

Fill in this information to identify the case:

Debtor 1 Gold's Texas Holdings Group, Inc.Debtor 2
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas

Case number 20-31318-hdh11

RECEIVED

SEP 10 2020

BMC GROUP

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

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

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?

Guilbeau Ventures, LLC

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

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

☒ No☐ Yes. From whom?

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

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

Where should notices to the creditor be sent?

Kustoff & Sanders, LLP

Name

4103 Parkdale Street

Number Street

San Antonio

TX

78229

City

State

ZIP Code

Contact phone (210)614-9444Contact email service@salegal.com

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

Name

Number Street

City

State

ZIP Code

Contact phone

Contact email

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

4. Does this claim amend one already filed?

☒ No☐ Yes. Claim number on court claims registry (if known)

Filed on

MM / DD / YYYY

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

☒ No☐ Yes. Who made the earlier filing?

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

6. Do you have any number you use to identify the debtor? ☒ 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? \$ unliquidated damages Does this amount include interest or other charges?
☐ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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

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

10. Is this claim based on a lease? ☐ No
☒ Yes. Amount necessary to cure any default as of the date of the petition. \$ 86,000.00

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

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?☒ No☐ Yes. Check one:

Amount entitled to priority

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

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

\$ _____

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

\$ _____

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

\$ _____

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

\$ _____

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

\$ _____

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

\$ _____

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

Part 3: Sign Below

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

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

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

Check the appropriate box:

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

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

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

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

Executed on date 09/09/2020

MM / DD / YYYY

Signature

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

Name

Melanie H. Sanders

First name

Middle name

Last name

Title

Partner

Company

Kustoff & Sanders, LLP

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

Address

4103 Parkdale Street

Number Street

San Antonio

City

TX

State

78229

ZIP Code

Contact phone

(210)614-9444

Email service@salegal.com

LEASE EXTENSION AGREEMENT

WHEREAS, that certain Lease Agreement was made and entered into on June 15, 1994 (as same may have been amended from time to time, the "Lease"), by and between JAI New Territories, Ltd., predecessor in interest to **UNIVERSITY OF THE INCARNATE WORD** as Lessor, and Racquetball & Fitness Clubs, Inc., predecessor in interest to **GOLD'S TEXAS HOLDINGS GROUP, INC.** as Lessee, for the premises commonly known as **9240 Guilbeau Road, Suite 104, San Antonio, Texas 78250**, said premises being more fully described in the Lease;

WHEREAS, the term of the Lease shall expire on or about September 14, 2017; and

WHEREAS, the parties to the Lease desire to extend the term of the Lease and amend certain other terms of the Lease as set forth herein.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree to amend the Lease as follows:

1. The term of the Lease is hereby extended through April 30, 2024.

2. Monthly Base Rent beginning May 1, 2014 through April 30, 2019 will be \$29,520.93; provided, however, that in the following seven (7) months, the Base Rent will be abated (during said months, Lessee shall continue to pay Lessee's prorated share of costs and expenses, pursuant to the terms of the Lease):

July, 2014
November, 2014
December, 2014
July, 2015
November, 2015
December, 2015
July, 2016

3. Monthly Base Rent beginning May 1, 2019 through April 30, 2024 will be \$30,996.87.

4. Except as specifically amended herein, all of the terms, covenants and conditions of the Lease are hereby ratified and shall continue in full force and effect, and shall be binding upon Lessor, Lessee, and their respective successors and assigns.

5. To facilitate execution, this Lease Extension Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. All executed counterparts of this agreement shall be deemed to be originals, but all such counterparts, taken together or collectively, as the case may be, shall constitute one and the same agreement. Any

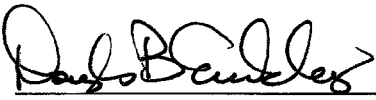
ABE *CM*

capitalized terms used but not defined herein shall have the same meaning as set forth in the Lease.

IN WITNESS WHEREOF, the parties have executed this Lease Extension Agreement in triplicate, to be effective as of **May 1, 2014**.

LESSOR:

UNIVERSITY OF THE INCARNATE WORD,
a Texas nonprofit corporation

By: 
Douglas B. Endsley,
Vice President, Business and Finance


LESSEE:

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

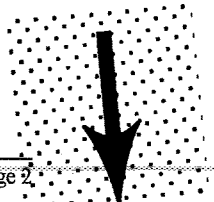
By: 
Name: Christopher P. Murphy
Title: VP

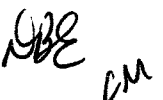
GUARANTOR:

GOLD'S GYM INTERNATIONAL, INC.

By: 
Name: Christopher J. Murphy
Title: VP

**INITIAL
HERE**







Anthony N. Romano
aromano@burr.com
Direct Dial: (205) 458-5210
Direct Fax: (205) 714-6895

420 North 20th Street
SUITE 3400
Birmingham, AL 35203

Office (205) 251-3000
Fax (205) 458-5100

BURR.COM

March 6, 2012

VIA FEDEX

Mr. Michael D. Hoover
DH Realty Partners
801 N. St. Mary's
San Antonio, TX 78205

RE: Spectrum Lease - Tezel

Dear Michael:

You should have received an email from Ed Christian containing copies of the fully executed documents set forth below in connection with the sale of Spectrum's clubs in San Antonio, Texas. Enclosed please find hard copies of the following fully executed documents (original signatures are included where indicated) forwarded by Ed:

1. One (1) original signed - Guaranty of Gold's Gym International, Inc.;
2. Consent, Estoppel Certificate and Agreement; and
3. Assignment and Assumption of Lease.

If you have any questions, please contact me using the contact information set forth above.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony N. Romano", is written over the word "Sincerely,".

Anthony N. Romano

ANR/db
Enclosures

GUARANTY

This Guaranty (the "Guaranty"), executed by Gold's Gym International, Inc. (the "Guarantor") in favor of University of the Incarnate Word, a Texas nonprofit corporation with an address of 4301 Broadway, San Antonio, Texas 78209 (the "Landlord").

RECITALS

WHEREAS, pursuant to an Assignment and Assumption of Lease dated March 1, 2012 (the "Assignment") by and between Racquetball & Fitness Clubs, Inc. ("RFC") and Gold's Texas Holdings Group, Inc. ("Tenant"), RFC assigned to Tenant and Tenant assumed, from and after the date of the Assignment, all of RFC's Obligations (as defined below) under that certain Lease Agreement dated June 15, 1994, as amended and assigned (the "Lease"), with respect to certain premises located at 9240 Guilbeau Road, Suite 104, San Antonio, Texas 78250, which premises (the "Premises") is more particularly described in the Lease;

WHEREAS, "Obligations" shall mean all obligations, liabilities, indebtedness and sums of money now or hereafter due or owing, or for which Tenant is liable or otherwise obligated to pay, pursuant to or arising under the Lease from and after the date hereof or with respect to the Premises (including, without limitation all Rent payable by Tenant to Landlord, and all maintenance costs payable by Tenant), together with all: (a) interest accruing thereon; and (b) costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in the enforcement or collection thereof; and

WHEREAS, as a condition to the assignment of the Lease, Guarantor has agreed to enter into this Guaranty;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Guarantor covenants and agrees as follows:

1. Guaranty. Guarantor absolutely and, unconditionally and irrevocably guarantees to Landlord the full and prompt payment and performance when due of the Obligations. The guaranty of Guarantor as set forth herein is a continuing guaranty of payment and performance and not a guaranty of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Tenant or any other person or entity. Guarantor additionally hereby absolutely, unconditionally and irrevocably guarantees to Landlord the full, complete and timely performance of all of the Obligations, including, without limitation, that Tenant will duly and punctually perform, observe and comply with all of the terms, covenants and conditions of the Lease, whether according to the present terms thereof, or pursuant to any change or changes in the terms, covenants or conditions thereof now or hereafter made or granted. Guarantor agrees that if all or any part of the Obligations are not performed when and as stated in the Lease, Guarantor shall immediately perform the Obligations. This Guaranty shall be effective as a waiver of, and Guarantor hereby


expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws or similar laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or person or entity whatsoever. This waiver by Guarantor is intended to waive, and Guarantor hereby expressly waives, any and all rights pursuant to Rule 31 of the Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code, Chapter 43 of the Texas Civil Practice and Remedies Code, and any and all amendments, recodifications or supplements to any such laws. This Guaranty shall continue, in full force and effect throughout the Term and thereafter, until all of the Obligations are paid and performed in full.

2. Representations. Guarantor hereby represents and warrants 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; (c) all balance sheets, earnings statements, and other financial data that have been or hereafter may be furnished to Landlord in connection with this Guaranty do and shall represent fairly the financial condition of Guarantor as of the dates on which, and for the periods for which, such balance sheets, earning statements, and other data are furnished; (d) all other information, reports, and other papers and data furnished to Landlord shall be accurate and correct in all material respects at the time given; and (e) Guarantor is solvent.
3. Sublease or Assignment of Lease. In the event the Tenant's interest in the Lease is sublet or assigned, unless Guarantor is expressly released by Landlord under the terms of the Lease or otherwise, Guarantor's obligations under this Guaranty shall continue and the term "Tenant" shall be deemed to include any assignee(s) of Tenant's interest through the full Term of the Lease.
4. Governing Law. This Guaranty is executed and delivered as an incident to a leasing transaction negotiated and consummated in Bexar County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas. Guarantor, for itself and its successors and assigns, hereby irrevocably (i) submits to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) waives, to the fullest extent permitted by Law, any objection that it may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guaranty or the Lease brought in the District Court of Bexar County, Texas, or in the United States District Court for the Western District of Texas, San Antonio Division, and (iii) agrees that any legal action or proceeding against Guarantor or any party to the Lease arising out of or in connection with this Guaranty or the Lease may be brought in any one of the foregoing courts.
5. Attorneys' Fees and Costs of Collection. Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Landlord in the enforcement of or

preservation of Landlord's rights under this Guaranty, including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether in connection with bankruptcy, reorganization, insolvency or appeal.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the 1th day of MARCH, 2012.

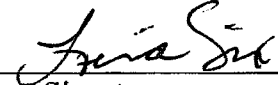
WITNESSES:



Signature

Paul Jorge

Printed Name



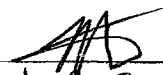
Signature

Lisa Six

Printed Name

"GUARANTOR"

Gold's Gym International, Inc.

By: 

Name: Michael G. Smith
Title: Vice President

ASSIGNMENT AND ASSUMPTION OF LEASE

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

WITNESSETH:

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement, dated February 8, 2012 (the "**Purchase Agreement**"), pursuant to which Assignor has agreed to sell, assign and transfer certain personal property and contracts to Assignee, including that certain Lease dated June 15, 1994, as amended and assigned, by and between Assignor, as tenant, and University of the Incarnate Word ("**Landlord**"), with respect to property located at 9240 Guilbeau Road, Suite 104, San Antonio, Texas 78250 (the "**Lease**").

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

NOW, THEREFORE, in consideration of the Purchase Price (as defined in the Purchase Agreement) and other good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally and equitably bound, do hereby agree as follows:

1. Assignment and Assumption of Lease.

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

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

2. Miscellaneous.

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


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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

ASSIGNOR:

Racquetball & Fitness Clubs, Inc.

By: 
Name: Anthony M. Lockhill
Title: CEO

ASSIGNEE:

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

By: _____
Name: _____
Title: _____

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

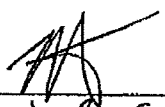
ASSIGNOR:

Racquetball & Fitness Clubs, Inc.

