

LEASE

This Lease ("Lease") is made and entered into as of the _____ day of _____, 2019, by and between the City of Williamsburg ("Lessor"), and 212 Sports Academy, LLC ("Lessee").

1. LEASE TERMS.

(a) "Premises" means that certain real property located in the City of Williamsburg, Iowa County, Iowa, and more particularly described as:

The City Recreation Center located at 929 South Highland Street, Williamsburg, Iowa 52361

Including that the recreation building and adjacent parking lot. See Exhibit A attached and by reference incorporated herein.

(b) "Lessee's Notice Address" shall be 2718 M. Avenue, Williamsburg, Iowa, unless changed by Lessee in accordance with the provisions of Section 27.2.

(c) "Lessor's Notice Address" shall be Williamsburg City Hall, 210 West State Street, Williamsburg, Iowa 52361.

(d) "Lessee's Permitted Use" means use as a recreation facility for both public and private events. Lessee's Permitted Use does not include use for lodging, cooking or any purpose which is illegal, immoral, offensive, termed hazardous by relevant insurance companies, or which may make void or voidable any fire insurance or other insurance on the Premises or which may increase the premium therefore, or which will interfere with the general safety, comfort and convenience of the owners, occupants and/or tenants of the Premises.

(e) "Lease Term" means the period commencing on the 1st day of July 2019 (the "Commencement Date"), and expiring July 1, 2020 (The "Expiration Date"). The Lessee may renew this Lease for July 1, 2020-July 1, 2021 by providing written notice to the Lessor on or before March 1, 2020.

(f) "Base Monthly Rent" means the minimum monthly rent to be paid by Lessee for the Premises during the Lease Term as set forth below:

<u>Dates</u>	<u>Base Monthly Rent</u>
Month 1 through 12	\$2000.00
Month 13 through 24	\$2000.00

(g) "Lessee Parties" refers singularly and collectively to Lessee, its assignees and sublessees, and their respective officers, members, partners, agents, employees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities.

(h) "Lessor Parties" refers singularly and collectively to Lessor.

2. PREMISES AND POSSESSION.

2.1 Lease. Lessor hereby leases to Lessee, and Lessee leases from Lessor the Premises for the Lease Term and upon and subject to the terms, conditions and other provisions of this Lease. Any statement of square footage set forth in this Lease, or that may have been used in calculating any Rent due hereunder, is an approximation which Lessor and Lessee agree is reasonable and any Rent based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 Condition and Disclosure. Lessor acknowledges that it has examined the Premises and accepts the Premises in "as is, where is" condition. Lessor makes no representation or warranty whatsoever, express or implied, concerning the fitness or suitability of the Premises for the conduct of Lessee's business or for any other reason. Lessee acknowledges that Lessor does not provide any level of security services at the Premises and that Lessor makes no representation or warranty whatsoever as to the safety or security of the Premises. Lessee acknowledges that Lessee has made such investigations as it deems reasonable and necessary with reference to all such matters and assumes all responsibility therefore.

2.3 Inspection and Inventory. Prior to the commencement of the Lease Term, the Lessor and Lessee will inspect the Premises together and make a detailed written record of the condition of Premises. In addition, a record will be made as to the personal property belonging to the Lessor that will be available for use by the Lessee (e.g. weight room equipment, treadmills, basketballs, and the like).

3. RENT.

3.1 Base Monthly Rent. In advance, on the first day of each calendar month of the Lease Term, Lessee shall pay, without deduction, offset, prior notice or demand, the Base Monthly Rent required hereunder at Lessor's Notice Address, provided that Base Monthly Rent for the first full calendar month of the Lease Term is due and payable upon execution of this Lease.

3.2 Real Estate Taxes and Assessments. Lessor will pay all real estate taxes and assessments assessed on the Premises during the Lease Term. Lessee shall reimburse to Lessor a proportion of such taxes and assessments as determined and calculated utilizing a TIF Rebate Agreement which shall be entered separate and apart from this lease agreement.

3.3 Personal Property Taxes. Lessee shall directly pay to the taxing authority when due all taxes that are attributable to the cost or value of Lessee's equipment, furniture, fixtures, and other personal property located in the Premises should any such tax be assessed.

