

## ESTOPPEL CERTIFICATE AND SUBORDINATION AGREEMENT

On this \_\_\_\_ day of July, 2007, Birmingham Realty Company, an Alabama corporation, whose address is 27 Inverness Center Parkway, Birmingham, Alabama 35242 is the "**Landlord**" under that certain lease dated January 4, 2007, as amended by that certain Amendment 1 to Lease dated May 7, 2007 (collectively referred to as the "**Lease**" and attached hereto as *Exhibit A*) with BAC Pelham, LLC, d/b/a Gold's Gym whose address is 239 S. Limestone, Suite 100, Lexington, Kentucky 40508 ("**Tenant**"), certifies, covenants and agrees with and to Regions Bank ("**Lender**") as follows:

1. **Landlord** is the fee simple owner of the "**Premises**" shown as crosshatched in Exhibit A to the **Lease** and the real property identified as the "**Shopping Center**" and more fully described in the **Lease**, and **Landlord** is the lessor of the **Premises** under the **Lease** and **Tenant** is the lessee of the **Premises** under the **Lease**.

2. To **Landlord's** knowledge, the **Tenant** is the current **Tenant** under the **Lease** except as shown on the attached *Exhibit B*.

3. The **Lease** has not been canceled, modified, assigned, extended or amended, except as set forth above.

4. The **Fixed Minimum Rent** payable under the **Lease** begins on the **Rental Commencement Date** as defined in Article 1.1.29 of the **Lease** at the rate of \$4,371.50 per month for the first twelve (12) months of the **Lease**, at which time it will increase to \$17,486.00 per month and will continue to increase as provided in Article 1.1.12 of the **Lease**.

5. There is no prepaid rent. The **Tenant** has paid the **Landlord** a security deposit of \$8,743.00.

6. The **Lease** terminates ten (10) years following the **Rental Commencement Date** as defined in Article 1.1.29 of the **Lease** (the "**Expiration Date**") with four 5-year options to renew.

7. As of this date, the **Lease** is in full force and effect; to the best of the **Landlord's** knowledge there are no uncured defaults under the **Lease**; **Landlord** has no claims against the **Tenant** under the **Lease** except as set forth in the **Lease**; to **Landlord's** knowledge, **Tenant** has no offsets against the rent or the charges payable by **Tenant** under the **Lease**.

8. **Landlord** has received no actual notice of any sale, transfer or assignment, hypothecation or pledge of **Tenant's** right, title, or interest in, to or under the **Lease**.

9. **Landlord** has not sold, transferred, assigned, hypothecated or pledged the **Leased Premises** or its right, title, or interest in, to or under the **Lease**.

10. **Landlord** acknowledges that **Landlord** has been notified that **Tenant** intends to mortgage its right, title and interest in, to and under the **Lease** to **Lender** as collateral for a loan (the "**Loan**"). **Landlord** hereby agrees that the making of the **Loan** and the encumbering of **Tenant's** interest in the **Lease** do not constitute a default under the **Lease**.

11. **Landlord** agrees that it will deliver to **Lender**, at the address set forth below, a duplicate copy of any and all default notices which **Landlord** may, from time to time, give or serve upon **Tenant** under the terms of the **Lease**, as and when **Landlord** gives or serves such notices upon **Tenant**:

Regions Bank  
P.O. Box 511  
Knoxville, TN 37901  
ATTN: Natalie Readett, Relationship Manager

Failure to deliver a copy of such default notice to **Lender** shall in no way affect the validity of the default notice as to **Tenant**, but shall make the same invalid as to the interest of the **Lender**.

12. **Landlord** further agrees that **Lender** shall have (a) a one-time monetary cure period of thirty (30) days following receipt of the first written default notice from **Landlord** as to the non-payment of any monetary sum due under the **Lease** and thereafter **Lender** shall have a monetary cure period of fifteen (15) days following receipt of each subsequent written default notice(s) from **Landlord** as to the non-payment of any monetary sum due under the **Lease**, and (b) the same period of time as **Tenant** after **Lender** has received written notice from **Landlord** of any non-



monetary default by **Tenant** within which to cure such non-monetary default (such period to run contemporaneously with **Tenant**'s cure period); provided, however, that if any such default shall be a default that cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period, and if the cure of such default shall be promptly commenced and prosecuted with diligence, the period within which such default may be cured shall be extended for an additional period of time, not to exceed an additional thirty (30) days, as may be reasonably necessary to cure such default as long as **Lender** prosecutes such cure with diligence and continuity and provided **Landlord** receives periodic reports with respect thereto. Upon **Lender** curing such default in accordance with the foregoing, any notice of **Landlord** advising of any such event of default or any action of **Landlord** to terminate this **Lease** or to interfere with the occupancy, use or enjoyment of the **Premises** by reason thereof shall be deemed rescinded and this **Lease** shall be reinstated and shall continue in full force and effect.

13. Notwithstanding anything to the contrary contained in the **Lease** or in this Agreement, in addition and not in limitation of the foregoing, except in the event of a default under the **Lease** or the natural expiration of the **Lease**. **Landlord** agrees to give **Lender** at least ten (10) days' written notice prior to any termination of the **Lease** and to allow **Lender** the option, prior to termination, to notify **Landlord** in writing of its desire to assume all of the duties, obligations, and rights as tenant under the **Lease**.