By: _____
Name: _____
Title: _____

ASSIGNEE:

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

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

CONSENT, ESTOPPEL CERTIFICATE AND AGREEMENT

Gold's Texas Holdings Group, Inc.
Gold's Gym International, Inc.
125 E. John Carpenter Freeway, Suite 1300
Irving, TX 75062

Re: Lease Agreement dated June 15, 1994 ("**Lease**") by and between JAI-New Territories, Ltd. and Racquetball & Fitness Clubs, Inc. (now known as Spectrum Clubs, Inc.), as amended pursuant to that Addendum to Lease Agreement dated June 15, 1994, as amended pursuant to Lease Amendment # 1 dated March 12, 1995, as amended pursuant to Lease Amendment # 2 dated November 1, 1995, as assigned by Spectrum Clubs, Inc. to Racquetball & Fitness Clubs, Inc. ("**Tenant**") pursuant to that Assignment and Assumption of Lease dated February 10, 2000, as amended pursuant to that Third Amendment to Lease dated June 1, 2002 by and between Capital Foresight Limited Partnership, as successor in interest to JAI-New Territories, Ltd., Spectrum Clubs, Inc. and Tenant, as assigned by Capital Foresight Limited Partnership to University of the Incarnate Word ("**Landlord**") pursuant to that certain Assignment and Assumption of Leases dated January 9, 2012, covering 27,250 square feet located at 9240 Guilbeau Road, Suite 104, San Antonio, TX 78250 (the "**Premises**").

Gentlemen:

Landlord is the Landlord under the Lease, and is vested with fee simple title to the Premises. Landlord understands that pursuant to an Assignment and Assumption Agreement (the "**Assignment and Assumption Agreement**") between Tenant and Gold's Texas Holdings Group, Inc. ("**Purchaser**") that will be executed in connection with the closing of the transactions contemplated by the Purchase Agreement between Tenant and Purchaser (the "**Purchase Agreement**"), Tenant will assign its interests in the Lease to Purchaser (the "**Assignment**"). The Assignment will occur upon the closing of the transaction contemplated by the Purchase Agreement (the actual date of closing being the "**Closing Date**").

1. Landlord (i) consents to the Assignment and the use of the trade name "Gold's Gym" at the Premises and waives any required notice of assignment under the Lease; (ii) releases Tenant and any and all current guarantors from any obligations or liability under the Lease, including without limitation, liability for the payment of rent and for the due performance of all the terms, covenants and conditions of Tenant pursuant to the Lease arising or accruing from and after the Closing Date; and (iii) agrees that Purchaser and Gold's Gym International, Inc. shall be responsible under the Lease only for the obligations, liabilities, terms, covenants or conditions under the Lease arising or accruing from and after the Closing Date. Landlord's consent to the Assignment will not constitute a waiver of Landlord's consent rights under the Lease as to any subsequent assignment, sublease or other transfer of Tenant's interest in the Lease by Purchaser.

2. Landlord warrants, represents and certifies to, and agrees with Purchaser as follows:

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

(b) The term of the Lease commenced on September 15, 1994, and the current term expires on September 14, 2017. Tenant has 0 options to renew the Lease for successive terms of — years each.

(c) The current monthly installments due under the Lease are:

Base or minimum monthly rent:	\$ <u>36,787.50</u>
Common area maintenance costs or operating expenses:	\$ <u>3,270.00</u>
Insurance costs:	\$ <u>817.50</u>
Real estate taxes:	\$ <u>3,815.00</u>

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

Common area maintenance or operating expenses:	<u>57.23</u> %
Insurance costs:	<u>57.23</u> %
Real estate taxes:	<u>57.23</u> %

No other payments are currently due from Tenant to Landlord under the Lease.

(d) Base Rent and Monthly Costs are (i) paid and up to date through and including the current month, and (ii) have not been paid more than one month in advance, except as follows: _____.

(e) A security deposit in the amount of \$ 10,000.00 is presently held by Landlord. All interest in the security deposit will transfer to Purchaser from Tenant. There are no other deposits under the Lease.

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

(g) Except as set forth below, all construction and leasehold improvements to the Premises required under the Lease to be performed by either Landlord or Tenant have been completed


(h) Landlord hereby waives and releases any liens which Landlord may have against Tenant's personal property, trade fixtures, equipment, merchandise, cash, or accounts receivable therein, whether such lien is statutory, constitutional, or contractual, or arises out of operation of law or otherwise.

3. The person signing the Certificate on behalf of Landlord is a duly authorized agent of Landlord and is fully authorized and empowered to execute this Certificate on behalf of Landlord.

The undersigned acknowledges that Purchaser is relying upon the truth and accuracy of the statements and certifications contained herein in evaluating and completing the Assignment.

Very truly yours,

University of the Incarnate Word.
a Texas nonprofit corporation

By: 
Name: Douglas B Endsley
Title: V.P. Finance & Technology
Date: February 20, 2012

1034

K+3 - Guilbeau

LEASE AGREEMENT

Summary Page

Bark's
copy

LESSOR JAI New Territories, Ltd.
LESSEE Racquetball & Fitness Clubs, Inc.
COMMENCEMENT September 15, 1994 EXPIRATION September 14, 2002

- (1) Lessor's address and telephone number: JAI New Territories, Ltd.
P.O. Box 218646, Houston, Texas 77218 Phone: (713) 579-9190
- (2) Lessee's address and telephone number: Racquetball & Fitness Clubs
15759 San Pedro, San Antonio, Texas 78232 Phone: (210) 490-1980
- (3) Lessee's trade name: Racquetball & Fitness Clubs of San Antonio
- (4) "Demised Premises": The premises contain about 19,050
square feet at 9240 Guilbeau Road, Suite 104, San Antonio, Texas 78250
(street address, city, state, zip code, of the
New Territories Shopping Center (herein called "the Center").
- (5) Lease term: 8 years and 0 months commencing on the 15th day
of September, 1994 and ending the 14th day of September, 2002.
- (6) Minimum Rental:
From 9/15/94 to 9/14/96 \$80,010.00 /annum (\$6,667.50 /mo.)
From 9/15/96 to 9/14/00 \$91,440.00 /annum (\$7,620.00 /mo.)
From 9/15/00 to 9/14/02 \$102,870.00 /annum (\$8,572.50 /mo.)
- (7) Annual percentage rental: None
- (8) Operating expense liability based on 45.15 % of all expenses.
Initial monthly amount: \$2,857.50 (minimum liability).
- (9) Security deposit: \$10,000.00
- (10) Liability insurance by Lessee: Minimum coverage to be
\$500,000.00 per occurrence and \$500,000.00
in the aggregate.
- (11) Business days and hours of Lessee: at least 9:00 a.m. to 9:00 p.m.
Monday through Friday and 9:00 a.m. to 6:00 p.m. Saturday with additional
hours as determined by Lessee
- (12) Permitted use: Operation of a health and fitness club
- (13) The Laws of the State of Texas, County of Bexar
City of San Antonio will govern the validity,
performance and enforcement of this lease.



Bir

AN

LEASE AGREEMENT

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THE STATE OF TEXAS

COUNTY OF BEXAR

JUNE 15
1. **PARTIES** This lease, made and entered into this 15 day of ~~February~~ June, A. D., 19 94, with effective date provided below by and between JAI New Territories, Ltd., hereinafter called "Lessor", and Racquetball & Fitness Clubs, Inc., hereinafter called "Lessee".

2. **PREMISES** Lessor does hereby demise and lease unto Lessee, and Lessee does hereby take, rent and hire from Lessor for the term and upon the terms and conditions hereinafter set out a lease space in "the Center" located at: 9240 Guilbeau Road, Suite 104

San Antonio, Texas 78250

the tract upon which the Center is located being more particularly described on Exhibit "A" hereunto attached. The space hereby demised (the "demised premises") is outlined in red on the plot plan of the Center attached hereto as Exhibit "B" and contains approximately 19,050 square feet of floor space.

3. **PURPOSE** Lessee will use the demised premises for the following purpose:
Operation of health and fitness club

Lessee will use the demised premises for no other purpose without the prior written consent of Lessor. Lessee's business will be advertised as and operated under the name of:

Racquetball & Fitness Clubs of San Antonio

unless and until the chain or franchise (if any) changes its name, whereupon Lessee may use and advertise such new name. Such change in name shall only be made with the prior written consent of Lessor. Lessee will not conduct or permit to be conducted any auction, bankruptcy, fire, "lost our lease", "going out of business", or similar sale and will not use any exterior lighting, flashing lights, searchlights, or any loudspeaker, phonograph, radio or sound amplifier which is audible outside the demised premises. Lessee will not commit any act which is a nuisance or annoyance to Lessor or other Lessees, or which might, in the exclusive judgment of Lessor, appreciably damage Lessor's goodwill and reputation, or which would tend to injure or depreciate the Center.

Lessee shall keep the outside areas immediately adjoining the premises clean and free from ice and snow, and not burn, place, or permit any rubbish, obstructions, or merchandise in such areas. Lessee shall keep the demised premises clean, orderly, sanitary and free from objectionable odors and from insects, vermin and other pests by periodic pest control treatment which shall be in a manner approved by Lessor. Lessee agrees to participate in the Merchant's Association of the Center (if any), and will cooperate in good faith with any reasonable advertising or promotional programs of such Association.

4. **TERM** The original term of this lease is for a period of 8 years, 9 months, commencing within fifteen (15) days after the date Lessor notifies Lessee that the demised premises are ready for occupancy or such earlier date as Lessee shall commence doing business on the demised premises or on see Addendum, 19 94, whichever occurs first. Prior to taking possession of the demised premises Lessee shall execute an acceptance letter in the form set out in Exhibit "C", accepting the demised premises as constructed. During the last ninety (90) days of the lease term, Lessor will have the right to enter and show the demised premises for the purpose of reletting said premises.

5. MINIMUM RENT Lessee agrees to pay Lessor a minimum rent of \$ 691,515.00 for the entire term hereof, payable in monthly installments of \$ (see page 2a) each, beginning on the first day of the term hereof. If the lease term does not begin on the first day of the calendar month, Lessee will pay in advance a pro rata part of such as minimum rental for such partial month. All rent payments are due in advance on the first day of each calendar month without any prior request for payment and without any deduction or offset whatsoever. All rental payments shall be paid to Lessor at its offices in Harris County, Texas, at the address set out in the paragraph on "NOTICES" or such other address as Lessor shall designate.

tenth (10th)

In the event said monthly rental payment is not received by Lessor by the ~~fifth (5th)~~ tenth (10th) day of the month or is returned from any bank or financial institution for any reason whatsoever, then a late charge of five percent (5%) of said payment shall be added and Lessee hereby agrees that in such event of untimely payment, that said charge shall be Additional Rent under this lease. In the event said payment shall not have been paid by the ~~tenth (10th)~~ tenth (10th) day of the month, then Lessee shall be in default, and Lessor may, at its option, proceed under any of its remedies provided herein or under such other remedy at law or in equity as Lessor may be entitled.

