasing of the Shopping Center; (e) improvements, repairs or alterations to interior of spaces leased to other tenants; (f) the cost of providing any service directly to any other tenant; (g) the cost of any items to the extent Landlord is to receive reimbursement from a third party; (h) any reserves for future expenditures or liabilities which would be incurred subsequent to the then current accounting year; (i) costs in connection with the cleanup or removal of Hazardous Substances not caused by Tenant; (j) any bad debt loss, rent loss or reserve for bad debt or rent loss; (k) any administrative fee or similar fees or charges which exceed 5% of the total of all other Common Area Maintenance Charges; (l) any salaries or payroll expenses of Landlord's employees; (m) security services; (n) advertising or promotional fees; (o) costs incurred by Landlord (or any tenant) due to the violation of any applicable law, code, regulation, ordinance or the like, which costs would not have been incurred but for such violation; (p) costs incurred by Landlord pursuant to Section 9.01 of this Lease; (q) depreciation; (r) costs incurred to obtain or upgrade a LEED certification or similar rating for the Premises and/or Shopping Center; (s) political or charitable contributions; (t) costs incurred to comply with any applicable law, code, regulation, ordinance or the like which was in effect on the Commencement Date of this Lease; (u) costs of correcting any defects in the construction of the Shopping Center; and (v) any expenditure that is properly categorized as capital under generally accepted accounting principles, including, without limitation: the original investment in capital improvements, any replacements of capital items or other equipment, and structural additions to the Shopping Center. There shall be no duplication of charges and at no time shall Tenant pay a proportionate share of an amount that exceeds Landlord's cost for any particular expense.

(c) Tenant's Proportionate Share of the initial Common Area Maintenance Charges (including Landlord's insurance pursuant to Section 10.01 below) is estimated to be **\$1.25** per square foot of Floor Area of the Premises for the first calendar year. Each month during the Term of this Lease, at the same time and in the same manner as with the monthly installments of Base Rent, Tenant shall pay to Landlord one-twelfth (1/12) of the estimated Common Area Maintenance Charges for the current year which Landlord may have given Tenant for the current year or, if the Common Area Maintenance Charges has not been estimated by Landlord, then Tenant shall pay one-twelfth (1/12) of the actual Common Area Maintenance Charges for the immediately preceding calendar year. Each Common Area Maintenance Charges payment shall be due and payable at the same time and in the same manner as the payment of Base Rent. Landlord may at its option make monthly or other periodic changes based upon the estimated annual Common Area Maintenance Charges, payable in advance, but subject to adjustment after the end of the year on the basis of the actual cost for such year, as provided herein. Notwithstanding anything to the contrary contained in this Lease, Tenant's Proportionate Share of the initial Common Area Maintenance Charges for the first calendar year shall not exceed \$1.50 per square foot of Floor Area of the Premises under any circumstances.

(d) Notwithstanding anything to the contrary contained in this Lease, for purposes of calculating Common Area Maintenance Charges, the maximum increase in the amount of Controllable CAM Charges (as hereinafter defined) that may be included in calculating such Common Area Maintenance Charges for each calendar year after the first calendar year shall be limited to five percent (5%) per calendar year on a non-cumulative, non-compounding basis. "Controllable CAM Charges" means all Common Area Maintenance Charges which are with the reasonable control of Landlord; thus, excluding Real Estate Taxes, insurance, utilities, and trash removal.

Section 8.05      Reconciliation. In the event Landlord does not otherwise notify Tenant of the monthly amounts to be paid under this Article VIII, then Tenant shall continue to pay such monthly deposits in an amount equal to one-twelfth (1/12) of Tenant's Proportionate Share of the Common Area Maintenance Charges for the immediately preceding twelve (12) month period. The Common Area Maintenance Charges due from Tenant shall be reconciled annually. If Tenant's total payments are less than Tenant's actual proportionate share of the Common Area Maintenance Charges related to the Shopping Center, Tenant shall pay to Landlord within 30 days of demand the difference; if the total payments of Tenant are more than Tenant's actual proportionate share of the Common Area Maintenance Charges related to the Shopping Center, Landlord shall retain such excess and such excess sum shall either (i) be credited against the next maturing installments due from Tenant to Landlord for Tenant's Proportionate Share of actual Common Area Maintenance Charges or (unless otherwise provided herein), or (ii) if no further installments are due from Tenant, be promptly refunded by Landlord to Tenant.

Section 8.06      Parking. In no event will the Tenant Protected Parking Area be modified in a way that materially or adversely affects the Premises or Tenant's Permitted Use therein without Tenant's prior written consent, which will not be unreasonably withheld or delayed except for those matters listed in this paragraph below that are specifically subject to Tenant's approval in Tenant's sole discretion. Landlord shall not construct any buildings for occupancy within the Tenant Protected Parking Area, nor otherwise make any improvements to the Tenant Protected Parking Area which materially or adversely affects visibility to the Premises, without Tenant's consent which may be withheld in its sole discretion. Landlord shall not reconfigure, restripe, or restrict the parking spaces contained in the Tenant Protected Parking Area in any manner that reduces the number or size of parking spaces available for parking by Tenant's invitees in the Tenant Protected Parking Area, without Tenant's consent, which may be withheld in its sole discretion.

Section 8.07      Roof Rights. Tenant shall be permitted to utilize the roof for roof-mounted antenna or satellite dishes for its sole use and not for sublease to third parties. Landlord grants to Tenant the right to access the roof to install, maintain, repair, and replace such antenna or satellite dish. Any antenna or satellite dish installed by Tenant shall comply with all applicable laws. Tenant, at its sole cost, may make structural modifications to certain portions of the roof to enhance the usability of the space which may include raising the height of all or part of the roof, subject to Landlord's approval, which approval shall not be unreasonably withheld or delayed.

Section 8.08      Center Expenses Statement

(a) Within ninety (90) days after the end of each whole or partial calendar year during the Term, Landlord shall deliver to Tenant a written statement that shows, in reasonable detail and in accordance with generally accepted accounting principles, the computation of the actual Real Estate Charges, insurance expenses, and Common Area Maintenance Charges payable by Tenant (the "Center Expenses") with respect to such whole or partial calendar year ("Center Expenses Statement"). If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is more than the actual amount of the Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Landlord shall credit the excess: first, against any outstanding Rent due from Tenant; and second, against future expenses to be paid by Tenant; provided that, if there are no future expenses to be paid by Tenant, then Landlord shall refund the excess to Tenant within thirty (30) days. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is less than the actual amount of the Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Tenant shall pay the amount of such deficiency within thirty (30) days, unless Tenant has timely invoked its audit rights as provided below, in which case the deficiency shall be due and payable within fifteen (15) days after the completion of Tenant's audit.

(b) Tenant shall have the right, at Tenant's expense, to audit Center Expenses for any calendar year (or partial calendar year occurring during the Term of the Lease) for a period of one hundred eighty (180) days following the receipt of the Center Expenses Statement for any calendar year period or partial calendar year period. Landlord shall provide reasonable access to all books and records relating to Center Expenses upon notice to Landlord at least two days in advance, during ordinary business hours. Landlord shall retain copies of all records related to Center Expenses for four (4) years. The audit shall be conducted only by reputable independent certified public accountants employed by Tenant on an hourly or fixed fee basis, and not on a contingency fee basis. The nature and content of any audit are confidential, and Tenant, for itself and on behalf of its representatives, shall not disclose the information obtained from the audit to any other tenant in the Center or any other parties, except for its attorneys, accountants, and other persons assisting Tenant with evaluation of the Center Expenses. If as a result of its audit, Tenant determines that the actual Center Expenses for the period covered by any statement are less than the amount shown on the Center Expenses Statement, Tenant shall promptly notify Landlord of such determination, which notice shall be accompanied by a copy of the results of Tenant's audit.