4. SECURITY DEPOSIT.

4.1 Security Deposit. Lessee shall pay a security deposit in the amount of \$2500.00, which sum shall be held by Lessor as security for the faithful performance by Lessee of all of the terms, covenants, conditions and agreements of this Lease. If Lessee defaults with respect to any provision of this Lease, Lessor may retain, use or apply all or any part of the Security Deposit to compensate Lessor for any expense, loss or damage suffered by Lessee's default including, but not limited to, the failure of Lessee to pay any rent due hereunder, and for the repayment of amounts Lessor is obligated to spend by reason of Lessee's default. Lessor may claim from a Security Deposit those sums reasonably necessary to remedy defaults in the payment of rent, to

repair damage caused by Lessee, to clean the premises, and to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Lessee or any person acting at the direction or under the authority or with the permission of Lessee. If any portion is so retained, used or applied, Lessee, within five (5) days following demand by Lessor, shall deposit with Lessor an amount sufficient to restore the Security Deposit to the original amount plus any increased amounts as required by this Lease. Lessor shall not be required to keep the Security Deposit separate from its general funds, and Lessee shall not be entitled to interest on it. If Lessee fully and faithfully performs every provision of this Lease, the Security Deposit shall be returned to Lessee within sixty (60) days following the expiration of the Lease Term and the surrender of the Premises. In no event shall Lessee have the right to apply any part of the Security Deposit to any rent payable under this Lease.

5. USE OF PREMISES.

5.1 Permitted Use. The Premises may be used and occupied only for Lessee's Permitted Use. Lessee shall not use or permit the Premises to be used for any other purpose without Lessor's prior written consent, which may be granted or withheld in Lessor's sole discretion. Lessee shall not use the Premises in any manner which would violate any laws or Orders. Lessee shall not perform any act or carry on any practices that may injure the Premises or that may be a nuisance or menace. Lessee shall not cause, maintain or permit any outside storage on or about the Premises. Lessee shall not allow any condition or thing to remain on or about the Premises which diminishes the appearance or aesthetic qualities of the Premises and/or any surrounding property. Lessor agrees not to lease portions of the Premises to third parties whose primary use are the same as Lessee's Permitted Use.

5.2 Compliance With Laws. For purposes of this Lease, the term "Laws and/or Orders" includes all federal, state, county, city or government agency laws, statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued. The terms also includes government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, Lessors, or Lessees. Subject to the provisions of Section 12 below, Lessee shall continuously and without exception repair and maintain the Premises, including Lessee Improvements, alterations, fixtures, and furnishings in compliance with all Laws and Orders. Subject to the provisions of Section 13 below, Lessee, at Lessee's sole expense, shall promptly make all repairs, replacements, alterations, or improvements needed to comply with all Laws and Orders relating to the Premises and Lessee's use of the Premises.

5.3 Hazardous Materials.

(a) Lessee agrees not to cause or permit any Hazardous Materials (as defined below) to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises without the prior written consent of Lessor, which consent Lessor may withhold in its sole and absolute discretion.

(b) Upon the expiration or termination of this Lease, Lessee agrees to promptly remove from the Premises, at its sole cost and expense, any and all Hazardous Materials which were caused to be located thereon by or at the direction of Lessee or any Lessee Party, including without limitation any equipment or systems containing Hazardous Materials.

(c) Lessee agrees to promptly notify Lessor within one day of any release of Hazardous Materials on the Premises during the Lease Term, whether caused by Lessee or any other persons or entities. If the presence of any Hazardous Materials brought on the Premises by Lessee or any Lessee Party results in contamination of the Premises, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to return the Premises to the condition that existed before the introduction of such Hazardous Materials. Lessee shall first obtain Lessor's approval of the proposed remedial action. This provision does not limit any indemnification obligation set forth in this Lease. At all times during the Lease Term, Lessor shall have the right, but not the obligation, to enter upon the Premises to inspect, investigate, sample and/or monitor the Premises to determine if Lessee is in compliance with the terms of this Lease regarding Hazardous Materials.

(d) As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of Iowa, or any local government authority having jurisdiction over the Premises. Hazardous Materials includes: (a) any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code Sections 9601-9675); (b) "hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code Section 6901-6992k); (c) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or materials, now or hereafter in effect); (d) petroleum products; (e) radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code Sections 2011-2297g-4; (f) asbestos in any form or condition; and (g) polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

(e) If, during the Lease Term (including any extensions), Lessee becomes aware of any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of Hazardous Material on, under, or about the Premises, Lessee shall give Lessor written notice of such investigation within five (5) days after learning of it and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, or other writings received by Lessee that concern the release or investigation.