~~6. PERCENTAGE RENT Not later than thirty (30) days after the end of each calendar year, Lessee shall furnish Lessor a statement showing the gross sales made on the demised premises during such calendar year. In addition, Lessee shall furnish Lessor a list of monthly sales figures by letter. Lessee shall also furnish any month's sales figures at any time upon request by Lessor. At the time such statement is furnished, Lessee agrees to pay to Lessor as additional rent due hereunder, an amount of money equal to N/A % of such sales, less the total of the monthly minimum rentals paid during the preceding calendar year. In computing sales for the purpose of this provision, Lessee shall take the total amount of all monies or things of value received or receivable (without deductions for uncollectibles) by Lessee, its sublessees, licensees or concessionaires or others, for merchandise sold or services performed or business conducted in, about or from the demised premises, including transactions in which delivery is made to the customer at the demised premises but the order is taken elsewhere, transactions in which the order is taken at the demised premises but delivery is made elsewhere, receipts from mechanical and other vending machines and deposits not refunded to purchasers and deduct therefrom: (a) refunds made to customers, and (b) sales, excise and gross receipts taxes. Provided, that the said statement shall be approved in writing by a Certified Public Accountant licensed by the State of Texas. In the event said statement and payment shall not have been received by Lessor within sixty (60) days after the end of the calendar year, then Lessee shall be in default, and Lessor may, at its option, proceed under any of its remedies provided herein or under such other remedy at law or in equity as Lessor may be entitled.~~

All books of account, records, daily cash register total slips, sales slips and Federal Income Tax returns relating to Lessee's operation in or about the demised premises will be retained by Lessee for a period of five (5) years after preparation, and will be open to inspection by Lessor (or its representative) at all reasonable times. At its option, Lessor shall have the right, during normal business hours, to audit the books of Lessee for the purpose of determining the accuracy of the statement provided to be furnished hereunder. The cost of the audit will be borne by Lessor unless such audit shows that Lessee's statement was in error by three per cent (3%) or more, in which event Lessee will pay the cost of such audit.

7. SECURITY DEPOSIT Lessee shall deposit with Lessor upon execution of this lease the sum of \$ 16,667.50 which shall bear no interest and apply as follows: \$ 6,675.00 of such deposit

10x 50

Minimum Rent Schedule:

<u>Period</u>	<u>Annual Base Rental Rate</u>	<u>Monthly Base Rent Amount</u>
Months 1 - 6	Rent Abated	Rent Abated
Months 7 - 24	\$4.20/sq. ft.	\$6,667.50
Months 25 - 72	\$4.80/sq. ft.	\$7,620.00
Months 73 - 96	\$5.40/sq. ft.	\$8,572.50

shall be applied on the first installment of rent due and payable hereunder and the remaining balance of said deposit shall be held by Lessor as security for the faithful performance of Lessee, of all terms, covenants and conditions of this lease to be observed and performed. In the event of default by Lessee of any of the terms, covenants and conditions of this lease, Lessor may apply said security deposit to any defaulted rent or other charges due Lessor and Lessee shall remain liable for any deficiency. If, at the end of the term of this lease, Lessee is not in default in the performance of any provision of this lease, the security deposit, or any balance thereof remaining, will be refunded to Lessee.

8. OPERATING EXPENSES Lessee shall pay to Lessor as additional rent 45.15% (Lessee's prorata share) of all costs and expenses ("COEX") of every kind and nature paid or incurred by Lessor in operating the Center. Lessee shall pay this additional rent in the initial amount of \$2,857.50 per month in advance and in addition to and at the same time as the minimum rent specified in paragraph 5. Within approximately ninety (90) days after the end of each calendar year during the term hereof, Lessor shall furnish to Lessee a statement in reasonable detail setting forth the computation of actual COEX for such calendar year. Within thirty (30) days after the date of the statement, there shall be a prompt adjustment between Lessor and Lessee, with payment to, or repayment by, Lessor, as the case may require, to the end that Lessor shall receive the entire amount of Lessee's prorata share of said COEX.

Any statement rendered to Lessee shall consist of data prepared for Lessor by its then accountant(s) and shall constitute a final determination between Lessor and Lessee as to COEX for the period represented thereby. At his option from time to time, Lessor's accounting may be on a cash or an accrual basis, and shall in any event be in accordance with generally accepted accounting principles.

Any delay or failure of Lessor in rendering any statement, hereinabove provided shall not prejudice Lessor's right to thereafter render such statement, nor constitute a waiver of, or in any way impair, the continuing obligation of Lessee to pay additional rent required by this paragraph. Notwithstanding the expiration or sooner termination of the term of this lease (except in the case of a cancellation by mutual written agreement), Lessee's obligation to pay additional rent pursuant to this paragraph shall continue and cover all periods up to the term expiration date. The obligation of Lessee with respect to any additional rent payable pursuant to this paragraph shall survive the expiration or sooner termination of the term of this lease. In the event said payment shall not have been received by Lessor within thirty (30) days of the date of the statement, then Lessee shall be in default, and Lessor may, at its option, proceed under any of its remedies provided herein or under such other remedy at law or in equity as Lessor may be entitled.

Lessor may at its option and in the event the actual COEX liability of Lessee exceeds the amount of COEX received by Lessor in accordance with this paragraph, give Lessee notice of an increase in amount to COEX due monthly in advance. Such notice shall specify the date on which the new amount shall commence being paid. Lessee agrees to commence paying to Lessor the amount of additional rent stated in the notice and on the date specified in said notice.

COEX shall include all costs and expenses of every kind and nature paid or incurred by Lessor in relation to the Center and the land of which it is a part, including all costs and expenses incurred as a result of Lessor's compliance with any of its obligations hereunder, and shall include, without limitations:

- (a) All ad valorem property taxes on the Center and the land of which it is a part;
- (b) All casualty, liability, property damage, rent, indemnification, multi-risk, business interruption, plate

glass, malicious mischief, vandalism, workmen's compensation, employees' liability and any other casualty and/or risk insurance on the Center and/or the land of which it is a part;

(c) All costs and expenses (including reasonable and appropriate reserves) for operating, managing, equipping, controlling, lighting, repairing, replacing, cleaning and maintaining all common areas, dumpsters, parking areas, canopies, exterior lighting, water for exterior and interior use, security and maintenance and upkeep of the landscaping and for such other things or services as may in the judgment of Lessor benefit the Lessees in the Center;

(d) All charges for ~~gas, steam, heat, ventilation, electricity, air conditioning, water, sewer and refuse and rubbish removal;~~ RL
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(e) All supplies (in connection with cleaning or otherwise), tools, materials and equipment;

(f) All repairs, alterations, improvements and replacements made by Lessor at its expense;

~~(g) Gross salaries and wages, medical, surgical and general welfare benefits (such as group life, medical and disability insurance) and pension payments, fringe benefits (such as vacation, holiday and other allowances), payroll taxes, workmen's compensation, union benefits paid by employer, unemployment insurance, social security and other taxes of or with respect to employees of Lessor and independent contractors engaged in the maintenance and/or operation;~~ RL
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(h) Management fees;

(i) Accounting expenses for all statements with respect to the Center and attorneys' fees and fees to other professionals for services rendered in connection with the Center;

(j) Administrative costs for bookkeeping, telephone and other office expenses of Lessor;

~~(k) Dues and fees for trade and industry associations and costs of their related activities, all relating to the Center; and~~ RL
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~~(l) Real estate brokers' and/or agents' commissions and compensation, and advertising costs;~~ RL
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It is understood by Lessee that the intent of this paragraph is to ensure that all costs and expenses of every kind and nature of the Center are to be paid by the Lessee and that Lessor shall have no liability for such costs and expenses.

9. **CONSTRUCTION** ^{Lessee} ~~XXXXXX~~ agrees to finish the interior of the demised premises according to the plans agreed to between Lessor and Lessee as shown on Exhibit "D" on or before ~~the date below~~ as said date may be delayed by days lost due to strikes, labor disputes, fires, hurricanes, tornados, prolonged inclement weather, or other acts of God. All installations in excess thereof which are requested by Lessee will be for Lessee's account and at Lessee's cost. RL
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10. **TAXES** Lessee shall pay all ad valorem and personal property taxes on fixtures and equipment, or other property which Lessee shall place on the demised premises.

11. **SIGNS** Lessee will not place or suffer to be placed or maintain on the exterior of the premises any sign, advertising matter, or any

* six (6) months following final execution of the Lease Agreement and receipt of written approval from Albertson's. RL
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other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the premises without first obtaining Lessor's prior written approval and Lessee will maintain such signs, lettering, advertising matter or other things as may be approved in good condition and repair at all times.

Lessor shall have the right to remove any signs or banners erected without such prior approval, and Lessee shall pay to Lessor, as additional rent at the next ensuing rent payment date, a sum equal to the cost of such removal. Lessor shall never be liable to Lessee for damages as a result of such removal.

12. COMMON FACILITIES Exhibit "B" hereto attached, generally shows common facilities, including the location of the parking areas, driveways and other public areas provided by Lessor for the general use and convenience of all tenants occupying space in the Center, their respective employees and customers, and the general public. Lessee, its employees, customers and invitees shall have the non-exclusive right to the use of such parking facilities, driveways and other public areas, provided that such areas shall at all times be subject to the control and management of Lessor, and Lessor shall have the right to establish and modify from time to time and to enforce reasonable rules and regulations with respect to the use of all such areas. Employees of Lessee shall park only in the Employee Parking Areas designated by Lessor. Lessee will not load or unload any trucks or permit any trucks serving the demised premises, whether owned by Lessee or not, to be loaded or unloaded in the Center except in the areas designated for such use by Lessor. Lessee further hereby consents to the terms of any cross-easement agreements which Lessor may elect to enter into with respect to the common facilities and it shall not be necessary for Lessee to join in such cross-easements. Lessee agrees to abide by such rules and regulations and to cooperate with Lessor in instructing its employees and invitees to comply therewith for the mutual benefit and convenience for all concerned.

13. MAINTENANCE AND REPAIRS Lessee agrees to maintain at its cost and expense the interior of the demised premises in substantially the same condition as at the beginning of the term excepting only reasonable wear and tear arising from proper use thereof and shall make all necessary repairs and replacements to keep the interior of the demised premises in good order and condition. Lessee further agrees to keep the walkway and parking lot adjacent to the curb immediately in front of the demised premises clean and orderly.

Lessee shall maintain and make all major and minor repairs and replacements to the air conditioning, plumbing, gas and electrical appurtenances in the demised premises at the sole cost and expense of Lessee. Lessor shall not be liable to Lessee or any other person whomsoever for injury or damages to persons or property received on or incidental to the use of said demised premises, and Lessee shall indemnify and save harmless Lessor from and against any loss, claim, expense or liability in connection therewith, including Lessee's failure to repair. All outside window breakage, including plate glass and special store front equipment, shall be repaired by Lessee at Lessee's cost.

In the event Lessee fails to make the necessary repairs or replacements as agreed herein, Lessor may do so and charge Lessee for the cost as additional rent payable by Lessee with the next ensuing rent payment or at Lessor's option, Lessor may deduct the cost from the Security Deposit and Lessee hereby agrees, in the latter event, to bring the Security Deposit to its original amount within ten (10) days of the date of the notice thereof.

14. ALTERATIONS AND INSTALLATIONS Lessee shall not make any additions, alterations or changes in the improvements without first

obtaining Lessor's written approval. Lessee may install machinery, equipment and trade fixtures necessary for the conduct of its business and upon termination of the lease, and provided Lessee is not at such time in default hereunder, Lessee shall be entitled to remove any such machinery, equipment and trade fixtures installed by Lessee on the premises, with the understanding, however, that Lessee shall be obligated to place the demised premises in their original condition, normal wear and tear excepted, in the event alterations have to be made or damages are caused by the removal of such property by Lessee.