(c) Upon receipt of such notice and accompanying information, Landlord may object to Tenant's determination by providing Tenant with written notice of such objection within 30 days following receipt by Landlord of Tenant's notice and accompanying information. Unless Landlord so objects, Landlord shall credit (or refund, if no further amounts are due under this Lease) to Tenant the excess as determined by the results of Tenant's audit within 30 days following receipt of Tenant's notice and accompanying information. If, however, Landlord timely objects, Landlord and Tenant shall negotiate for a 30-day period to attempt to reach agreement concerning the dispute, following which they shall appoint, by mutual agreement, a neutral independent certified public accountant who shall promptly make a written determination of the Center Expenses for the period in question and shall provide such determination to Landlord and Tenant. The neutral independent certified public accountant's determination shall be binding upon Landlord and Tenant for all purposes.

(d) If the neutral independent certified public accountant determines (or if Landlord does not timely object to the results of Tenant's audit) that Landlord has overstated Tenant's pro rata share of Center Expenses by 5% or more cumulatively for the period covered by the audit, then Landlord shall pay (i) for the reasonable costs of Tenant's audit, as well as (ii) the fees and costs owed to the neutral independent certified public accountant for its services, and (iii) if Landlord has objected to Tenant's audit, all reasonable costs incurred by Tenant in disputing such Center Expenses Statement. If the neutral independent certified public accountant determines that Landlord did not overstate Center Expenses by 5% or more cumulatively for the period covered by the audit, Tenant shall pay the fees and costs owed to the neutral independent certified public accountant for its services and shall pay all reasonable costs incurred by Landlord in connection with the dispute over Center Expenses. Any amount owed by one party to the other following the neutral auditor's determination shall be paid within 10 days of the date of such determination.

## ARTICLE IX --MAINTENANCE AND REPAIR OF THE PREMISES

Section 9.01      Maintenance by Landlord. Landlord shall keep the foundation, the exterior walls (except plate glass; windows, doors and other exterior openings), the utility lines serving the Premises up to the Premises (but not within the Premises), and the roof of the Premises in good repair. The costs and expenses incurred by Landlord in connection with the foregoing sentence shall not be included in Common Area Maintenance Charges. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give written notice thereof to Landlord and Landlord shall have a reasonable time after receipt by Landlord of such written notice in which to make such repairs, but in no event shall such period of time exceed 30 days. If Landlord fails to make such repairs within a reasonable period of time (not to exceed 30 days), then Tenant may perform such repairs and charge the cost thereof to Landlord. If Landlord fails to pay such charge within 30 days of demand from Tenant, then Tenant may offset such amount against Rent due during each month until Tenant has been credited with the full amount due to Tenant.

Section 9.02      Maintenance by Tenant. Except for those repairs to the Premises which Landlord has expressly agreed to make pursuant to this Lease, Tenant shall make all other necessary repairs and

maintenance to the Premises or the improvements thereon. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include the repair and maintenance of all lighting, heating, air conditioning, plumbing, and other electrical, mechanical and electromotive installation, equipment and fixtures. Tenant shall keep the Premises and Tenant's Improvements in first class condition order and repair, clean, sanitary and safe. In addition to the foregoing, Tenant shall maintain a preventative maintenance contract on the HVAC serving the Premises, which contract shall provide for periodic maintenance in accordance with the manufacturer's specifications. In the event Tenant fails to maintain such preventative maintenance contract, Landlord, at its option, may arrange for such a preventative maintenance contract for the HVAC units; provided, however, Landlord has notified Tenant, in writing of this failure of Tenant to comply with the maintenance requirements set forth herein and Tenant has failed to cure such noncompliance within thirty (30) days from receipt by Tenant of Landlord's notice, in which event the cost of such preventative HVAC maintenance shall be billed directly to Tenant and shall be paid within ten (10) days of receipt of invoice therefore.

## ARTICLE X --INSURANCE AND INDEMNITY

### Section 10.01 Landlord's Insurance

Landlord shall procure and maintain throughout the Term of this Lease a policy or policies of insurance causing the Shopping Center and all improvements thereon to be insured under standard fire and extended coverage insurance for their actual replacement cost and causing the Common Areas to be insured under commercial general liability insurance for limits of not less than One Million and No/Dollars (\$1,000,000.00) per occurrence and Five Million and No/Dollars (\$5,000,000.00) annual aggregate for personal injury including bodily injury and death or property damage liability and shall contain a contractual liability endorsement (and any other endorsements which are customary carried by owners of similar properties).

### Section 10.02 Tenant's Insurance

(a) At all times during construction of Tenant's Improvements or any approved alterations to the Premises, Tenant shall maintain and keep in effect Builder's Risk Insurance with completed operations coverage, in insurance companies reasonably satisfactory to Landlord.

(b) At all times during the Term of this Lease, Tenant shall:

(i) carry, or cause to be carried in the name of Landlord and Tenant as their interest may appear, in insurance companies reasonably satisfactory to Landlord, standard fire and extended coverage insurance, including, by endorsement if necessary, coverage of the following additional perils: flood, including sprinkler leakage coverage, and ordinance or law, insuring the Tenant's Improvements located on Premises and its appurtenances for the actual replacement cost (such insurance shall include an endorsement for business income and extra expense coverage, shall name Landlord as loss payee, include an "agreed amount" endorsement, and eliminate any coinsurance requirement);

(ii) effect and maintain commercial general liability insurance, on an occurrence basis, for the benefit of Landlord and Tenant for limits of not less than One Million and No/Dollars (\$1,000,000.00) per occurrence and Five Million and No/Dollars (\$5,000,000.00) annual aggregate for personal injury including bodily injury and death or property damage liability and shall contain a contractual liability endorsement (such amounts may be met through a combination of primary and excess/umbrella insurance policies). Tenant shall name Landlord as an additional insured on Tenant's commercial general liability insurance; and

(iii) effect and maintain workers' compensation insurance in statutory amounts.

(c) Evidence of insurance must be on file with Landlord before Tenant receives the Premises and must be kept current at all times.

(d) All policies of insurance required to be procured herein shall be issued by insurance companies with general policyholder's rating of not less than A and a financial rating of Class VII as rated in the most current available "Best's Insurance Reports", and licensed to do business in the state where the Premises is located and authorized to issue such policy or policies. All such policies shall contain a provision that the coverage shall be primary and non-contributing with respect to any policy carried by the other party, and that any policy carried by the other party shall be excess insurance.

(e) All policies procured by either party shall contain an endorsement containing an express waiver of any right of subrogation (as more specifically addressed in Article XXIV of this Lease) by the insurance company against the other party (whether named as an insured or not).

Tenant's Proportionate Share of Landlord's "insurance expenses" related to the Shopping Center shall be paid monthly, in advance, in equal installments, in an amount estimated by Landlord from time to time subject to adjustment after the end of each calendar year on the basis of the actual "insurance expenses" for such calendar year as part of Common Area Maintenance Charges. A copy of an insurance bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of "insurance expenses" to which such bill relates.

Section 10.03      Indemnification.

(a) Indemnification by Tenant. **SUBJECT TO THE PROVISIONS OF ARTICLE XXIV OF THIS LEASE, TENANT SHALL INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FROM ANY AND ALL LOSSES, DAMAGES, CLAIMS, SUITS OR ACTIONS, JUDGMENTS AND COSTS, WHICH MAY ARISE OR GROW OUT OF THE FAILURE OF TENANT TO PERFORM ITS OBLIGATIONS PURSUANT TO THIS LEASE, OR ANY CLAIMS FOR LIABILITY OF ANY NATURE WHATEVER ARISING FROM CIRCUMSTANCES WITHIN THE PREMISES, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ITS EMPLOYEES, PARTNERS, AGENTS, CONTRACTORS OR REPRESENTATIVES.**

(b) Indemnification by Landlord. **SUBJECT TO THE PROVISIONS OF ARTICLE XXIV OF THIS LEASE, LANDLORD SHALL INDEMNIFY, DEFEND AND HOLD TENANT HARMLESS FROM ANY AND ALL LOSSES, DAMAGES, CLAIMS, SUITS OR ACTIONS, JUDGMENTS AND COSTS, WHICH MAY ARISE OR GROW OUT OF THE FAILURE OF LANDLORD TO PERFORM ITS OBLIGATIONS PURSUANT TO THIS LEASE, OR ANY CLAIMS FOR LIABILITY OF ANY NATURE WHATEVER ARISING FROM CIRCUMSTANCES OCCURRING WITHIN THE SHOPPING CENTER, BUT OUTSIDE THE PREMISES, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT OR ITS EMPLOYEES, PARTNERS, AGENTS, CONTRACTORS OR REPRESENTATIVES.**