(f) Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, protect and hold harmless Lessor and all Lessor Parties with respect to all losses arising out of or resulting from the release of any Hazardous Material in or about the Premises or the violation of any environmental Law or Order, by Lessee or Lessee's agents, contractors, or invitees. This indemnification includes losses attributable to diminution in the value of the Premises and all other liability, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages, and costs (including attorney, consultant, and expert fees and expenses) resulting from such release or violation. This indemnification and all other obligations of Lessee with respect to Hazardous Materials shall survive the expiration or termination of this Lease.

6. LESSEE IMPROVEMENTS. Lessee hereby acknowledges that Lessor shall be under no obligation to alter, improve or otherwise perform any work in the Premises prior to or during the Lease Term. The Lessee shall obtain prior approval from the Lessor to make any improvement which has a gross cost of \$1,000 or more.

7. PARKING. Lessee shall have the nonexclusive right to use the paved and/or unimproved areas of the Project, subject however to Lessor's reserved areas, to provide parking for Lessee's employees, agents, contractors and invitees, in accordance with all applicable Laws and Orders. Lessee shall not have the right to assign or transfer any right to use such parking areas, except upon the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion. All responsibility for damage to or loss of vehicles is assumed by Lessee, and Lessor shall not be responsible for any such damage or loss by water, fire, defective brakes, the act or omissions of others, theft, or for any other cause.

7.1 Unpaved Portion of the Parking Lot: The Lessor retains the right to utilize the unpaved portions of the parking lot for use by employees of the University of Iowa to park their vehicles for ride share purposes. This use shall be exclusively for Monday through Friday. In exchange for this reservation of rights the Lessor shall clear the parking lot in the same manner and time as performed when the Lessor still operated the facility. The clearing of snow does not, however, extend to the sidewalks which shall be the Lessee's obligation to clear of snow and ice.

8. LESSOR'S RIGHTS. Notwithstanding any provision of this Lease to the contrary, but provided that such action by Lessor will not materially adversely affect Lessee's ability to conduct business on the Premises, Lessor reserves the right at any time during the Lease Term, upon thirty (30) days prior written notice, to make additional improvements, including without limitation the right to erect additional buildings on the Premises and to recapture portions of the parking area on the Premises. No such action by Lessor shall reduce any rental amount payable by Lessee under this Lease.

8.1 Without limiting the above Lessor reserves the rights:

- (a) to install solar panels on the facility's exterior/roof.
- (b) to utilize one of the upstairs meeting rooms for purposes of any general or special election;

8.2 Lessee agrees that it shall continue to offer memberships for the general public to be able to utilize the recreational facility at such times as the Lessee may reasonably establish. The Lessee may charge any fee for such use so long as one option available to the public is an annual membership which, for the first year, shall be no greater than the present annual membership rate and on the same terms as such membership is presently available. During the second year of the lease the Lessee may increase said fee by no more than 20% unless otherwise approved by the Lessor.

9. UTILITIES.

9.1 Utilities and Services. Lessee shall directly contract and pay for (a) all electricity, water and gas, if any, consumed in the Premises, and (b) all costs of operating and scheduled maintenance of the HVAC system serving the Premises. Lessee shall provide to Lessor, upon request, satisfactory evidence of Lessee's HVAC maintenance contract with a vendor approved by Lessor. Lessee shall replace lamps, starters, and ballasts for all lighting fixtures within the Premises at Lessee's expense. Lessee shall provide adequate janitorial

services in and about the premises, and shall take all steps necessary to ensure that rodents and other pests are at all times controlled. If Lessee fails to take such steps, Lessor may, but shall not be required to, do so at Lessee's expense. Lessee shall at all times cause the Premises to be maintained in a clean, safe and sanitary condition. Failure to do so may, at Lessor's option, constitute a material breach of this Lease.

9.2 Interruption of Utilities. Lessee agrees that Lessor shall not under any circumstances be liable for damages, by abatement of Rent or otherwise, for interruptions or diminution in the quality or quantity of any utility or service. Such failure, delay, or diminution shall not be considered to constitute an eviction or a disturbance of Lessee's use and possession of the Premises or relieve Lessee from paying Rent or performing any of its obligations under this Lease. Lessor shall not be liable under any circumstances for a loss of or injury to property or for injury to or interference with Lessee's business, including loss of profits through, in connection with, or incidental to a failure of any such utilities or services.