15. INSPECTION OF DEMISED PREMISES Lessor shall have the right to enter upon the demised premises at all reasonable hours for the purpose of inspecting same. Lessor has the right, in the event Lessee does not maintain the premises as required herein and after giving Lessee written notice and five (5) days to cure such default, to order such repairs or maintenance as may be deemed necessary by Lessor, and to charge the cost thereof to Lessee, said cost to be additional rent payable from Lessee on the first day of the month following notice to Lessee that such work has been performed by Lessor on behalf of Lessee.

16. COMPLIANCE WITH LAWS Lessee shall comply with all statutes, ordinances, rules, orders and regulations and requirements of the federal, state, county and city governments and all departments thereof, applicable to the demised premises.

17. QUIET POSSESSION Lessor covenants and warrants that Lessee, on payment of rents and other sums due hereunder and the performance of all its covenants herein contained, shall have the full and unrestricted use, possession and enjoyment of the demised premises during the term hereof, subject only to the rights or interests of any holder of a mortgage on the demised premises, and subject to the rights of other Lessees in the Center. LESSOR FURTHER COVENANTS AND WARRANTS TO LESSEE THOSE ITEMS INCLUDED IN THE LEASE SUBORDINATED NON-DISTURBANCE AND ATTORNEYMENT AGREEMENT ATTACHED AS EXHIBIT "B".

18. LIABILITY INSURANCE Lessee shall maintain in full force and effect during the term of this lease, at Lessee's own expense, personal injury and property damage liability insurance in companies approved by Lessor, insuring the Lessor and Lessee jointly, in the amount of \$500,000.00 with respect to any one occurrence \$500,000.00 with respect to the aggregate. Certificates for such insurance shall be issued showing Lessor to be an additional insured, and the policy shall be written so that it may not be changed or canceled without ten (10) days prior written notice being first given to Lessor. A duplicate original of such policy will be deposited with Lessor.

19. CASUALTY INSURANCE Lessor will maintain in full force and effect during the term of this lease, fire and extended coverage casualty insurance on the improvements located in the Center. Lessee will maintain fire and extended coverage casualty insurance on all fixtures and equipment owned or placed in the demised premises. Lessee will not engage in any activity or business which would cause Lessor's fire and extended coverage insurance to be canceled. Should the nature or conduct of Lessee's business in the demised premises result in increased fire and extended coverage premiums for the demised premises and/or the adjoining and surrounding improvements owned by Lessor, Lessee will pay Lessor during the term hereof an amount equal to such increase so long as it shall continue in effect.


20. DESTRUCTION If the premises shall be damaged by fire (unless such fire was caused by the Lessee or the Lessee's agents), the

elements, unavoidable accident or other casualty, but are not hereby rendered unusable in total or in part, the Lessor, shall repair this damage, and the rent shall not be adated or reduced. If because of this occurrence the premises shall be made unusable only in part, the Lessor shall repair the damage and the fixed minimum rent meanwhile shall be reduced proportionately as to the proportion of the premises made unusable. If the premises shall be made totally unusable by reason of this occurrence, the Lessor shall, at his own expense, cause this damage to be repaired and the fixed minimum rent shall be reduced in total, ~~only to the extent of proceeds received by the Lessor from rent insurance.~~ The Lessor shall have the right, to be exercised by notice in writing, delivered to the Lessee within sixty (60) days from and after this occurrence, to elect not to reconstruct the destroyed premises. In that event this lease and the tenancy created by this lease shall cease as of the date of said occurrence. The rent is to be adjusted as of this date. Nothing in this section shall be considered as to permit the reduction in total or in part of the percentage rent, but for the purposes of Paragraph 6 above, the computation of percentage rent shall be based upon the revised minimum rent as the same may be reduced as defined in this section. B
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In the event that fifty percent (50%) or more of the leasable area of the Center is damaged or destroyed by fire or other cause, notwithstanding that the premises may be unaffected by any fire or other cause, the Lessor shall have the right, to be exercised by notice in writing and delivered to the Lessee within sixty (60) days from and after said occurrence, to elect to cancel or terminate this lease. Upon giving this notice to the Lessee, the term of this lease shall expire by lapse of time upon the third (3rd) day after notice is given and the Lessee shall vacate the premises and surrender the premises to the Lessor.

21. ASSIGNMENT AND SUBLETTING Lessee may not assign, sublet or underlet the demised premises or any portion thereof without the prior written approval of Lessor; ~~any attempt to do so shall be null and void.~~ In determining whether to grant consent to the Lessee's sublet or assignment request, the Lessor may consider any reasonable factor. Lessor and Lessee agree that any one of the following factors, or any other reasonable factor, will be reasonable grounds for deciding the Lessee's request: ~~(a) financial strength of the proposed sublessee/assignee must be at least equal to that of the existing Lessee; (b) business reputation of the proposed sublessee/assignee must be in accordance with generally acceptable commercial standards; (c) use of the premises by the proposed sublessee/assignee must be identical to the use permitted by this lease; (d) percentage rents of the proposed sublessee/assignee, or the prospect of percentage rents, must be at least equal to that of the existing Lessee; (e) managerial and operational skills of the proposed sublessee/assignee must be the same as those of the existing Lessee; (f) use of the premises by the proposed sublessee/assignee will not violate or create any potential violation of any laws; and (g) use of the premises will not violate any other agreements affecting the premises, the Lessor or other Lessees.~~ In the event Lessor's written approval is given to such assignment, subletting or underletting, Lessee shall not be relieved from any liability hereunder. * such approval shall not be unreasonably withheld.

22. HOLDING OVER It is agreed and understood that any holding over by the Lessee of the hereby demised premises after the expiration of this lease shall operate and be construed as a tenancy from month to month at a rental equal to one hundred fifty percent (150%) of the minimum rental and the percentage rental herein provided (computed on a monthly basis rather than lease year basis as hereinabove provided).

thirty (30) 
23. **DEFAULT** In the event of any failure of the Lessee to pay any of the rentals or other sums provided to be paid hereunder within ~~five (5)~~ days after same shall be due, or if Lessee defaults in observance or performance of any other covenant, condition, agreement or provision hereof, which is not remedied within ~~ten (10)~~ days after notice of such default from Lessor shall have been mailed to Lessee, then Lessor may at its option exercise either of the following remedies:

(a) Lessor may terminate this lease by giving to Lessee written notice of Lessor's intention to do so, in which event the term of this lease shall end, and all right, title and interest of Lessee hereunder shall expire on the date stated in such notice which shall not be less than ten (10) days after the date of the notice by Lessor of his intention to terminate. Lessor shall be entitled to recover from Lessee all of the rentals accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Lessee or for which Lessee is liable or in respect of which Lessee, under the provisions hereof, has agreed to indemnify Lessor, which may be then owing and unpaid and all cost and expense including court costs and attorneys fees incurred by Lessor in the enforcement of its rights and remedies hereunder; and in addition, Lessor shall be entitled to recover as damages the then fair market value for the lease for the remainder of its term; or

(b) Lessor may, without terminating this lease, terminate the right of Lessee to possession of the demised premises by giving notice to Lessee that Lessee's right of possession shall end on the date stated in the notice, which shall not be less than ten (10) days from the date of such notice, in which case the right of Lessee to the possession of the demised premises or any part thereof shall cease on the date stated in such notice. Lessor may enter the demised premises and take possession thereof, and may remove any portion of the equipment, machinery, or apparatus thereof, and place same in storage at the expense of Lessee, and may sublet or relet the demised premises or any part thereof from time to time for all or any part of the unexpired part of the term hereof, or for a longer period. Lessor may make any and all alterations or repairs that may be necessary in order to relet the premises or any part for whatever term or terms which may be for lease extending beyond the term of this lease, and at rental or rentals and upon any other terms and conditions as the Lessor, in its sole discretion, may deem advisable. Upon this reletting, all rentals received by the Lessor shall be applied: (1) to the payment of any indebtedness other than rent due from the Lessee to the Lessor; (2) to the payment of any cost and expenses of this reletting, including brokerage fees, attorney's fees and the cost of any alterations and repairs; and (3) to the payment of rent due and unpaid. In the event that the proceeds of such reletting or subletting are insufficient to paying full the foregoing, Lessee shall be liable for, and Lessee promises and agrees to pay the amount of any such deficiency.

Lessor may at any time and from time to time recover judgment for such deficiency. Provided, that Lessor's election to exercise the right of possession set forth in paragraph 23(b) hereof shall not operate as a waiver of Lessor's right of termination of the leasehold estate herein created, as set forth in paragraph 23(a) hereof.

Lessee covenants and agrees that in the event Lessor should exercise the right of possession provided for in this paragraph 23(b), or in the event that Lessor should exercise a right of possession pursuant to the right of termination set forth in the foregoing paragraph 23(a), Lessee shall peaceably surrender the demised premises to Lessor. Provided, that Lessor shall have the right of action of forcible entry and detainer against Lessee or others claiming under Lessee, in the event that Lessee or others claiming under Lessee should refuse to relinquish possession of the demised premises.

24. WAIVER OF DEFAULT No acceptance of rent by Lessor or delay in enforcing any obligation shall be construed as a waiver of any default in the performance of any obligation to be undertaken by Lessee. Lessor's failure to enforce the default provisions hereof in the event of Lessee's default hereunder shall not act as a waiver of Lessor's right to enforce the default provisions hereof in the event of a subsequent breach thereof by Lessee.

25. LESSOR'S LIEN Lessor shall have a lien as security for rents and other covenants of Lessee herein on all goods, wares, chattels, fixtures, equipment and other personal property placed upon the demised premises; provided, however, that such lien is in addition to and cumulative of any statutory or constitutional lien to which Lessor may be entitled; and provided, further, that Lessor's contractual and statutory lien on such personal property and fixtures of Lessee shall be subordinate to the lien of any recorded purchase money mortgages only to the extent of the indebtedness secured by such purchase mortgages in existence at the time such personal property and fixtures are placed or installed upon the demised premises. Lessee herein specifically waives any right he may have for a due process hearing prior to the removal of the hereinabove enumerated chattels.

26. BANKRUPTCY In the event Lessee becomes insolvent or bankrupt or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for and consents to the appointment of a trustee or receiver for Lessee, or if bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under the Bankruptcy Law, or similar law, for relief of debtors are instituted by or against Lessee, then Lessor shall have the option of declaring this Lease to be in default and shall have the right to pursue the remedies provided hereinabove.

27. ABANDONMENT If the Lessee shall abandon the premises or discontinue full-time operations (and such abandonment or failure to operate continues for fifteen (15) consecutive calendar days) or cause this lease to be taken under any writ of execution, then the Lessor, besides other rights and remedies it may have, shall have the immediate right to reenter and remove all persons and property from the premises. This property may be removed and stored in a public warehouse or elsewhere, at the cost of and the account of the Lessee, all without service of notice or resort to legal process and without being considered guilty of trespass or becoming liable for any loss or damage which may have occurred because of this action.