ARTICLE XI --DAMAGE BY CASUALTY

Section 11.01      Restoration. Except as otherwise provided in Section 11.02 hereof, if the Premises (except moveable trade fixtures, furniture and furnishings on the Premises) should at any time during the Term be damaged or destroyed by fire or otherwise, and Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall, to the extent insurance proceeds are available to Landlord (or would have been available to Landlord had Landlord maintained the insurance required by this Lease), restore and rebuild the same as nearly as possible to the condition they were in immediately before such damage or destruction, and such restoration and rebuilding, prosecuted with due diligence, shall be completed as soon as reasonably possible. Landlord shall give written notice to Tenant of such election (to the extent such election is available to Landlord) within thirty (30) days after the occurrence of such casualty and, if it elects to rebuild and repair, shall proceed to do so with reasonable diligence and at its sole cost and expense. In the event of a termination of this Lease pursuant to this Article, Base Rent shall be apportioned on a per diem basis and paid to the date of such casualty. Notwithstanding the foregoing, if the Premises is totally or partially destroyed or damaged during the last thirty six (36) months of the Term or any renewal thereof, either Landlord or Tenant may terminate this Lease as of the date of the occurrence of such damage or destruction by giving written notice thereof to the other party within thirty (30) days after the date of the casualty; provided, however, that if Landlord elects to terminate this Lease in accordance

with the foregoing provision, then Tenant may nullify such termination by exercising its renewal option (if any) within thirty (30) days of Landlord's election to terminate.

Section 11.02      Landlord's Obligations to Rebuild . Landlord's obligation to rebuild and repair under this **Article XI** shall in any event be limited to restoring the Premises to substantially the condition in which the same existed prior to such casualty, exclusive of any alterations, additions, exhibits, Tenant's Improvements, fixtures and equipment installed by Tenant. Tenant agrees that promptly after completion of such work by Landlord, to the extent insurance proceeds are available to Tenant (or would have been available to Tenant had Tenant maintained the insurance required by this Lease), Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to restore, repair and replace all alterations, additions, Tenant's Improvements, fixtures, signs and equipment installed by Tenant, as the case may be.

Section 11.03      Continued Operations. Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable and Tenant's Base Rent shall be abated in proportion to the area damaged during such time of restoration.

## ARTICLE XII --CONDEMNATION

Section 12.01      Partial Taking. If less than ten percent (10%) of the Floor Area of the Premises and less than twenty percent (20%) of Tenant's Protected Parking should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof (a "Partial Condemnation"), and Landlord's lender consents to the restoration of the Premises, this Lease shall not terminate; however, the Base Rent payable hereunder during the unexpired portion of this Lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such Condemnation, and Landlord's receipt of any condemnation award, Landlord shall make all necessary repairs or alterations to the remaining premises required to make the remaining portions of this Premises and Common Area an architectural whole.

Section 12.02      Total Taking. If more than 10% of the Floor Area of the Premises or more than twenty percent (20%) of Tenant's Protected Parking shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof (a "Total Condemnation") then Tenant shall have the right to terminate this Lease as of the date possession shall be taken by such authority and the Base Rent shall be abated during the unexpired portion of this Lease.

Section 12.03      Taking of Common Area. If any immaterial part of the Common Area should be taken as aforesaid, this Lease shall not terminate, nor shall the Base Rent payable hereunder be reduced.

Section 12.04      Application of Award. In the event of a Total Condemnation, or a Partial Condemnation, the awards and other payments which Landlord and Tenant shall be entitled to have and receive, shall be paid to Landlord. Notwithstanding the foregoing, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; provided, however, Tenant shall in no event have any right to receive any award for its interest in this Lease or for loss of leasehold, and any such award shall not reduce amounts that would otherwise be available to Landlord.

## ARTICLE XIII --ASSIGNMENT AND SUBLETTING

Section 13.01      Consent Required. Tenant shall not, directly or indirectly, transfer, assign, sublet, enter into license or concession agreements, change ownership, hypothecate, or pledge this Lease or Tenant's interest in and to the Premises in whole or in part, or otherwise permit occupancy of all or any part of the Premises by anyone with, through or under it, without first procuring the written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed. The transfer of a direct or indirect controlling interest in Tenant shall be deemed to be a transfer requiring Landlord's consent if Tenant is not a publicly traded corporation. The general prohibition contained herein against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. No assignment or sublease shall be effective until the



assignee executes a written agreement, in form reasonably satisfactory to Landlord, assuming the obligations of the tenant contained in this Lease.

Section 13.02      Permitted Transfer. Notwithstanding the foregoing, Tenant may, with written notice to Landlord, sublet all or any portion of the Premises or assign this lease to the following only if the transferee expressly agrees in writing to bound by each and every duty and obligation set forth in this Lease, and Tenant is not in default under the terms and conditions of this Lease at the time of the assignment or sublease: (a) a parent, subsidiary, affiliate, division, or other entity, controlling, controlled by, or under common control with Tenant or Gold's Gym International Inc., a Delaware corporation ("Gold's Gym"); (b) any franchisee of Gold's Gym; (c) any entity which acquires all or substantially all of the stock and/or assets of Tenant whether through a merger, consolidation or otherwise; or (d) a subtenant pursuant to a sublease of a maximum of ten thousand 10,000 square feet of the Premises whose proposed use (i) will be consistent with the character and reputation of the Center, in Landlord's reasonable judgment, (ii) is included in, or complementary to, the Permitted Use, (iii) is not prohibited by this Lease, (iv) will not cause a violation of any exclusive agreements executed by Landlord that Landlord has delivered to Tenant, and (v) is not a Prohibited Use, and Tenant may choose to share its pylon signage and/or storefront signage with such subtenant, subject to compliance with the terms and conditions of this Lease.

Section 13.03      Tenant to Remain Liable. Notwithstanding any transfer, Tenant shall at all times remain fully liable for the performance of all of Tenant's obligations under this Lease (notwithstanding future transfers and regardless of whether or not Tenant's approval has been obtained for such future transfers). The transferee shall agree in a form reasonably satisfactory to Landlord to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease to the extent of the space transfer, and Tenant shall deliver to Landlord promptly after execution an executed copy of each such transfer and an agreement of compliance by each such transferee.

Section 13.04      Void Transfer. Any sale, mortgage or transfer of this Lease which is not in compliance with the provisions of this Article XIII shall be of no effect and void.

Section 13.05      Transfer by Landlord. In the event of the transfer and assignment by Landlord of its interest in this Lease, Landlord shall thereby be released from any further obligations hereunder accruing after the date of such transfer or assignment, and Tenant agrees to look solely to such successor in interest of Landlord for performance of such future obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereafter be discharged of any further obligation relating thereto upon the written acknowledgement of receipt thereof from such successor in interest.

Section 13.06      No Mortgage. Tenant shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Premises without Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant may grant a security interest against Tenant's removable trade fixtures and equipment in connection with the purchase money financing thereof without Landlord's consent.

#### ARTICLE XIV --DEFAULT

Section 14.01      Events of Default. The following events shall be deemed to be "Events of Default" by Tenant under this Lease:

(a) Tenant shall have failed to pay any installment of Base Rent, Additional Rent or any other charge provided herein, or any portion thereof when the same shall be due and payable, and the same shall remain unpaid for a period of fifteen (15) days after written notice from Landlord; or

(b) Tenant shall have failed to comply with any other provision of this Lease, if the failure continues for thirty (30) days after written notice to Tenant; provided, however, that in the case of a default which cannot, with due diligence, be cured within a period of thirty (30) days, Tenant shall have such additional time to cure such default as may reasonably be necessary, provided Tenant proceeds promptly and with due diligence to cure such default within thirty (30) days after receipt of said notice; or

(c) The making by Tenant of a general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless a petition filed against Tenant is dismissed within ninety (90) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease if possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises, or of Tenant's interest in this Lease, if the seizure is not discharged within thirty (30) days.