10. ALTERATIONS; MECHANIC'S LIENS.

10.1 No Alterations Without Consent. Lessee shall not make any alterations to the Premises without Lessor's prior written consent, which shall not be unreasonably withheld. Lessor's consent to any proposed alterations shall be deemed not to have been unreasonably withheld if such alterations could: (a) adversely affect the roof or any structural component of the Premises; (b) adversely affect any Base Building Systems; or (c) result in Lessor's being required under any Laws or Orders to perform any construction, alterations or other work anywhere in the Premises. As used in this Lease, "Base Building Systems" means all systems and equipment (including plumbing; heating, ventilation, and air conditioning; electrical; fire/life safety; elevator; and security systems, if any) that serve the Premises.

10.2 Contractor Requirements. If Lessor gives its consent to Lessee's proposed alterations, no such alterations shall proceed without Lessor's prior written approval of (i) Lessee's contractor; and (ii) insurance policies, or other evidence acceptable to Lessor of the existence of insurance coverage in favor of Lessee's contractor, for public liability insurance including bodily injury and property damage with a combined single limit of not less than \$1,000,000; for automobile liability including owned, non-owned and hired vehicles with limits not less than \$1,000,000; each of the preceding policies to be endorsed to name Lessor and, if required by Lessor, Lessor's lender, as additional insureds; for worker's compensation in the limits required by law; and for employers' liability with limits not less than \$1,000,000.

10.3 Conditions. Lessor shall not be required to consider Lessee's request for approval of alterations unless Lessee has delivered to Lessor detailed plans and specifications therefore. Lessor's approval of the plans, specifications and working drawings for Lessee's alterations shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with any Laws or Orders. Before any alterations may begin, valid building permits or other required permits or licenses shall be furnished to Lessor, and, once the alterations begin, Lessee shall diligently and continuously pursue their completion.

10.4 Lessor's Property. All alterations and fixtures that may be installed in or about the Premises from time to time shall be and become the property of Lessor on installation; provided, however, Lessee's trade fixtures shall be removed by Lessee prior to the expiration or sooner termination of the Lease Term. Lessee shall repair any damage to the Premises caused by such removal. By written notice to Lessee either before expiration of the Lease Term or within a reasonable time after any termination of this Lease, Lessor may require Lessee at Lessee's sole

expense, to remove any alterations and restore the Premises to their configuration and condition before the alterations were made. If Lessee fails to complete such restoration before expiration of the Lease Term or, in the case of termination, within fifteen (15) days after written notice from Lessor requesting the restoration, Lessor may do so and charge the cost of the restoration to Lessee.

10.5 Manner of Construction. All alterations shall be performed in a good and workmanlike manner, using new materials. All work shall be diligently prosecuted to completion. Within twenty (20) days after completion of any alterations, Lessee shall deliver to Lessor a reproducible copy of the drawings of the alterations as built.

10.6 Payment for Improvements. Lessee agrees to pay promptly for any work done or materials furnished in or about the Premises and not to suffer or permit any lien to attach thereto. Lessee further agrees to cause any such lien or any claims therefore to be released promptly; provided, however, that in the event Lessee contests any such claim, Lessee agrees to indemnify and secure Lessor to Lessor's satisfaction. No mechanic's or materialmen's or other liens sought to be taken or vested on the Premises shall in any manner affect the right, title or interest of Lessor in this Lease, and Lessee shall have no authority from Lessor to permit or create any such lien. On completion of any alteration, Lessee shall deliver to Lessor evidence of full payment and unconditional final waivers of all liens for labor, services, or materials. If any lien is filed against any portion of the Premises as a result of any alterations requested by Lessee, Lessee shall cause the same to be released no later than ten (10) days following the filing thereof. If Lessee fails to cause the release of any lien as provided above, Lessor may pay the demand of the lien claimant in full or otherwise cause the release of such lien, and Lessee shall reimburse Lessor for all such costs upon demand as Additional Rent hereunder.

10.7 Obstructions. Lessee shall not place blinds or shades on the front windows of the Premises, nor place racks or stack boxes so as to block or obstruct the view from or into the Premises through the front windows.