~~28. CONTINUOUS OPERATION Subject to the provisions of the paragraph on "Destruction", Lessee shall continuously during the entire term hereof conduct and carry on Lessee's business in the premises and shall keep the premises open for business and cause Lessee's business to be conducted therein during the usual business hours of each and every business day as is customary for businesses of like character in the area in which the premises are located to be open for business; provided, however, that this provision shall not apply if the premises should be closed and the business of Lessee temporarily (10 business days or less) discontinued therein on account of strikes or lockouts. In addition, failure of Lessee to continuously occupy the premises during the entire term hereof, including any rent concession or abatement period, shall also be an event of default.~~

~~In the event of breach by the Lessee of any of the conditions in this paragraph contained, the Lessor shall have, in addition to any and all remedies herein provided, the right at its option to collect one hundred twenty five percent (125%) of the minimum rent herein provided, for each and every day that the Lessee shall fail to conduct its business as herein provided.~~

29. WAIVER OF LIABILITY OR SUBROGATION Lessor and Lessee hereby releases the other, and their respective employees, agents and every person claiming by, through, or under either of them, and Lessee hereby releases each other tenant in the Center of which the premises are a part and the employees and agents thereof, from any and all liability or responsibility (to the other or anyone claiming by, through or under them by way of subrogation or otherwise) for any loss or damage to any property (real or personal) caused by fire or any other insured peril covered by any insurance policies for the benefit of any party, even if such loss or damage shall have been caused by the fault or negligence of another party, their employees or agents or such other Lessee or any employee or agent thereof.

30. UTILITY INTERRUPTION The failure of or temporary interruption of any utility resulting from causes beyond the control of Lessor or due to damage or to required maintenance or due to required improvements or modifications thereof or from any cause, shall not render the Lessor liable in any respect for damages to either person or property, nor be construed an eviction of Lessee or work in abatement of rent, nor relieve Lessee from the fulfillment of any covenant or agreement hereof.

31. LESSOR'S EXCULPATION Lessee shall look solely to the Lessor's interest in the Entire Premises and in the Lessor's personal property used in connection therewith for the satisfaction of any claim, judgement or decree requiring the payment of money by the Lessor, based upon any default hereunder, and no other property or asset of the Lessor shall be subject to levy, execution or other endorsement procedure for the satisfaction of such claim, judgment or decree.

32. LEGAL ACTION In the event that any time during the term of this lease either the Lessee or the Lessor shall begin any action or legal proceeding against the other relating to the provisions of this lease or any default of this lease, then, and in that event, the unsuccessful party in this action or proceeding agrees to reimburse the successful party for the expenses of attorney's fees and expenses incurred during that action by the successful party.

33. SUBORDINATION This lease is subject and subordinate to any mortgage or deed of trust which may now or hereafter encumber the demised premises and/or the Center and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Lessee shall at Lessor's request, execute promptly any appropriate certificate or instrument that Lessor may request. ~~Lessee hereby constitutes and appoints Lessor the Lessee's attorney-in-fact to execute any such certificate or instrument for and on behalf of Lessee.~~ In the event of the enforcement by the trustee or the beneficiary under any such mortgage or deed of trust of the remedies provided for by law or by such mortgage or deed of trust, Lessee will, upon request of any person or party succeeding to the interest of Lessor as a result of such enforcement, automatically become the Lessee of such successor in interest without change in terms or provisions of this lease; provided, however, that such successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one month in advance except prepayments in the nature of security for the performance by Lessee of its obligations under this lease, or (ii) any amendment or modification of this lease made after the date of such enforcement and made without the written consent of such trustee or such beneficiary or such successor in interest. Upon request by such successor in interest, Lessee shall promptly execute and deliver an instrument or instruments confirming the attornment herein provided for.

34. NOTICES Any notices, requests or other communications hereunder shall be deemed duly given if made in writing and delivered or mailed by registered or certified mail as follows:

To Lessor: JAI New Territories, Ltd.
c/o Johnson-Allen Inc.
P.O. Box 218646
Houston, Texas 77218
Attn: Mike Johnson

To Lessee: Racquerball & Yitness Clubs, Inc.
15759 San Pedro
San Antonio, Texas 78212
Attn: Bruce Hendin

35. ESTOPPEL LETTERS During the term of this lease, Lessee agrees upon request from Lessor to execute, acknowledge and deliver to Lessor a statement in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which minimum rent, percentage rent and other charges have been paid and that there are no defenses or offsets. Lessee agrees upon request in writing from Lessor to provide: (1) a current (within 3 months from date of request) signed and dated financial statement of net worth; (2) background data in regards to Lessee's company and (3) credit information on Lessee and Lessee's company. It is understood and agreed that any such statements will be provided within 10 days of written request and may be relied upon by any prospective purchaser of the fee or any leasehold or the mortgagee, beneficiary or grantee of any security interest, or any assignee or any thereof, under any mortgage or deed of trust now or hereafter made covering the fee or any leasehold interest in the leased premises or the real property covered by this lease.

36. HEIRS AND ASSIGNS This lease shall be binding upon and insure to the benefit of the heirs, legatees, devisees, executors, administrators, successors and assigns of the respective parties hereto, who may come into possession of the premises in any manner whatsoever.

37. ENTIRE AGREEMENT This instrument, the said Exhibits herein mentioned and attached hereto as part hereof, and the addendum(s) attached hereto and signed by lessor and Lessee as a part of this lease, if any, together constitute the lease agreement of the parties hereto and the same may not be changed, altered or modified except in writing signed by the parties hereto.

It is expressly agreed and understood that in making and entering into this lease, each of the parties hereto has been induced by and has relied solely on the agreements, representations and other matters expressly set out in this lease agreement and contained therein; and it is further agreed that any and all prior or contemporaneous oral agreements or representations on the part of either party hereto in relation to this lease agreement or the lease agreement are hereby waived and shall not be actionable, enforceable on the basis of any claim, demand or cause of action.

IN WITNESS WHEREOF, Lessor and Lessee have caused this lease to be
executed in one single original this 15 day of April, 19 98.

June 1998

LESSEE:
Racquetball & Fitness Clubs, Inc.

By: Bruce I. Hendin
Printed Name:
Title:

LESSOR:
JAI New Territories, Ltd.
By: Johnson-Allen, Inc.
General Partner

By: Franklin Allen
Printed Name:
Title: Vice President

LIST OF EXHIBITS ATTACHED

- EXHIBIT A - Legal Description
- EXHIBIT B - Site Plan
- EXHIBIT C - Acceptance Letter
- EXHIBIT D - Lessee's Space Plan

ADDENDUM TO LEASE AGREEMENT

April 15 BJA

This Addendum is attached to, made a part of and incorporated herein by reference into that certain Lease Agreement (the "Lease"), dated ~~February 28, 1994~~, between JAI New Territories, Ltd. as Lessor and Racquetball & Fitness Clubs, Inc. as Lessee for space located at 9240 Guilbeau Road, Suite 140, San Antonio, Texas.

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Notwithstanding any provisions to the contrary set forth in the Lease, Lessor and Lessee agree that the following amendments shall be made to the Lease:

1. Commencement Date: The original term of the Lease shall commence upon the earlier of the following dates to occur:

- 1) Six (6) months following the final execution of the Lease Agreement and receipt of written approval from Albertson's, or
- 2) Upon the opening of Lessee's business in the Demised Premises.

2. Renewal Option: As long as Lessee has not committed any event of default which remains uncured under the Lease, then Lessee shall have one (1) option to renew the Lease for a term of eight (8) years at the then current Market Base Rental Rate. Lessee shall notify Lessor in writing of its intent to exercise such renewal option not earlier than (12) months nor later than six (6) months prior to the expiration of the original lease term. "Market Base Rental Rate" shall mean the average of the annual rental being charged in northwest San Antonio, for space comparable to the Demised Premises (taking into consideration the size, use, location, leasehold improvements provided, quality, age, and location of the applicable building, rental concessions (such as abatements or Lease assumptions) and the time the particular rate became effective). Within thirty (30) days after receipt of written notice from Lessee of its exercise of the Renewal Option, Lessor shall notify Lessee of Lessor's estimate of the Market Base Rental. If Lessee does not dispute notice within fifteen (15) days after receipt of Lessor's notice, then the amount specified shall become the rental payable for the renewal term. If Lessee disagrees, it shall notify Lessor within such fifteen (15) day period setting forth its assessment of the Market Base Rental Rate for the period. Thereafter, Lessor and Lessee shall try to meet to resolve their differences. If, within a period of fifteen (15) days they are unable to agree upon the Market Base Rental Rate, then the matter shall be determined by appraisal. Within five (5) days after the expiration of the fifteen (15) day resolution period outlined above, Lessor and Lessee shall each appoint an appraiser to determine the annual Base Market Rental Rate for the period in question and the two appraisers so appointed shall appoint a third appraiser. Any decision in which any two appraisers shall concur shall be binding or, if no two appraisers concur, then the average of the two closest mathematical determinations shall

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constitute a decision of all three and be binding. The appraisers shall meet within a period of ten (10) days after their appointment and render their determination within a further period of ten (10) days. Lessor and Lessee shall bear the cost of appraisal equally. All appraisers shall be members of the American Institute of Real Estate Appraisers or an successor association or body of comparable standing, and shall have been actively engaged in appraising real estate and the rental value thereof for a period of not less than five (5) years immediately preceding their appointment. No appraiser shall have any financial interest (other than payment of a reasonable fee) in the outcome of the appraisal. It is expressly agreed that rental payable during the renewal term will not be less than that then being paid for the Demised Premises during the last year of the original lease term.

3. Rental Abatement: Lessor shall abate the minimum rent and operating expenses during the first three (3) months of the original lease term. Lessor shall abate the minimum rent, but not the operating expenses, during the second three (3) months of the original lease term.
4. Operating Expenses: Lessee's cost for operating expenses, including property taxes, insurance and common area maintenance ("CAM") shall not exceed \$.15 per square foot of the Demised Premises per month during the first two (2) years of the original lease term. Lessee's cost for operating expenses not including taxes and insurance during the third (3rd) year through the eighth (8th) year of the original lease term shall not exceed an amount equal to one hundred and ten percent (110%) of the cost for such expenses during either the first (1st) or second (2nd) year of the original lease term, depending upon whichever is higher.
5. Real Property Taxes: During the original lease term and renewal term (provided the renewal option is exercised), Lessee shall have the right to be a party to the protest of the valuation of the Property for real property tax purposes. Lessee shall pay its own expenses for any such protest efforts. Lessor shall furnish to Lessee a copy of the property tax valuation notice(s) with thirty (30) days of receipt of the same. In the event that Lessor fails to allow Lessee to be a party to the protest of the Property's tax valuation, then Lessee shall not be responsible for paying its pro rata share of the property tax increase from the previous year.

- ~~6. Quiet Possession: The following sentence is hereby added to the end of this section:~~

~~Lessor further covenants and warrants that this Lease Agreement will remain in full force and effect in the event of a sale or foreclosure proceedings.~~

7. Lessor's Lien: The following sentence is hereby added to the end of this section:

Lessor further agrees from time to time during the lease term to grant additional landlord waiver for

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goods, wares, chattels, fixtures, equipment and other personal property placed upon the demised premises.

8. Continuous Operation: In the event that Lessee closes its business operation, Lessee agrees to continue paying the monthly rental and common area maintenance charges as specified in this Lease Agreement.

All terms, covenants and conditions of the Lease as amended remain in full force and effect as heretofore agreed. In consideration of the mutual covenants contained herein and in the Lease, Lessor and Lessee have executed this instrument by proper persons thereon duly authorized to do so, to be effective as of the date first mentioned in the Lease.

LESSOR:

Racquetball & Fitness
Clubs, Inc.