Section 14.02 Remedies. Upon the occurrence of any Event of Default, Landlord may pursue any one or more of the following remedies without any notice or demand whatsoever:

(a) Termination of Right of Possession. Landlord may terminate Tenant's right of possession of the Premises without terminating the Term of this Lease. Upon such termination, Landlord may, at Landlord's option, enter into the Premises and take and hold possession thereof, without such entry into possession terminating the Term of this Lease or releasing Tenant in whole or in part from Tenant's obligation to pay Base Rent and Additional Rent for the full Term. Upon such re-entry, Landlord may remove all persons and property from the Premises, and store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. Landlord may make repairs to the Premises to the extent necessary to return the Premises to the condition in which Tenant is required to surrender it to Landlord pursuant to this Lease, and Tenant shall, upon demand, pay the actual and verifiable costs thereof, together with Landlord's reasonable expense of reletting. The amount, if any, by which cash consideration actually received by Landlord upon any such reletting, exceeds Landlord's expenses incident thereto, including reasonable brokerage fees and legal expenses, shall be credited to Tenant's rental obligations hereunder. Landlord may cancel and terminate the Term of this Lease by serving five (5) days' written notice on Tenant of such further election and to pursue any remedy at law or in equity that may be available to Landlord. Landlord shall use commercially reasonable efforts to mitigate its damages.

(b) Termination of Term of Lease. Landlord may terminate the Term of this Lease. Upon such termination, Landlord shall have the right to recover from Tenant:

(i) the worth at the time of the award of any unpaid Rent which has been earned at the time of such termination; and

(ii) the worth at the time of the award of the amount by which Base Rent and Additional Rent that would have been earned after such termination until the time of award exceeds the fair market rental value of the Premises over the same period of time; and

(iii) the worth at the time of award of the amount by which Base Rent and Additional Rent for the balance of the Term after the time of award exceeds the fair market rental value of the Premises over the same period of time; and

(iv) any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant's failure to perform its obligations (including the costs and expenses of recovering the Premises and reasonable attorneys' fees); and

(v) all other amounts permitted by applicable law; provided, however, that, except as otherwise specifically set forth in this Lease, in no event shall Landlord be entitled to seek and Landlord hereby waives any right to any consequential, special or punitive damages against Tenant for Tenant's default or breach of this Lease.

(c) Other Remedies. Pursuit of any of the foregoing remedies by Landlord shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law (all

such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent or other payments due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. No act or thing done by Landlord or its agents during the Term of this Lease shall be deemed a termination of the Term of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate the Term of this Lease or accept a surrender of the Premises shall be valid unless in writing signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Landlord's acceptance of the payment of Rent or other payments hereunder after the occurrence of a default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord in enforcing one or more of the remedies herein provided upon a default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to enforce any such remedies with respect to such default or any subsequent default.

(d) Jury Trial. The parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other with respect to matters arising under this Lease.

Section 14.03 Landlord's Default. Landlord shall, in no event, be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within a reasonable period of time after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation (such reasonable period of time not to exceed 30 days); provided, however, that in the case of a default which cannot, with due diligence, be cured within a period of thirty (30) days, Landlord shall have such additional time to cure such default as may reasonably be necessary, provided Landlord proceeds promptly and with due diligence to cure such default within thirty (30) days after receipt of said notice. Except as otherwise specifically set forth in this Lease, in no event shall Tenant be entitled to seek and Tenant hereby waives any right to any special, punitive or consequential damages against Landlord for Landlord's default or breach of this Lease. If Landlord is in default, Tenant may, in addition to any other remedies available in equity or at law, perform such obligation and charge the cost thereof to Landlord. If Landlord fails to pay such charge within 30 days of demand from Tenant, then Tenant may offset such amount against Rent due during each month until Tenant has been credited with the full amount due to Tenant.

Section 14.04 Waiver of Landlord's Lien. Landlord hereby waives and relinquishes any and all contractual, statutory or constitutional liens or rights to claim a lien against Tenant's furniture, fixtures, equipment or other personal property, and agrees to execute such other and further documentation evidencing such waiver as may be reasonably requested by any lender providing financing for such property, as well as granting such lender reasonable rights to access the Premises for purposes of removing their collateral.

#### ARTICLE XV --HOLDING OVER

If Tenant, without Landlord's consent, remains in possession of the Premises after the expiration of the Term and without the execution of a new lease, it shall be deemed to be occupying the Premises on a month-to-month basis at a rental equal to one hundred twenty-five percent (125%) of the Base Rent plus one hundred percent (100%) of Additional Rent herein provided for the period immediately before the expiration of the Term and otherwise subject to all the conditions, provisions and obligations of this Lease. The exercise of Landlord's rights shall not be interpreted to allow Tenant to continue in possession, nor shall it be deemed an election to extend the Term.

#### ARTICLE XVI --ACCESS BY LANDLORD

Landlord or Landlord's agents shall have the right to enter the Premises during Tenant's business hours and upon at least 24 hours prior notice (except in the event of an emergency) to examine the same, and to show them to prospective purchasers or lessees of the building. During the three (3) months before the expiration of the Term of this Lease or any renewal term, and provided Tenant has not previously exercised an option to extend the Term, Landlord may place upon the Premises the usual notice "For Lease" or "For Sale", which notices Tenant shall permit to remain thereon. If Tenant shall not be personally present to open and permit an entry into the Premises at

any time when for any reason an entry therein shall be necessary to protect the Premises from damage, Landlord or Landlord's agents may enter the same, without rendering Landlord or such agents liable therefor and without, in any manner, affecting the obligations and covenants of this Lease. Landlord shall repair any damage caused by its entry. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any additional obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.

#### ARTICLE XVII --QUIET POSSESSION

Landlord covenants that Tenant, on paying the Rents reserved herein and performing the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements, appurtenances and privileges thereunto belonging or in any ways appertaining, during the Term hereof.

#### ARTICLE XVIII --BANKRUPTCY-INSOLVENCY

The parties acknowledge that in order to protect the mix of tenants within the Shopping Center, the purpose for which Tenant may use the Premises have been specifically limited by the provisions of Article V hereof, and that the economics of this Lease, particularly with respect to the agreed upon Base Rent and Additional Rent, were established on the basis of Tenant's expected business operations for the Permitted Use. Anything in this Lease to the contrary notwithstanding, if Tenant becomes subject to voluntary or involuntary proceedings under the United States Bankruptcy Code (the "Bankruptcy Code") and Tenant or any trustee, receiver or other custodian of Tenant or of its assets or properties shall assign this Lease, any and all amounts paid or to be paid by or for the account of the assignee in consideration of such assignment shall be and remain the property of Landlord, and any and all such amounts received by Tenant or such trustee, receiver or custodian shall be held in trust for Landlord and remitted to Landlord promptly after receipt thereof.

#### ARTICLE XIX --TITLE TO IMPROVEMENTS; SURRENDER

Tenant covenants and agrees that its interest in the Tenant's Improvements (other than Tenant's moveable trade fixtures, machinery, equipment and personal property) to be constructed on the Premises shall become subject to the terms and conditions of this Lease and that any grantees or assignees of its interest in the Tenant's Improvements or this Lease shall take subject to and be bound by the terms and conditions of this Lease, expressly including the following provisions:

(a) Upon expiration or termination of the Term of this Lease, Landlord shall be the sole and absolute owner of the Tenant's Improvements, free of any right, title, interest or estate of Tenant therein without the execution of any further instrument and without payment of any money or other consideration thereof. Tenant shall execute such further assurances of title as may be requisite. Tenant hereby grants, releases, transfers, sets over, assigns and conveys to Landlord all of its right, title and interest in and to Tenant's Improvements upon the termination of the Term of this Lease.