14. **Landlord** agrees to accept performance of **Tenant**'s obligations under the **Lease** by **Lender** as if it were performance by **Tenant**. Notwithstanding the foregoing, **Landlord** acknowledges that while **Lender** shall have the right to tender performance of **Tenant**'s obligation under the **Lease**, **Lender** shall not have the obligation to do so.

15. If **Lender** or its successors or assigns succeeds to **Tenant**'s interest in the **Lease**, the **Lease** shall not be terminated by such action and **Landlord** agrees to accept performance of **Tenant**'s obligations under the **Lease** by **Lender** or its successors or assigns, and the **Lease** shall continue in full force and effect as a lease between **Landlord** and **Lender** or its successors or assigns. **Lender** shall not be responsible for obligations or afforded any rights under the **Lease** unless and until **Lender** succeeds to **Tenant**'s interest in the **Lease**. Except with respect to obligations which accrued under the **Lease** while **Lender** was the **Tenant** under the **Lease**, **Lender** shall remain responsible for **Tenant**'s obligations under the **Lease** only so long as **Lender** is the **Tenant** under the **Lease**, and **Lender** will not be liable under the **Lease** following the sublease or assignment to a third party or its other disposition of **Tenant**'s leasehold estate upon reasonable approval by **Landlord** of such third party's financial capacity, which approval shall not be unreasonably withheld or delayed. **Lender** and **Tenant** acknowledge that it shall be deemed reasonable for the **Landlord** to not approve a sublease or assignment due the potential sub-tenant's or assignee's proposed change in the use of the **Premises** as defined in Article 5 of the **Lease**, or due to the potential sub-tenant's or assignee's failure to have a superior financial condition.

16. The provisions of this Agreement notwithstanding, nothing contained herein shall grant **Lender** any rights greater than those granted to **Tenant** under the **Lease** or expand any rights granted to **Tenant** under the **Lease**.

17. **Landlord** has full power and authority to enter into and perform its agreements under this Agreement, and the person executing and delivering this Agreement on behalf of **Landlord** is fully and properly authorized to do so, and neither the execution, delivery or performance of its obligations under this Agreement is or could result in a default under any agreement or organizational document, to which **Landlord** is a signatory or by which its properties may be bound.

18. This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, all of which shall be deemed the original counterpart of this Agreement.

19. This Agreement shall terminate upon payment in full of the **Loan**.

LANDLORD: **Birmingham Realty Company**

By: 

Printed Name: Charles M. Miller, Jr.

Its: President

TENANT: **BAC Pelham, LLC, d/b/a Gold's Gym**

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

Printed Name: see Attached

Its: \_\_\_\_\_

LENDER: **Regions Bank**

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

Printed Name: see Attached

Its: \_\_\_\_\_

STATE OF ALABAMA    )  
SHELBY COUNTY        )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that Charles M. Miller, Jr. whose name as President of **BIRMINGHAM REALTY COMPANY**, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 25<sup>th</sup> day of July, 2007.

David D. Butz  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 24, 2010  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA    )  
\_\_\_\_\_ COUNTY        )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of **BAC PELHAM, LLC, d/b/a GOLD'S GYM**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

STATE OF ALABAMA    )  
\_\_\_\_\_ COUNTY        )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of **REGIONS BANK**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_



TENANT: **BAC Pelham LLC, d/b/a Gold's Gym**

By: Stephen Dawahore

Printed Name: Stephen Dawahore

Its: Member

LENDER: **Regions Bank**

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

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

Its: \_\_\_\_\_

STATE OF ALABAMA )  
SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that Charles M. Miller, Jr. whose name as President of **BIRMINGHAM REALTY COMPANY**, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 25<sup>th</sup> day of July, 2007.

Kim D. Vaughn  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 24, 2010  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Kentucky  
STATE OF ALABAMA )  
Fayette COUNTY )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that Stephen Dawahore whose name as \_\_\_\_\_ of **BAC PELHAM, LLC, d/b/a GOLD'S GYM**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 10<sup>th</sup> day of October, 2007.

Kim D. Vaughn  
NOTARY PUBLIC

My Commission expires: 5/19/2010

STATE OF ALABAMA )  
\_\_\_\_\_ COUNTY )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of **REGIONS BANK**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

TENANT: **BAC Pelham, LLC, d/b/a Gold's Gym**

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

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

Its: \_\_\_\_\_

LENDER: **Regions Bank**

By: Natalie Readett

Printed Name: Natalie Readett

Its: Vice President

STATE OF ALABAMA )  
SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that Charles M. Miller, Jr. whose name as President of **BIRMINGHAM REALTY COMPANY**, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 25<sup>th</sup> day of July, 2007.

Kenneth D. Dwyer  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 24, 2010  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA )  
\_\_\_\_\_ COUNTY )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of **BAC PELHAM, LLC, d/b/a GOLD'S GYM**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

Tennessee  
STATE OF ~~ALABAMA~~ )  
KNOX COUNTY )

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that Natalie Readett whose name as Vice President of **REGIONS BANK**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 5<sup>th</sup> day of October, 2007.

Kelley R. Giddens  
NOTARY PUBLIC  
My Commission expires: 6/7/2008  