By: 

Printed Name: BRUCE HENDRIX

Title: President

LESSOR:

JAI New Territories, Ltd.
By: Johnson & Allen, Inc.
General Partner

By: 

Printed Name: Franklin Allen

Title: Vice President

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12/31/03 10:22 FAX 310 477 1011 BRENTWOOD ASSOCIATES
2003/DEC/31/WED 10:45 AM D.B. HARRELL REAL ES FAX No. 210 271 0183

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P. 014

LEASE AMENDMENT #1

Lease Agreement dated June 15, 1994, between JAI-New Territories, Ltd. as Lessor and Racquetball & Fitness Clubs, Inc. as Lessee.

In reference to the above captioned Lease for approximately 19,050 square feet of space located at 9240 Guilbeau, Suite 104, San Antonio, Texas, Lessor and Lessee mutually agree to the following:

1. The "Demised Premises" of approximately 19,050 square feet shall be increased to approximately 24,250 square feet to include the swimming pool and related structure located on the south side of the original building and more accurately shown on Exhibit "A" attached.
2. The rental obligations, both Minimum Rental and Common Area Maintenance, Taxes, and Insurance Rental shall not change; and Lessee's Pro Rata Share of Common Area Expenses, CAM, Insurance and Taxes shall not change.

All other terms and conditions of the Lease remain unchanged.

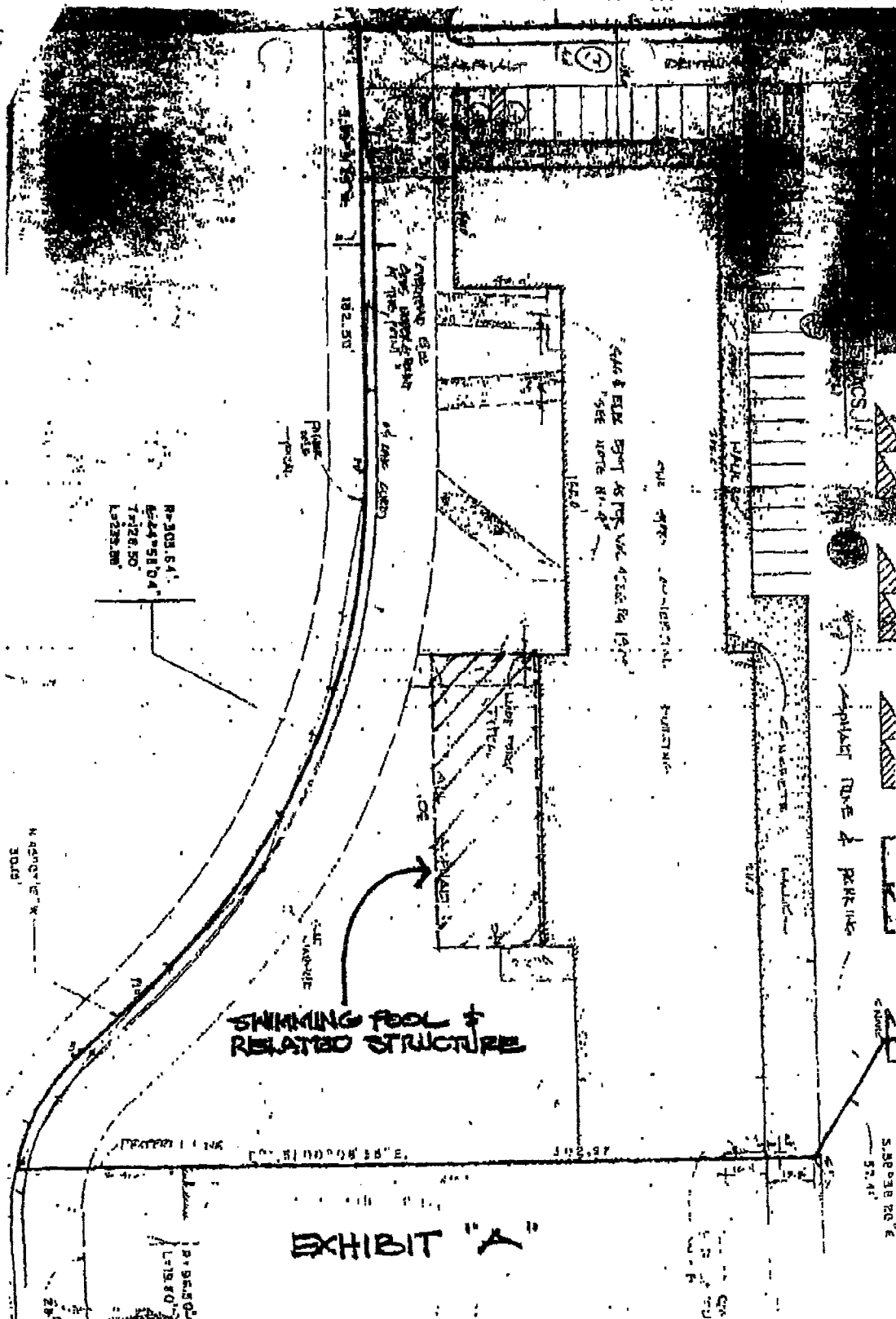
Agreed to and accepted this 12 day of March, 1995.

LESSEE:


Racquetball & Fitness Clubs, Inc.

LESSOR:


JAI-New Territories, Ltd.



12/31/03 10:21 FAX 310 477 1011
2003/DEC/31/WED 10:44 AM

BRENTWOOD ASSOCIATES
D.B. HARRELL REAL ES FAX No. 210 271 0183

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P.009

DEC-25-95 WED 11:13 AM JOHNSON, ALLEN

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P.02

LEASE AMENDMENT #2

Lease Agreement dated June 15, 1994, between JAI-New Territories, Ltd. as Lessor and Racquetball and Fitness Clubs, Inc. as Lessee. Said Lease be amended by Lease Agreement #1 dated March 10, 1995.

In reference to the above captioned Lease for approximately 24,250 square feet of space located at 9240 Gullbearn, Suite 104, San Antonio, Texas, Lessor and Lessee mutually agree to the following:

1. The "Demised Premises" of approximately 24,250 square foot shall be increased approximately 3,000 square feet for a total of 27,250 square feet. The 3,000 square foot expansion space is located on the west side of the original lease space and more accurately shown on Exhibit "A" attached.
2. The "Term" for the 3,000 square foot expansion space shall commence upon the earlier of the following date to occur:
 1. Two (2) months following the final execution of this Lease Amendment #2 and receipt of written approval from Albertson's Inc.; or
 2. Upon the opening of Lessee's business in the 3,000 square foot expansion space.

The Term of the Lease for the 3,000 square foot expansion shall expire in conjunction with the original lease dated June 15, 1994.

3. The "Minimum Rent" for the 3,000 square foot expansion shall be as follows.

11/94
Commencement to 12/02/96 \$.35/sf/mo \$1,050.00/mo
12/03/96 to 12/02/00 \$.40/sf/mo \$1,200.00/mo
12/03/00 to 12/02/02 \$.45/sf/mo \$1,350.00/mo

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BRENTWOOD ASSOCIATES

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4. The Common Area Maintenance, Insurance and Taxes cost is in addition to the Minimum Rent and is estimated to be \$.15/sfmo at this time.
5. Lessee agrees to take the 3,000 square foot expansion space on an "As Is" condition.
6. Lessee shall have the right to renew the lease for the 3,000 square foot expansion based on the same terms and conditions defined in the original Lease Agreement dated June 15, 1994.

All other terms and conditions of the Lease remain unchanged.

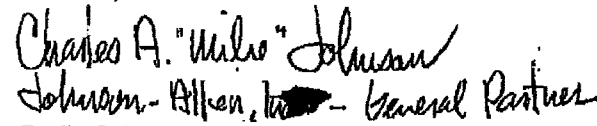
Agreed to and accepted this 1 ^{November} day of September, 1995.

LESSEE



Racquetball and Fitness Clubs, Inc.

LESSOR



Johnson - Allen, Inc. - General Partner

JAG-New Territories, Ltd.

12/31/03 10:21 FAX 310 477 1011 BRENTWOOD ASSOCIATES
2003/DEC/31/WED 10:45 AM D.B. HARRELL REAL ES FAX No. 210 271 0183

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P. 010

001-25-95 WED 11:20 AM JOHNSON, ALLEN

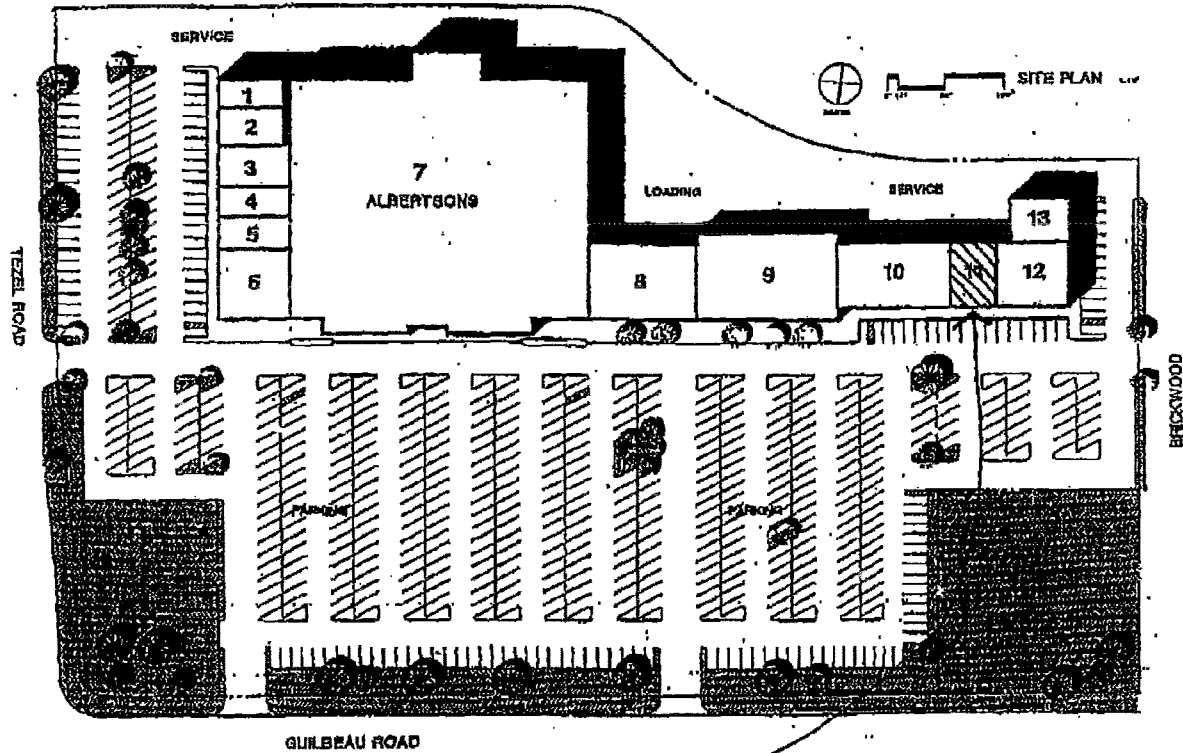
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P. 01

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BRENTWOOD ASSOCIATES
D.B. HARRELL REAL ES FAX No. 210 271 0183

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P. 011



RACQUETBALL AND FITNESS CLUBS, INC.
EXPANSION SPACE
APPROXIMATELY 3,000 SF

EXHIBIT "A"

12/31/03 10:22 FAX 310 477 1011
2003/DEC/31/WED 10:45 AM

D.B. HARRELL REAL ES

BRENTWOOD ASSOCIATES

FAX No. 210 271 0183

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P.012

THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally
appeared BRUCE HENDIN, and after being duly sworn,
stated that the statements hereinabove set forth are true and
correct, and further acknowledged that HE executed the same
for the purposes and consideration therein expressed.