11. INSURANCE.

11.1 Compliance with Insurer Requirements. Lessee shall, at Lessee's sole expenses, comply with all requirements, guidelines, rules, orders and similar mandates and directives pertaining to the use of the Premises, whether imposed by Lessee's insurers, Lessor's insurers, or both. Lessee shall, at Lessee's sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and of any similar body.

11.2 Property Insurance.

(a) Lessee Obligations. Lessee shall procure and maintain property insurance coverage for all office furniture, trade fixtures, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the Premises, including property installed by, for, or at the expense of Lessee. Lessee's property insurance shall fulfill the following requirements: (a) it shall be written on the broadest available "all-risk" (special-causes-of-loss) policy form or an equivalent form acceptable to Lessor, (b) it shall include an agreed-amount endorsement for no less than 100% of the full replacement cost (new without deduction for depreciation) of the covered property and (c) the amounts of coverage shall meet any coinsurance requirements of the policy or policies. It is the parties intent that Lessee shall structure its property insurance program

so that no coinsurance penalty shall be imposed and there shall be no valuation shortfalls or disputes with any insurer or Lessor. The property insurance coverage shall include vandalism and malicious mischief coverage.

(b) Lessor Obligations. Lessor shall procure and maintain all-risk property insurance coverage for all improvements and alterations thereto (including those installed by Lessee and of which Lessor has notice) on the Premises. Such property insurance shall include vandalism and malicious mischief coverage and shall be written for the full replacement cost of all improvements on the Premises (including endorsements for demolition costs, any increased cost of construction because of modifications and alterations that may be required by then current building codes).

11.3 Commercial General Liability Insurance.

(a) General Requirements. Lessee shall obtain commercial general liability insurance with minimum liability limits of \$1,000,000.00, written on an "occurrence" policy form, covering bodily injury property damage and personal injury arising out of or relating (directly or indirectly) to Lessee's business operations, conduct, assumed liability, or use or occupancy of the Premises. Lessee's liability coverage shall include all the coverages typically provided by the Broad Form Comprehensive General Liability Endorsement, including broad form property damage coverage (which shall include coverage for completed operations). Lessee's liability coverage shall further include premises-operations coverage, products-completed operations coverage owners and contractors protective coverage, and the broadest available form of contractual liability coverage. It is the parties' intent that Lessee's contractual liability coverage provide coverage to the maximum extent possible of Lessee's indemnification obligations under this Lease.

(b) Additional Insureds. Lessor Parties and any lender of Lessor shall be named by endorsement as additional insureds under Lessee's general liability coverage. The additional insured endorsement shall be on ISO Form CG 20 11 11 85 or an equivalent acceptable to Lessor, with such modifications as Lessor may require. Lessee's general liability policies shall be endorsed as needed to provide that the insurance afforded by those policies to the additional insureds is primary and that all insurance carried by Lessor Parties is strictly excess to any secondary and shall not contribute with Lessee's liability insurance. The coverage afforded to Lessor and any lender of Lessor shall be at least as broad as that afforded to Lessee and may not contain any terms, conditions, exclusions, or limitations applicable to Lessor any lender of Lessor that do not apply to Lessee.

(c) Other Requirements. Lessee's general liability policies shall be endorsed as needed to provide cross-liability coverage for Lessee, Lessor, and any lender of Lessor and to provide severability of interests. Lessee's liability insurance coverage may be provided by a combination of primary, excess, and umbrella policies but those policies shall be absolutely concurrent in all respects regarding the coverages afforded by the policies. The coverage of any excess or umbrella policy shall be at least as broad as the coverage of the primary policy. Lessee shall, at Lessee's sole expense, procure a "per location" endorsement or equivalent reasonably acceptable to Lessor so that the general aggregate and other limits apply separately and specifically to the Premises.

11.4 Lessee's Workers' Compensation and Employer Liability Coverage. Lessee shall procure and maintain workers' compensation insurance as required by law and employer's liability insurance with limits of no less than \$1,000,000.00. Each of such policies shall include a waiver of subrogation for the benefit of Lessor.

11.5 Business Income and Extra Expense Coverage. Lessee shall further procure and maintain business income (business interruption) insurance and extra expense coverage with coverage amounts that shall reimburse Lessee for all direct or indirect loss of income and charges and costs incurred arising out of all perils insured against by Lessee's property insurance coverage, including prevention of, or denial of use of or access to, all or part of the Premises, as a result of those perils.