(b) Tenant shall, upon such termination, surrender and deliver the Premises and deliver Tenant's Improvements, other than Tenant's moveable trade fixtures, machinery, equipment and personal property (without any payment or allowance whatever to Tenant on account of, or for, the improvements or any part thereof) to the possession and use of Landlord, without delay and in good order, condition and repair, ordinary wear and tear and casualty and condemnation excepted.

(c) Landlord, upon termination of the Term of this Lease for any reason, may, without notice (any notice to quit or intention to re-enter required by law being expressly waived by Tenant), re-enter upon the Premises and possess itself thereof by summary proceedings, ejectment, or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises. Any personal property of Tenant remaining on the Premises after termination or expiration of this Lease shall be deemed abandoned by it and be retained by Landlord as its sole property or be disposed of, without liability or accountability, as Landlord sees fit.

## ARTICLE XX --MECHANICS' LIENS

Notice is hereby given that Landlord shall not be liable for any work performed or to be performed on the Premises, or any improvement thereon, or in connection with any appurtenance thereto, for Tenant or any subtenant, or for any materials furnished or to be furnished at the Premises for Tenant or any subtenant, and that no mechanic's or other lien for such work or materials shall attach to the reversionary or other interest of Landlord. If, in connection with any work being performed by Tenant or any subtenant or in connection with any materials being furnished to Tenant or any subtenant, any mechanic's lien or other lien or charge shall be filed or made against the Premises or any part thereof or any buildings or improvements now or hereafter erected and maintained thereon or on any appurtenances thereto, or if any such lien or charge shall be filed or made against Landlord as owner, then Tenant, at Tenant's cost and expense, within ninety (90) days after Tenant receives notice of such lien or charge, shall cause the same to be canceled and discharged of record by payment thereof, filing of a bond or providing an indemnity or otherwise, and shall also defend, at Tenant's cost and expense, any action, suit or proceeding which may be brought for the enforcement of such lien or charge, and shall pay any actual damages suffered or incurred therein by Landlord and shall satisfy and discharge any judgment entered therein. In the event of the failure of Tenant to cure within the above-mentioned 90-day period any mechanic's lien or other lien or charge herein required to be cured by Tenant, Landlord may pay such items or discharge such liability by payment or bond, or both, and Tenant will repay to Landlord within 30 days of demand any and all amounts paid by Landlord therefor, or by reason of any liability on any cash bond, and also any and all incidental expenses, including counsel fees in reasonable amount, incurred by Landlord in connection therewith; provided, however, Tenant shall have the right to contest any such mechanic's lien or other lien, provided, that Tenant (i) diligently continues such contest in good faith, and (ii) deposits or delivers to Landlord satisfactory indemnification or other security reasonably satisfactory to Landlord.

## ARTICLE XXI --PRESENT CONDITION OF PREMISES

Except as specifically provided otherwise in this Lease, Tenant accepts the Premises, without recourse to Landlord, in the condition or state in which they or any of them now are or are as of the Effective Date, without representation or warranty, express or implied, in fact or by law, as to the nature, condition or usability thereof or as to the use or uses to which the Premises or any part thereof may be put or as to the prospective income from, and expense of operation of, the Premises. Tenant agrees that Landlord, its employees and agents have made no representations, inducements or promises about the Premises, the Shopping Center or this Lease, or about the characteristics or conditions regarding or pertaining to the Premises or the Shopping Center, unless the representations, inducements and promises are in this Lease. Therefore, no claim or liability, or cause for termination, shall be asserted by Tenant against Landlord, its employees and agents, for, and they shall not be liable because of, the breach of any representations, inducements or promises not expressly in this Lease.

## ARTICLE XXII --HAZARDOUS MATERIALS

Section 22.01      Prohibition of Hazardous Materials. Tenant shall not cause or permit any Hazardous Material to be brought upon, transported through, stored, kept, used, discharged or disposed in or about the Shopping Center by Tenant or any Tenant Parties, except that Tenant may store and use Hazardous Materials in the Premises, if: (i) they are used in the ordinary course of business, and (ii) their storage or use does not violate any applicable laws.

Section 22.02      Tenant Indemnity. Tenant shall indemnify, defend, protect and hold harmless Landlord (and Landlord's parents, subsidiaries, affiliates, employees, partners, agents, mortgagees or successors to Landlord's interest in the Shopping Center) (collectively "Indemnity") from any and all claims, sums paid in settlement of claims, judgments, damages, clean-up costs, penalties, fines, costs, liabilities, losses or expenses (including, without limitation, reasonable attorneys', consultants' and experts' fees and any other reasonable and customary fees by Landlord to enforce the Indemnity) which arise during or after the Term as a result of Tenant's breach of the obligations or the release or contamination of the Shopping Center by Tenant or Tenant Parties, including, without limitation: diminution in value of the Shopping Center; damages for the loss of, or the restriction on the use of, rentable or usable space or any amenity of the Shopping Center; damages arising from any adverse impact on the sale or lease of the Shopping Center. This Indemnity includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required

by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on, under or originating from the Shopping Center. This Indemnity shall survive the expiration or earlier termination of the Term of this Lease and shall survive any transfer of Landlord's interest in the Shopping Center.

Section 22.03      Landlord Indemnity. Landlord shall indemnify, defend, and hold Tenant harmless from and against from any and all claims, sums paid in settlement of claims, judgments, damages, clean-up costs, penalties, fines, costs, liabilities, losses or expenses (including, without limitation, reasonable attorneys', consultants' and experts' fees and any other reasonable and customary fees by Tenant to enforce the Indemnity) which arise during or after the Term as a result of any of the following: (i) any Hazardous Materials that existed on or about the Premises or the Shopping Center prior to the Effective Date; (ii) any Hazardous Materials existing on or about the Premises or the Shopping Center that are caused or created by Landlord or any of Landlord's parents, subsidiaries, affiliates, employees, partners, agents, mortgagees or successors or assigns; or (iii) any Hazardous Materials that migrate onto the Premises or the Shopping Center during or after the Term through no fault of Tenant. This Indemnity shall survive the expiration or earlier termination of the Term of this Lease and shall survive any transfer of Tenant's interest in the Premises.

Section 22.04      Remediation. Without limiting the foregoing, if the presence of Hazardous Material anywhere on the Shopping Center caused or permitted by Tenant or any Tenant Parties results in the contamination, release or threatened release of Hazardous Material on, from or under the Shopping Center or other properties, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Shopping Center and other properties to the condition existing before the introduction of the Hazardous Material; provided that Landlord's written approval of the actions shall be obtained first (which approval shall not be unreasonably withheld) and so long as such actions do not have or would not potentially have any material, adverse long-term or short-term effect on Landlord or on the Shopping Center or other properties.

#### ARTICLE XXIII --SPECIAL PROVISIONS

Section 23.01      Landlord's Entry. In any circumstance where Landlord is permitted to enter upon the Premises during the Term, whether for the purpose of curing any default of Tenant, repairing damage resulting from fire or other casualty or an eminent domain taking or is otherwise permitted under this Lease or by law to go upon the Premises, no such entry shall: (a) constitute an eviction or disturbance of Tenant's use and possession of the Premises or a breach by Landlord or any Landlord's obligations under this Lease; (b) except in the case of the breach of this Lease, gross negligence, or willful misconduct of Landlord, its agents, representatives, employees or any of them, render Landlord liable for damages for loss of business or otherwise, or entitle Tenant to be relieved from any of Tenant's obligations under this Lease; or (c) grant Tenant any right of setoff or recoupment or other remedy that is not provided for by this Lease. In connection with any entry incident to performance of repairs, replacements, maintenance or construction, all of the aforesaid provisions shall be applicable notwithstanding that Landlord may elect to take building materials in, to or upon the Premises that may be required or utilized in connection with entry by Landlord.