My commission expires:

11-17-97



Barbara A. Amaya

Notary Public for said State
and County

Notary's Printed Name:

BARBARA A. AMAYA

12/31/03 10:22 FAX 310 477 1011 BRENTWOOD ASSOCIATES
2003/DEC/31/WED 10:45 AM D.B. HARRELL REAL ES FAX No. 210 271 0183

015
P. 013

THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally
appeared BRUCE HENDIN, and after being duly sworn,
stated that the statements hereinabove set forth are true and
correct, and further acknowledged that HE executed the same
for the purposes and consideration therein expressed.

My commission expires:

11-17-97



Barbara A. Amaya
Notary Public for said State
and County

Notary's Printed Name:

BARBARA A. AMAYA

12/31/03 10:26 FAX 310 477 1011 BRENTWOOD ASSOCIATES 020
2003/DEC/31/WED 10:48 AM D.B. HARRELL REAL ES FAX No. 210 271 0183 P. 027
05/20/02 MON 16:44 FAX 12102247540 OPPENHEIMER BLEND et al 016

Recording Requested by
and When Recorded Mail to:
Elizabeth Blendell, Esq.
Latham & Watkins
693 West 5th Street, Suite 4000
Los Angeles, CA 90071-2007

2000-0027328

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (the "Assignment and Assumption") is made and entered into as of Feb 9, 2003 (the "Effective Date"), by and between Spectrum Clubs, Inc., a Texas corporation, successor in interest to Racquetball & Fitness Clubs, Inc., a Texas corporation, whose address is 16759 San Pedro, San Antonio, Texas 78232 ("Assignor"), and Racquetball & Fitness Clubs, Inc., a Texas corporation, whose address is 16759 San Pedro, San Antonio, Texas 78232.

FOR VALUE RECEIVED, Assignor hereby grants, conveys, assigns, releases and transfers to Assignee and Assignee's legal representatives, heirs, successors and assigns all of Assignor's right, title and interest as tenant in, to and under that certain Lease by and between Capital Foresight Limited Partnership, a Nevada limited partnership, as landlord (the "Landlord"), and Assignor, as tenant, dated as of June 15, 1994, including the Addendum attached thereto, as amended by that certain Landlord's Consent dated October 4, 1994, that certain letter agreement dated June 1, 1994, that certain letter dated June 1, 1994, that certain Lease Amendment #1 dated March 12, 1995, that certain Lease Amendment #2, dated November 1, 1995 and that certain Lessee's Letter of Acceptance dated January 7, 1995 (as so amended, the "Lease").

TO HAVE AND TO HOLD the same unto Assignee and Assignee's legal representatives, heirs or successors and assigns forever.

Assignee hereby assumes the Lease from and after the Effective Date and agrees, for the benefit of Assignor and the other party to the Lease, to perform and discharge all obligations and duties of Assignor under the Lease from and after the Effective Date, for the rest and remainder of the term of the Lease. Notwithstanding the foregoing, in no event shall Assignor be released from any of its obligations under the lease.

Assignor shall defend, protect, indemnify, and hold harmless Assignee and its affiliates from and against any and all loss, cost, liability, expense, claim, action, damages, and fines (including those arising from the loss of life, personal injury and/or

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BRENTWOOD ASSOCIATES

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P. 028

05/20/02 MON 13:44 FAX 12102247540

OPPENHEIMER BLEND et al

017

property damage), including reasonable attorneys' fees, directly or indirectly arising from or out of any failure by Assignor to perform Assignor's obligations, or any breach or violation of Assignor's obligations, under the Lease prior to the Effective Date.

Assignee shall defend, protect, indemnify, and hold harmless Assignor and its affiliates from and against any and all loss, cost, liability, expense, claim, action, damages, and fines (including those arising from the loss of life, personal injury and/or property damage), including reasonable attorneys' fees, directly or indirectly arising from or out of any failure by Assignee to perform Assignee's obligations, or any breach or violation of Assignee's obligations, under the Lease from and after the Effective Date.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Lease as of the Effective Date.

ASSIGNOR:

ASSIGNEE:

Spectrum Clubs, Inc.

Racquetball & Fitness Clubs, Inc.

By:
Its:

By:
Its:

The undersigned Landlord under the Lease consents to the above:

LANDLORD:

Capital Foresight Limited Partnership,
a Nevada limited partnership

By:

Naty Saidoff, General Partner

720001010001

12/31/03 10:27 FAX 310 477 1011

BRENTWOOD ASSOCIATES

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2003/DEC/31/WED 10:48 AM D.B. HARRELL REAL ES

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05/20/02 MON 15:45 FAX 12102247540

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

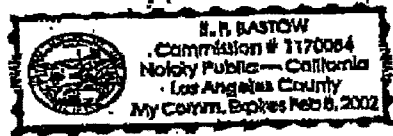
LOS ANGELES

ss.

On FEB 10, 2000 before me, S. F. BASTOW NOTARY PUBLIC

personally appeared NATY SAIDOFF

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

Please Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Assignment & Assumption of Lease

Document Date: 2-10-2000

Number of Pages: 2

Signer(s) Other Than Named Above: Spectrum Club & Racquetball Club

Capacity(ies) Claimed by Signer

Signer's Name: NATY SAIDOFF

- ☐ Individual
☐ Corporate Officer — Title(s):
☒ Partner — ☐ Limited ☒ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer is Representing: Capitol Foresight Limited Partnership

12/31/03 10:27 FAX 310 477 1011

BRENTWOOD ASSOCIATES

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2003/DEC/31/WED 10:48 AM

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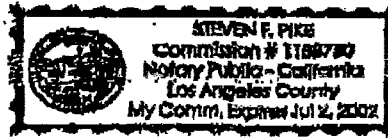
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On 2003, before me, Steven F. Pike, Notary Public, personally
knew the Secretary of Spectrum Clubs, Inc., a Texas
personally known to me or proved to me on the basis of satisfactory evidence
a) whose name(s) is/are subscribed to the within instrument and
me that he/she/they executed the same in his/her/their authorized
that by his/her/their signature(s) on the instrument the person(s), or the
of which the person(s) acted, executed the instrument.

and official seal.



Signature of Notary

Expires: July 2, 2007

ORNIA

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On 2003, before me, Steven F. Pike, Notary Public, personally
knew the Secretary of Racquetball & Fitness Clubs, Inc.,
personally known to me or proved to me on the basis of satisfactory
person(s) whose name(s) is/are subscribed to the within instrument and
me that he/she/they executed the same in his/her/their authorized
that by his/her/their signature(s) on the instrument the person(s), or the
of which the person(s) acted, executed the instrument.

and official seal.



12/31/03 10:27 FAX 310 477 1011 BRENTWOOD ASSOCIATES
2003/DEC/31/WED 10:48 AM D.B. HARRELL REAL ES FAX No. 210 271 0183
05/20/02 MON 15:46 FAX 12102247540 OPPENHEIMER BLEND et al

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P. 031

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My Commission Expires: July 2, 2002

Signature of Notary

2003 DEC 31

12/31/03 10:27 FAX 310 477 1011

BRENTWOOD ASSOCIATES

034

2003/DEC/31/WED 10:48 AM D.B. HARRELL REAL ES

FAX No. 210 271 0183

P. 032

05/20/02 MON 15:46 FAX 12102247540

OPPENHEIMER BLEND et al

021

EXHIBIT "A"

Lot 1, Block 126, New City Block 18300, NEW TERRITORIES,
COMMERCIAL, UNIT 1, City of San Antonio, Bexar County, Texas
according to plat recorded in Volume 9512, Page(s) 134, Deed and
Plat Records, Bexar County, Texas.

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION THIS
INSTRUMENT WAS FOUND TO BE INADEQUATE
FOR THE BEST PHOTOGRAPHIC REPRODUCTION
BECAUSE OF ILLEGIBILITY, CARBON OR
"HOT" COPY, OR OTHER PAPER, ETC.

Any person (people) which receives the sale or lease of the described real
property because of race is illegal and unenforceable under Federal law
50 USC 1701, CIVIL RIGHTS ACT OF 1968.
(hereby certify that this instrument was RECORDED in the Public Records on
the date and at the time stated herein by the seal was duly RECORDED
in the Public Records, Bexar County, Texas)

FEB 18 2000



Sergio R. Rios
COUNTY CLERK BEXAR COUNTY, TEXAS

Filed for Record in
BEXAR COUNTY, TX
BERRY RICKHOFF, COUNTY CLERK

On Feb 18 2000

At 11:05am

Receipt #: 387410
Recording: 13.00
Inst/Reg: 5.00

Doc/Num : 2000- 0027328

Deputy - Catherine Revilla

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THIRD AMENDMENT TO LEASE

This Third Amendment to Lease ("Amendment") is executed as of the 1st day of June, 2002, by and between Capital Foresight Limited Partnership, a Nevada limited partnership ("Landlord") (successor in interest to JAI-New Territories, Ltd. "Original Landlord"), Spectrum Clubs, Inc. (successor in interest to Racquetball & Fitness Clubs, Inc.) ("Original Tenant") and Racquetball & Fitness Clubs, Inc. ("Tenant").

WHEREAS, Original Landlord and Original Tenant entered into that certain Lease Agreement ("Original Lease") dated as of June 15, 1994 for the lease of that certain Demised Premises (as defined in the Original Lease) situated at 9240 Guilbeau Rd., Suite 104, San Antonio, Texas 78250; and

WHEREAS, Original Landlord and Original Tenant entered into that certain Lease Amendment #1 dated March 12, 1995 ("First Amendment"); and

WHEREAS, Original Landlord and Original Tenant entered into that certain Lease Amendment #2 dated November 1, 1995 ("Second Amendment") (the Original Lease, as amended by the First Amendment, Second Amendment and all other amendments and agreements is herein sometimes collectively referred to as the "Lease"); and

WHEREAS, Original Tenant assigned its rights to Tenant pursuant to that certain Assignment and Assumption of Lease dated on or about February 10, 2000; and

WHEREAS, the parties desire to amend the Lease in certain respects.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and hereby confessed, the parties hereby agree to amend the Lease as follows:

1. All capitalized terms not defined herein shall have the same meanings as defined in the Lease.
2. Notwithstanding anything to the contrary contained in the Lease, the Lease Term is hereby extended until September 14, 2017.
3. Notwithstanding anything to the contrary contained in the Lease, the Demised Premises contains 27,250 square feet.
4. Notwithstanding anything to the contrary contained in the Lease, commencing on September 15, 2002, the Minimum Rental shall be \$294,300.00 per annum payable monthly on the 1st day of each month in a monthly amount of \$24,525.00. A prorated amount of the Minimum Rent increase for the month of September is \$12,262.50.
5. Notwithstanding anything to the contrary contained in the Lease, commencing on September 15, 2003 and for each succeeding year thereafter for the Lease Term, the Minimum Rent shall increase by \$0.60 per square foot per annum (\$0.05 per square foot per month) for each year of the Lease Term.

6. Notwithstanding anything to the contrary contained in the Lease, the amount of the Minimum Rent increase for the year 2002 totalling \$56,070.00 shall be deferred and paid by Tenant in twelve (12) equal payments of \$4,672.50 commencing January 1, 2003 and shall be included with the Minimum Rent payments due on the first (1st) day of every month.