11.6 Delivery of Certificate, Policy, and Endorsements. Lessee shall deliver evidence of the insurance required under this Lease to Lessor: (a) on or before the Commencement Date, and (b) at least thirty (30) days before the expiration or renewal date of any policy. The certificate(s) shall provide for no less than thirty (30) days; advance written notice to Lessor from the insurer or insurers of any cancellation, nonrenewal or material change in coverage or available limits of liability and shall confirm compliance with the liability insurance requirements in this Lease. The "endeavor to" and "failure to mail such notice shall impose no obligation or liability of any kind upon the Company" language and any similar language shall be stricken from the certificate.

11.7 Form of Policies. All insurance policies required of Lessee hereunder shall: (a) name Lessor and any other Lessor Party specified by Lessor as an additional insured; (b) be issued by an insurance company that is acceptable to Lessor, and admitted to engage in the business of insurance in the State of Iowa; (c) be primary insurance for all Claims under it and provide that any insurance carried by Lessor Parties and Lessor lenders is strictly excess, secondary, and noncontributing with any insurance carried by Lessee, and (d) provide that insurance may not be canceled, nonrenewed, or the subject of material change in coverage or available limits of coverage, except on thirty (30) days' prior written notice to Lessor and Lessor's lenders. All deductibles and self-insured retentions, if any, under Lessee's policies are subject to Lessor's prior written approval. Lessee shall be permitted to provide the insurance required under this Lease by obtaining a blanket policy or policies to be maintained by Lessee, provided that the coverages afforded to Lessor and Lessor's lenders under this Lease shall in no way be limited, diminished, or reduced under such blanket policy or policies.

11.8 Waiver of Subrogation. Notwithstanding any provision of this Lease to the contrary, but except as expressly limited below, Lessor and Lessee each hereby waives all rights of recovery, claim, action or cause of action against the other for any loss or damage that may occur to the Premises, including any improvements thereon, and/or any personal property of either of them, arising from any cause that (a) would be insured against under the terms of any insurance required by this Lease to be carried by the party suffering the loss; or (b) is insured against under the terms of any insurance actually carried by the party suffering the loss, regardless of whether such coverage is expressly required hereunder. The foregoing waiver shall apply regardless of the cause or original of the claim, including but not limited to the negligence of a party or its agents, officers, employees or contractors. The foregoing waiver shall not apply (w) to the extent the loss is caused by the gross negligence or willful misconduct of the party for whose benefit this waiver is given, (x) to the extent that it invalidates any insurance coverage of Lessor or Lessee, provided that each party has used reasonable efforts to obtain policies which do permit waivers of subrogation; (y) to the extent the loss suffered is less than the deductible amount of the applicable casualty policy, or (z) to the extent the loss exceeds the casualty limits

of the applicable policy. Each party shall obtain any special endorsements required by its insurer to evidence compliance with this waiver.

12. INDEMNIFICATION AND WAIVER OF CLAIMS.

12.1 Indemnification. As used in this Lease, the term “Claims” means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorney fees actually incurred). To the fullest extent permitted by law, Lessee shall, at Lessee’s sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless each of the Lessor Parties from and against all Claims from any cause directly or indirectly arising out of or relating to this Lease, the tenancy created under this Lease, or the Premises, including without limitation (a) the use or occupancy of the Premises by Lessee or any other party; (b) the negligence or willful misconduct of Lessee or of any employee, agent, contractor or invitee of Lessee; (c) Lessee’s conduct of its business, and (d) any breach or default in performance of any obligation on Lessee’s part to be performed under this Lease, whether before or during the Lease Term or after its expiration or termination. The foregoing indemnification extends to and includes Claims for (a) injury to any persons (including death); (b) loss of, injury or damage to, or destruction of property (including all loss of use); and (c) all economic losses and consequential or resulting damage of any kind. Lessee’s insurance obligations under this Lease are independent of Lessee’s exculpation, indemnification, and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee’s exculpation, indemnification, and such obligations of Lessee or to limit Lessee’s liability under this Lease.

12.2 Duty to Defend. Lessee’s duty to defend Lessor Parties is separate and independent of Lessee’s duty to indemnify Lessor Parties. The duty to defend includes claims for which Lessor Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Lessee Parties have been determined. The duty to defend applies immediately, regardless of whether Lessor Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that Lessor Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee’s duty to defend Lessor Parties at any stage of any claim or suit within the Scope of this Section 13.