Section 23.02      Independent Obligations. The obligation of Tenant to pay Rent and other sums under this Lease, and the obligation of Tenant to perform Tenant's other covenants and duties under this Lease and the obligation of Landlord to perform Landlord's other covenants and duties under this Lease constitute independent and unconditional obligations, unless an abatement, offset, or reduction is expressly provided for in this Lease. Tenant waives and relinquishes all rights which it might have to claim any nature of lien against or withhold, or deduct from or offset against any Rent and other sums to be paid Landlord by Tenant, except as expressly set forth in this Lease.

#### ARTICLE XXIV --SUBROGATION

Landlord and Tenant each waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises or its contents, or to other portions of the Shopping Center or the Premises arising from any liability, loss, damage or injury for which insurance is carried or required to be carried pursuant to this Lease. LANDLORD AND TENANT INTEND FOR THE WAIVER OF CLAIMS SET FORTH IN THIS ARTICLE XXIV TO APPLY EVEN IF THE

LOSS OR DAMAGE DESCRIBED IN SUCH SECTION IS CAUSED BY THE NEGLIGENCE OF THE RELEASED PARTY AND EVEN IF THE RELEASED PARTY WOULD OTHERWISE BE STRICTLY LIABLE FOR SUCH LOSS OR DAMAGE UNDER APPLICABLE LAWS. The foregoing shall not apply to losses, damages, or injuries that are in excess of policy limits or that are not covered due to a deductible or self-insured retention clause in the policy.

#### ARTICLE XXV --INTENTIONALLY DELETED

#### ARTICLE XXVI --SIGNAGE

Tenant will be entitled to construct on the exterior of the Premises, or otherwise in the Shopping Center, the maximum amount of signs permitted under applicable law. All of Tenant's signs shall be subject to the approval of Landlord, which will not be unreasonably withheld or delayed. Tenant shall also have the right to affix to the exterior of the Premises "Pre-Opening" and "Grand Opening" banners during the pre-sale and grand opening periods, as well as reasonable promotional banners periodically during the Lease Term.

#### ARTICLE XXVII --MISCELLANEOUS PROVISIONS

Section 27.01 Relationship of Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. This Lease shall not confer rights or benefits, including third-party beneficiary rights or benefits to anyone that is not a named party to this Lease, including any individual, corporation, partnership, trust, unincorporated organization, governmental organization or agency or political subdivision.

Section 27.02 Construction. Each party has read and understands this Lease. The rule of construction that a document should be construed most strictly against the party which prepared the document shall not be applied, because both parties have participated in the preparation of this Lease. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one tenant and to either corporations, associations, partnerships or individuals, males or females, shall, in all instances, be assumed as though fully expressed. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof. The parties acknowledge that certain charges, fees and other payments are deemed Additional Rent in order to enforce Landlord's remedies, and shall not be construed to be Base Rent if rent controls are imposed. The printed provisions of this Lease and written or typed additions shall be given equal weight for the interpretation of this Lease. The deletion of any portion of this Lease shall not create an implication regarding the intent of the parties, and this Lease shall be read and interpreted as if the deleted portion had never been in this Lease.

Section 27.03 Parties Bound. It is agreed that this Lease, and each and all the covenants and obligations hereof, shall be binding upon and inure to the benefit of, as the case may be, the parties hereto, their respective heirs, executors, administrators, successors and assigns, subject to all agreements and restrictions herein contained with respect to assignment or other transfer of Tenant's interest herein.

Section 27.04 Entire Agreement. This Lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

Section 27.05 Brokers. Landlord and Tenant warrant that neither has had any dealings with any broker or agent in connection with the negotiation or execution of this Lease, and each party agrees to indemnify the other party and hold him harmless from and against any and all cost, expense or liability for commissions or other compensation and charges claimed by any broker or agent by, through, or under Landlord or Tenant with respect to this Lease.

Section 27.06      Savings and Governing Law. If any provision of this Lease or any paragraph, sentence, clause, phrase or word is judicially or administratively held invalid or unenforceable, that shall not affect, modify or impair any other paragraph, sentence, clause, phrase or word. The laws of the state of Fenton shall govern the interpretation, validity, performance and enforcement of this Lease.

Section 27.07      Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this **Section 27.07** shall not operate to excuse either party from prompt payment of (as applicable) Base Rent, construction allowances or any other payments required by the terms of this Lease.

Section 27.08      Recording of Lease. This Lease shall not be recorded, but a short form lease of even date herewith, describing the property herein demised, giving the term of the Lease and referring to this Lease may be recorded by either party upon execution by both parties. The party so requesting such short form lease shall be responsible for preparation and recording thereof, and release thereof after termination of this Lease.

Section 27.09      No Option. The submission of this Lease for examination or execution does not constitute a reservation of or option for the Premises, and this Lease becomes effective as a lease only upon execution and delivery thereof by Landlord and Tenant.

Section 27.10      Notices. Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested, or the day after deposit with a national recognized overnight delivery service (e.g. Federal Express) addressed to the parties hereto at the addresses hereinafter set forth, or at such other addresses as they have theretofore specified by written notice delivered in accordance herewith, or the day of transmittal by facsimile to the number specified herein if accompanied by confirmation thereof.

If to Landlord:                      RBR Real Estate Holdings, LLC  
4001 Maple Avenue, Suite 200  
Dallas, Texas 75219  
Attn: Real Estate/Accounting Department

If to Tenant:                        Gold's St. Louis, LLC  
4001 Maple Avenue, Suite 200  
Dallas, Texas 75219  
Attn: Real Estate/Accounting Department

With a copy to:  
E Smith Realty Partners  
One Cowboys Way, Suite 350  
Frisco, TX 75034  
Attention: Lease Administration



Section 27.11      Estoppel Certificates. Both Landlord and Tenant agree, upon request of the other party, at any time and from time to time upon ten (10) business days' notice, to execute and deliver to the requesting party, without charge, a written declaration, in recordable form: (i) ratifying this Lease, (ii) confirming the commencement and expiration dates of the Term; (iii) certifying that Tenant is in occupancy of the Premises, and that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended, except by such writings as shall be stated; (iv) that there are no defenses or offsets against the enforcement of this Lease, or stating those claimed; and (v) reciting the amount of advance Rent, if any, paid by Tenant and the date to which Rent has been paid.

Section 27.12      Guaranty. Tenant shall cause Guarantor to sign the Guaranty attached to this Lease as Exhibit "C" and deliver such executed Guaranty to Landlord along with this Lease signed by Landlord.

Section 27.13      Subordination. This Lease and the estate of Tenant hereunder shall be subject and subordinate to any ground lease, deed of trust, mortgage lien or charge, or any reciprocal easement agreement or other operating agreement which now encumbers or which at any time hereafter may encumber the Premises (such ground lease, deed of trust, mortgage lien or charge or any reciprocal easement agreement or other operating agreement and any replacement, renewal, modification, consolidation or extension thereof being hereinafter referred to as an "Encumbrance"); provided always that this Lease shall never be subject or subordinate to any Encumbrance unless the holder of such Encumbrance and Landlord execute an agreement in a form reasonably satisfactory to Tenant, which provides that Tenant's rights under this Lease will not be disturbed so long as Tenant is not in default hereunder, and which does not materially adversely affect Tenant's rights in this Lease.