7. Notwithstanding anything to the contrary contained in the Lease commencing September 15, 2002, there shall not be a cap on any annual increase of COEX.

8. Notwithstanding anything to the contrary contained in the Lease, Tenant agrees that it shall annually provide its most recent audited financial statements within thirty (30) days from completion of same, only if Tenant actually has its financial statements audited. If Tenant does not have its financial statements audited, Tenant shall provide annual unaudited financial statements within thirty (30) days from completion of same.

9. Notwithstanding anything to the contrary contained in the Lease, Landlord and Tenant acknowledge and agree that it is the intent of the parties for Tenant to have parking and access rights over and across all of the common areas of the Shopping Center as well as the rights of Landlord under any recorded documents to parking and access on any adjacent parcels. Notwithstanding anything to the contrary contained in the Lease, Tenant acknowledges and agrees that Landlord may replat the Shopping Center and subdivide the Shopping Center into one or more separate parcels. Landlord shall place a reciprocal easement agreement over the entire Shopping Center providing Tenant and the other occupants of the Shopping Center the same access, parking and other rights currently available to Tenant.

10. Notwithstanding anything to the contrary contained in the Lease, Landlord agrees that Tenant may, at its sole cost and expense, place an identification sign at the highest location available on Landlord's pylon sign for the Shopping Center.

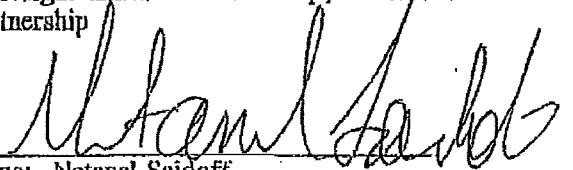
11. This Amendment may be executed in any number of separate counterparts with separate original or telecopied signature pages, all when taken together shall constitute one instrument.

12. Except as amended by this Amendment, the Lease shall continue in full force and effect.

EXECUTED to be effective as of the date first set forth above.

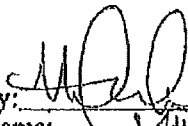
LANDLORD:

Capital Foresight Limited Partnership, a Nevada
limited partnership

By: 
Name: Netanel Saidoff
Title: General Partner

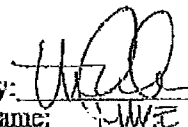
ORIGINAL TENANT:

Spectrum Clubs, Inc.

By: 
Name: MIKE MULLEN
Title: SENIOR VICE PRESIDENT

TENANT:

Racquetball & Fitness Clubs, Inc.

By: 
Name: MIKE MULLEN
Title: SENIOR VICE PRESIDENT

NOTICE OF ASSIGNMENT
OF LANDLORD'S INTEREST IN LEASE

January 9, 2012

Spectrum Clubs, Inc.
Corporate Office
15759 San Pedro
San Antonio, Texas 78232

CERTIFIED MAIL NO. 7008 1140 0003 8651 7975
RETURN RECEIPT REQUESTED

Spectrum Clubs, Inc.
9240 Guilbeau #104
San Antonio, Texas 78250

Re: Lease Agreement dated June 15, 1994 between Spectrum Clubs, Inc., as successor to Racquetball & Fitness Clubs, Inc. as "Lessee" and The Capital Foresight Limited Partnership as "Lessor" (as may have been amended from time to time, the "Lease") for certain premises located at 9240 Guilbeau #104, San Antonio, Bexar County, Texas (the "Property")

Dear Lessee:

You are hereby advised that the Lease has been assigned to University of the Incarnate Word, a Texas nonprofit corporation (the "New Landlord") in connection with the New Landlord's acquisition of the Property, by virtue of that certain Assignment and Assumption of Leases dated January 9, 2012 (the "Assignment"). The Security Deposit of \$10,000.00 under the Lease has been transferred to the New Landlord.

Effective immediately, please make your regular monthly payments of rent and other sums under the Lease payable to University of the Incarnate Word. DH Realty Management, Inc. will continue as the commercial property manager for the Property, so all payments and notices to lessor should continue to be delivered to:

DH Realty Management, Inc.
801 North St. Mary's Street
San Antonio, Texas 78205

If you have any questions, you are welcome to contact Michael D. Hoover, the President of DH Realty Management, Inc. (210-222-2424 office, 210-218-9095 cell) or Janice Wilson, the Controller at DH Realty Management, Inc. (210-222-2424 office).

Very Truly Yours,

LANDLORD:

THE CAPITAL FORESIGHT LIMITED
PARTNERSHIP,
a Nevada limited partnership

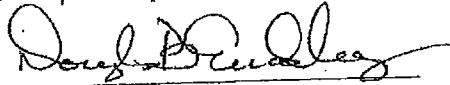
By: Saidoff Foresight, L.P.,
General Partner

By: Naty Saidoff, LLC,
General Partner

By: 
Naty Saidoff, Manager

NEW LANDLORD:

UNIVERSITY OF THE INCARNATE WORD,
a Texas nonprofit corporation

By: 
Douglas B. Eadsley,
Vice President for Finance and Technology

ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES ("Assignment") is made by and between UNIVERSITY OF THE INCARNATE WORD, a Texas nonprofit corporation ("Assignor"), and GUILBEAU VENTURES LLC, a Texas limited liability company ("Assignee").

RECITALS

- A. Assignor, as Seller, and Assignee, as Buyer, are parties to that certain Commercial Contract-Improved Property with an Effective Date of October 19, 2016, as amended by that certain First Amendment to Commercial Contract-Improved Property dated December 1, 2016, as further amended by that certain Second Amendment to Commercial Contract-Improved Property dated January 6, 2017 (the "Contract"), in connection with the purchase and sale of the property located at 9240 Guilbeau Road, 8181 Tezel Road & Pad Site, San Antonio, Texas (the "Property"), as such Property is more particularly described on Exhibit A, attached hereto and incorporated herein by reference.
- B. In connection with the conveyance of the Property and pursuant to the terms and conditions of the Contract, Assignor and Assignee desire that all of Assignor's right, title and interest in leases affecting the Property be conveyed to Assignee as set forth below.

NOW, THEREFORE, in consideration of the recitals above which are incorporated below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment. Assignor hereby grants, conveys, assigns, and transfers to Assignee, and its successors and assigns, any and all Assignor's right, title and interest, as landlord or otherwise, in and to the leases affecting the Property, including without limitation the leases set forth on Exhibit B (collectively, the "Leases") and to the rents and security deposits set forth in the Leases relating to the period from and after the date of Closing, together with any and all rights and appurtenances thereto in any way belonging to Assignor and its successors and assigns.

2. Acceptance and Assumption. Effective as of the date of Closing, Assignee hereby accepts and agrees to assume and perform all of the terms and conditions of the leases set forth on Exhibit B required to be performed by landlord from and after the date of Closing; provided that Assignee's obligation to return the security deposit under each lease is limited to the amount of such deposit, or credit for same, that Assignee received at Closing.

3. No Representations. Assignee acknowledges and agrees that all of the Leases are herein being sold, assigned, transferred and delivered without warranty or representation by Assignor of any kind whatsoever, express or implied, except as

otherwise expressly set forth in the Contract, and subject to all restrictions on use or enjoyment existing thereon or as may be imposed thereunder.

4. Attorneys' Fees. If any party hereto defaults in any manner or fails to fulfill any and all provisions of this Assignment, and if the nondefaulting party places this Assignment with an attorney to exercise any of the rights of the nondefaulting party upon such default or failure, or if suit be instituted or defended by the nondefaulting party by reason of, under or pertaining to such default or failure, then the nondefaulting party shall recover reasonable attorneys' fees, costs and expenses from the defaulting party.

5. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Assignment via facsimile or other electronic means shall be as effective as delivery of an original signed copy.

6. Definitions. Any capitalized term not defined herein shall have the meaning ascribed to such term in the Contract, except as the context otherwise requires.

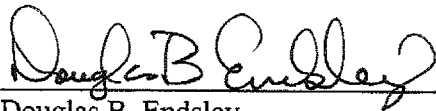
7. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the State of Texas.

8. Indemnification. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all claims originating or relating to the period prior to the date hereof and arising out of the landlord's obligations under the Leases. Assignee hereby agrees to indemnify Assignor against and hold Assignor harmless from any and all claims originating or relating to the period on or after the date hereof and arising out of the landlord's obligations under the Leases.

[Signature pages follow]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be duly
executed to be effective as of January 10, 2017.

Assignor: **UNIVERSITY OF THE INCARNATE WORD,**
a Texas nonprofit corporation

By: 
Douglas B. Endsley,
V.P. for Business and Finance

Assignee: **GUILBEAU VENTURES LLC,**
a Texas limited liability company


By: 
Name: JOHN W. FELT
Title: MANAGER

EXHIBIT A

PROPERTY DESCRIPTION

Lots 1, 2 and 5, Block 126, New City Block 18300, UIW Physical Therapy School II, in the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume 9709, Page 141, Real Property Records, Bexar County, Texas.

Easement Estates affecting above property described in Volume 13032, Page 1607, Real Property Records, Bexar County, Texas.

EXHIBIT B

LEASES

[Attached]



1/9/2017 3:22:33 PM

Rent Roll - Occupancy Summary

As of Date: 01/09/2017

Property: New Territories Shopping Center - uiw-nt

Unit	Lease Name	Lease	Lease To
9240 Guilbeau, Suite 101	Texas Health & Science	7/1/2015	12/31/2024
8181 Tezel, Suite 101 & 102	James N. Bond & Paul	10/1/2015	5/31/2026
9240 Guilbeau, Suite 102	Texas Health & Science	6/1/2014	5/31/2024
8181 Tezel, Suite 103	Min Wah Lee	4/1/2008	9/30/2018
9240 Guilbeau, Suite 104	Gold's Gym ID 43050	12/3/1994	4/30/2024
8181 Tezel, Suite 104	Subway Store #29112	5/20/2004	9/30/2019
8181 Tezel Suite 105	Babcock Enterprises,	7/2/1996	12/31/2020
8181 Tezel, Suite 106	Mystyle, Inc. dba Gr	11/1/1998	10/31/2018
8181 Tezel, Suite 108	Hedilberto Arias dba Tink A Tako	10/1/2008	12/31/2018
9240 Guilbeau, Suite 128	Beverley L. Henwood	4/1/1993	3/31/2017
9240 Guilbeau, Suite 130	VACANT	1/9/2017	1/9/2017

Northern District of Texas Claims Register

20-31318-hdh11 GGI Holdings, LLC

Judge: Harlin DeWayne Hale

Chapter: 11

Office: Dallas

Last Date to file claims: 09/09/2020

Trustee:

Last Date to file (Govt): 12/08/2020

Creditor: (19155701)
Guilbeau Ventures, LLC
C/O Kustoff & Sanders, LLP
4103 Parkdale Street
San Antonio, Texas 78229

Claim No: 30
Original Filed
Date: 09/09/2020
Original Entered
Date: 09/09/2020

Status:
Filed by: CR
Entered by: Melanie Phipps
Sanders
Modified:

No amounts claimed

History:

Details 30-1 09/09/2020 Claim #30 filed by Guilbeau Ventures, LLC, Amount claimed: (Sanders, Melanie)

Description: (30-1) Proof of Claim - Unliquidated Damages

Remarks:

Claims Register Summary

Case Name: GGI Holdings, LLC

Case Number: 20-31318-hdh11

Chapter: 11

Date Filed: 05/04/2020

Total Number Of Claims: 1

No Amounts Claimed