[SIGNATURE PAGE FOLLOWS]

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

**TENANT:**

GOLD'S ST. LOUIS, LLC

By: 

Name: Brandon Dean

Title: President and CEO

**LANDLORD:**

RBR REAL ESTATE HOLDINGS, LLC

By: 

Name: Michael G. Spitzer

Title: Vice President

**EXHIBIT A**

**PROPERTY**

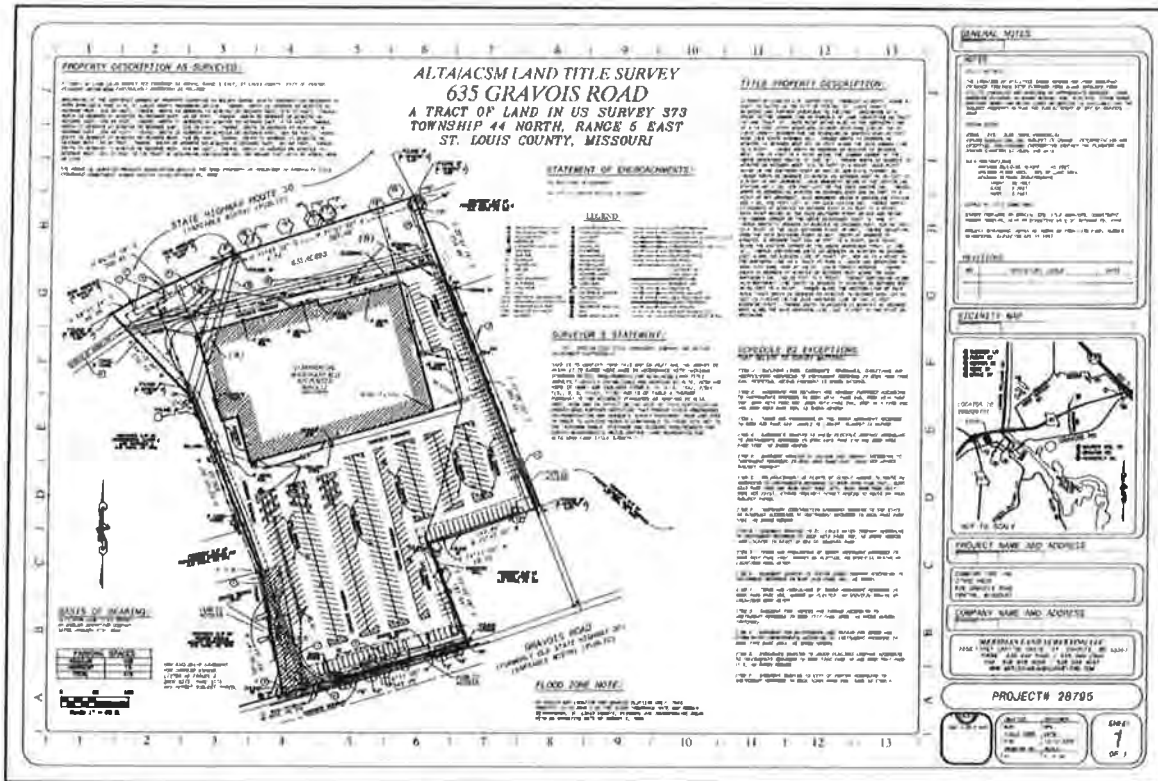
**LEGAL DESCRIPTION FOR LAND**

A tract of land in U.S. Survey 373, Township 44 North, Range 5 East, situated in the City of Fenton, St. Louis County, Missouri and further described as follows:

Beginning at a point in the common line of parcels of land above identifies as tract "A" and tract "D", said point being also in the Northern line of a 12 foot strip described in Book 6372 page 279 of the St. Louis County Records for the widening of Gravius Road 60 feet wide (Old State Highway 30); thence North 10 degrees 56 minutes 14 seconds West, 221.33 feet along the said common line to a point; thence North 22 degrees 03 minutes 34 seconds West, 330.55 feet to a point being the common corner of the above described tracts "D" and "B"; thence North 44 degrees 13 minutes 20 seconds West, 210.73 feet to a point, said point being in the Southern Right-of-Way of New State Highway 30, thence North 59 degrees 01 minute 24 seconds East 40.38 feet to a right-of-way monument, said monument being at the centerline station 461 + 90,226 feet left of the said centerline; thence North 65 degrees 02 minutes 08 seconds East 200.85 feet to a right-of-way Monument, said monument being a centerline station 459 + 80,200 feet left of the said centerline; thence North 71 degrees 57 minutes 32 seconds East, 4.74 feet to a point, said point being in the said Southern right-of-way and being the common corner of the above described tract "B" and "C"; thence North 71 degrees 57 minutes 32 seconds East 332.49 feet to a point in the said Southern right-of-way; thence departing from the said Southern right-of-way, South 22 degrees 07 minutes 15 seconds East 234.46 feet to a point, said point being the Eastern common corner of the above described tract "C" and "D"; thence continuing South 22 degrees 06 minutes 00 seconds East along the Eastern line of tract "D", 363.59 to a point in the Northern line in a tract to Fred A. Henze and described in Book 7417 page 1948 of the St. Louis County Records; thence South 70 degrees 47 minutes 00 seconds West along the said Northern line, 143.86 feet to a point; thence continuing along said Northerly line South 74 degrees 11 minutes 00 seconds West 56.35 feet to a point; thence along the Western line of said Henze Tract South 22 degrees 03 minutes 18 seconds East 187.93 feet to a point in the said Northern line of the 12 foot widening strip; thence South 74 degrees 11 minutes 00 seconds West along the said Northern line 343.17 feet to the point of beginning.

# EXHIBIT B

## SITE PLAN



**EXHIBIT C**  
**GUARANTY**

[Attached]

## **AMENDED AND RESTATED GUARANTY**

This Amended and Restated Guaranty (the "Guaranty") is executed by Gold's Gym International, Inc., a Delaware corporation ("Guarantor") in favor of RBR Real Estate Holdings, LLC, a Texas limited liability company ("Landlord").

### **RECITALS**

**WHEREAS**, Landlord and Gold's St. Louis, LLC, a Delaware limited liability company ("Tenant"), are parties to that certain Lease Agreement dated July \_\_, 2006 (the "Original Lease") for that certain premises located at 635 Gravois Road in Fenton, Missouri.

**WHEREAS**, Guarantor executed a Guaranty of Lease dated July \_\_, 2006 (the "Original Guaranty"), guaranteeing payment and performance of Tenant's obligations under the Original Lease.

**WHEREAS**, Landlord and Tenant desire to amend and restate the Original Lease in its entirety pursuant to an Amended and Restated Shopping Center Lease dated August 31, 2018 (the "Lease").

**WHEREAS**, simultaneously with the execution of the Lease, Guarantor and Landlord desire to amend and restate the Original Guaranty in its entirety pursuant to this Guaranty.

**WHEREAS**, "Obligations" shall mean all obligations, liabilities, and indebtedness of Tenant to Landlord under the Lease from and after the date hereof, including, without limitation, all rent payable by Tenant to Landlord.

### **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Guarantor and Landlord covenant and agree that the Original Guaranty shall be amended and restated in its entirety as follows:

1. Incorporation of Recitals. The Recitals to this Guaranty are incorporated into and shall constitute a part of this Guaranty.
2. Guaranty. Guarantor absolutely and unconditionally guarantees the full and prompt payment and performance when due of the Obligations. This Guaranty shall continue, in full force and effect throughout the term of the Lease and thereafter, until all of the Obligations are paid and performed in full.
3. Representations. Guarantor hereby represents to Landlord that: (a) this Guaranty is the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms and conditions; (b) there is no action or proceeding at law or in

equity, or by or before any court or governmental instrumentality or agency, now pending against or, to the knowledge of Guarantor, threatened against, Guarantor that may materially and adversely affect the financial condition of Guarantor; and (c) Guarantor is solvent.

4. Amendments and Waivers; Successors and Assigns.

(a) This Guaranty may not be amended except by an instrument in writing signed by the Guarantor and Landlord.

(b) This Guaranty shall be binding upon the Guarantor and its successors and assigns and shall inure to the benefit of Landlord and its successors and assigns.

*[Signature Page to Immediately Follow]*

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of August 31, 2018.

**GUARANTOR**

**GOLD'S GYM INTERNATIONAL, INC.**

By: 

Name: Brandon Bean

Title: President & CEO

**LANDLORD**

**RBR REAL ESTATE HOLDINGS, LLC**

By: 

Name: MICHAEL G. SMITH

Title: VICE PRESIDENT



# Exhibit C

**FIRST AMENDMENT TO  
AMENDED AND RESTATED SHOPPING CENTER LEASE**

This **FIRST AMENDMENT TO AMENDED AND RESTATED SHOPPING CENTER LEASE** (this "**First Amendment**") is made and entered into as of November \_\_, 2019 ("**First Amendment Effective Date**"), by and between RBR Real Estate Holdings, LLC ("**Landlord**"), and Gold's St. Louis, LLC ("**Tenant**"), and joined into by Gold's Gym International, Inc. ("**Guarantor**"), for the purpose set forth in this First Amendment.

**RECITALS**

**WHEREAS**, Landlord and Tenant entered into that certain Amended and Restated Shopping Center Lease dated August 31, 2018 (the "**Lease**") for that approximately 41,624 square foot Premises located at 635 Gravios Rd., Fenton, MO 63026 as more particularly described in the Lease.

**WHEREAS**, Landlord and Tenant desire to amend the terms of the Lease as set forth in this First Amendment.

**AGREEMENT**

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

1. **Recitals.** The foregoing recitals are hereby incorporated by reference into this First Amendment as if fully set forth herein.

2. **Defined Terms.** All capitalized terms used herein shall have the meanings ascribed to such terms in the Lease, unless otherwise defined herein.

3. **Extension.** The initial Term of the lease shall be extended through November 30, 2034.

4. **Renewals.** The number of Tenant options to extend the Term shall be reduced from four (4) 5-year options to three (3) 5-year options.

5. **Monthly Rent.** During the remainder of the initial Term and any renewals thereof, Base Rent shall be as follows:

| <u>Period</u>  | <u>Annual Base Rent</u> | <u>Monthly<br/>Rent</u> | <u>Base</u> |
|--|-------------------------|-------------------------|-------------|
| (i) First Amendment Effective Date through November 30, 2024 | \$624,360.00            |                         | \$52,030.00 |
| (ii) November 30, 2024 through November 30, 2029             | \$686,796.00            |                         | \$57,233.00 |

|  |                |             |
|--|----------------|-------------|
| (iii) November 30, 2029 through<br>November 30, 2034 | \$755,475.60   | \$62,956.30 |
| (iv) During the first renewal period                 | \$831,023.20   | \$69,251.93 |
| (v) During the second renewal period                 | \$914,125.00   | \$76,177.12 |
| (vi) During the third renewal period                 | \$1,005,538.00 | \$83,794.83 |

6. **No Broker.** Landlord and Tenant warrant that neither has had any dealings with any broker or agent in connection with the negotiation or execution of this First Amendment, and each party agrees to indemnify the other party from and against any and all cost, expense or liability for commissions or other compensation and charges claimed by any broker or agent by, through, or under Landlord or Tenant with respect to this First Amendment.

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

8. **Authority.** Each party hereby represents and warrants to the other that this First Amendment (and each term and provision hereof) has been duly and appropriately authorized by such party through proper written corporate action and approval, and no additional consent, agreement or approval is required with respect hereto.

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


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

[SIGNATURE PAGE TO FOLLOW]

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


**LANDLORD:**

RBR Real Estate Holdings, LLC

By:   
Name: Paul A. Targe  
Its: Vice President

**TENANT:**


Gold's St. Louis, LLC

By:   
Name: Adam Zeitoff  
Its: President + CEO

**GUARANTOR:**

Guarantor is signing this First Amendment solely for purposes of acknowledging that the Amended and Restated Guaranty shall remain in full force and effect during the Term and any renewal thereof.

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

By:   
Name: Adam Zeitoff  
Its: President CEO

# Exhibit D

## ASSIGNMENT AND ASSUMPTION OF LEASES

This ASSIGNMENT AND ASSUMPTION OF LEASES ("Assignment") is dated November 9<sup>th</sup>, 2019 (the "Effective Date") by and between **RBR REAL ESTATE HOLDINGS, LLC**, a Texas limited liability company ("Assignor"), and **MILTON 635 GRAVOIS ROAD LLC**, a Delaware limited liability company ("Assignee").

### RECITALS

WHEREAS, pursuant to the terms and conditions of that certain Agreement of Purchase and Sale dated May 1, 2019 (the "Purchase Agreement"), as amended by that certain First Amendment dated September 27, 2019, between Assignor and Assignee, as successor by assignment from Leeton Real Estate Inc., a New York corporation, Assignor has agreed to sell and Assignee has agreed to purchase that certain real property located at 635 Gravois Rd, Fenton, MO 63026, as more particularly described on Exhibit A of the Purchase Agreement (the "Property").

WHEREAS, Assignor is the landlord under those certain leases described in Schedule A attached hereto and incorporated by reference herein (collectively, the "Leases") for the premises located on the Property.

WHEREAS, Assignor desires to assign to Assignee all of its right, title, and interest in, to, and under the Leases, and Assignee desires to assume all of Assignor's obligations under the Leases first arising on and after the Effective Date.

### AGREEMENT

NOW, THEREFORE, in consideration of the sum of \$10.00, the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment. Assignor hereby assigns, transfers and sets over to Assignee all of its right, title, and interest in, to, and under the Leases to have and to hold the same unto Assignee, its successors and assigns, forever, subject to all of the terms, covenants and conditions of the Leases.
2. Assumption. Assignee hereby accepts the assignment of Assignor's right, title, and interest in, to, and under the Leases upon the terms and conditions herein set forth and hereby assumes and agrees to pay, perform and observe all of the obligations of the landlord under the Leases first arising from and after the Effective Date.
3. Indemnities. Assignor hereby agrees to defend, indemnify and hold harmless Assignee from and against any and all claims, liabilities, obligations, costs and expenses, including, without limitation, reasonable attorney's fees, which arise out of the Leases and relate to the period prior to the Effective Date. Assignee hereby agrees to indemnify and hold harmless Assignor from and against any and all claims, liabilities, obligations, costs and

expenses, including, without limitation, reasonable attorney's fees, which arise out of the Leases and relate to the period on or after the Effective Date.

4. Attorney Fees. If any action or proceeding is commenced by either party to enforce its rights under this Assignment, the prevailing party in the action or proceeding will be entitled to recover all reasonable costs and expenses incurred, including reasonable attorney fees and costs, in addition to any other relief awarded by the court. The term "prevailing party" means the party that has succeeded on a significant issue in the litigation and achieved a benefit with respect to the claims at issue, taken as a whole, whether or not damages are actually awarded to the party.

5. Miscellaneous. This Assignment may be amended only by an instrument in writing signed by Assignor and Assignee. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. This Assignment may be executed in two or more counterparts, all of which shall be considered one and the same Assignment. Facsimile or email copies of the signature pages to this Assignment shall be deemed to be originals.

[signature page follows]

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

**SELLER:**

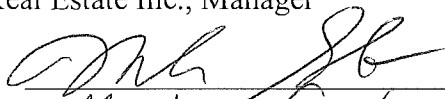
**RBR REAL ESTATE HOLDINGS, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: Paul A. Jorge  
Title: Vice President

**PURCHASER:**

**MILTON 635 GRAVOIS ROAD LLC,**  
a Delaware limited liability company

By: Leeton Real Estate Inc., Manager

By:   
Name: Mark Graham  
Title: President



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

**SELLER:**

**RBR REAL ESTATE HOLDINGS, LLC,**  
a Texas limited liability company

By: 

Name: Paul A. Jorge

Title: Vice President

**PURCHASER:**

**MILTON 635 GRAVOIS ROAD LLC,**  
a Delaware limited liability company

By: Leeton Real Estate Inc., Manager

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

## **SCHEDULE A**

1. **Gold's Gym:**

Amended and Restated Shopping Center Lease dated August 31, 2018 (as amended by that certain First Amendment to Amended and Restated Shopping Center Lease dated the same date hereof) by and between RBR Real Estate Holdings, LLC, as landlord, and Gold's St. Louis, LLC, as tenant.

2. **Sky Zone:**

Shopping Center Lease dated January 12, 2015 by and between RBR Real Estate Holdings, LLC, as landlord, and Innovative Heights Fenton, LLC D/B/A Sky Zone Indoor Trampoline Park, as tenant.

3. **St. Vincent DePaul Society:**

Shopping Center Lease dated July 27, 2015 by and between RBR Real Estate Holdings, LLC, as landlord, and The St. Vincent DePaul Society, as tenant.