12.3 Exculpation. To the fullest extent permitted by law, Lessee waives all Claims (in law, equity or otherwise) against each of the Lessor Parties arising out of, and agrees that Lessor Parties shall not be liable to Lessee for (and Lessee knowingly and voluntarily assumes the risk of) the following: (i) injury to or death of any person occurring on or about the Premises; or (ii) loss of, injury or damage to, or destruction of any tangible or intangible property of Lessee, its employees, agent, contractors or invitees, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause. Lessor Parties shall not be liable under this clause regardless of whether the liability results from any error, omission or negligence of any of the Lessor Parties. This exculpation clause shall not apply to Claims against any particular Lessor Party to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage, or destruction was proximately caused by such Lessor Parties’ fraud, negligence, willful injury to person or property or violation of law.

12.4 Survival. The indemnification and exculpation provisions of this Section 13 shall survive the expiration or termination of this Lease until all Claims contemplated by these provisions are fully barred by the applicable statutes of limitations.

13. REPAIRS.

13.1 Lessee's Repair Obligations. Lessee shall at Lessee's expense, maintain and repair the interior of the Building on the Premises, including the fixtures in the Premises, Lessee's signs, locks, closing devices, security devices, windows, window sashes, casements and frames, floors and floor coverings, restrooms, fitness equipment and all other property located within the premises, in first-class condition and repair, and shall return the premises to Lessor upon the expiration or sooner termination of this Lease in at least as good condition as when received by Lessee subject only to routine wear and tear. Lessee shall also maintain and repair any improvements or additions to the Building made by Lessee and shall replace glass broken during all terms with glass of the same size and of not lower quality than that broken. Such maintenance and repairs shall be performed with due diligence, lien-free and in a first-class and workmanlike manner, by licensed contractor(s) which are approved by Lessor, which approval Lessor shall not unreasonably withhold or delay. Lessor shall, however, have the right to approve of Lessee's choice of contractor for any or all of such work. Lessee shall not clog any plumbing, sewers waste pipes, drains, and water closets used by Lessee. If Lessee fails to provide any maintenance or repairs required of Lessee within fifteen (15) days after written notice by Lessor and to complete the same with reasonable diligence, then Lessor may provide such repairs or maintenance for the account of Lessee and such costs shall be added to the next monthly installment of rent payable under this Lease and collectible as rent.

13.2 Lessor's Repair Obligations. During all terms of this Lease, Lessor shall maintain and repair the structure of the Building (e.g., the roof, walls, windows, and floors) and all service and utility pipes, plumbing, wires, electrical boxes and lines on the Premises and HVAC equipment. Lessor shall also be responsible in the event that the furnaces, air conditioners or hot water heaters need major service or full replacement due to normal wear and tear or defectiveness. Lessor shall be responsible for (i) the maintenance, repair, cleaning, lighting, line-marking, mowing, and removal of snow and ice from the parking, driving, and service areas of the Premises; and (ii) the maintenance and replacement of landscaping on the Premises.

13.3 Specific Repair and Maintenance Provisions. Notwithstanding any other provisions of this Lease (including without limitation, paragraphs 9.1, 13.1 and 13.2 above), the following provisions shall apply:

- a. Notwithstanding paragraph 9.1 above, the Lessor shall be responsible for maintaining the ceiling lights in the gymnasium unless such lights have been damaged because of the Lessee's neglect or negligence.
- b. The Lessee's responsibility for HVAC shall be limited to (i) scheduled maintenance as provided in paragraph 9.1 above, and (ii) service calls of less than \$500 per occurrence.
- c. The Lessee's responsibility for windows shall be limited to minor maintenance (less than \$500 per occurrence) and damage caused by the Lessee's neglect or negligence.
- d. The Lessee's responsibility for plumbing shall be limited to minor maintenance (less than \$500 per occurrence) and damage caused by the Lessee's neglect or negligence.

- e. The Lessee's responsibility for maintaining the gym dividers/curtains and the motors and apparatus for raising and lowering the curtains except for damage caused by the Lessee's neglect or negligence.
- f. The Lessee shall be responsible for maintaining the scoreboards in the gym, except for damage caused by the Lessor's neglect or negligence.
- g. The Lessee shall be responsible for maintaining gym equipment. In the event a piece of equipment cannot be repaired the Lessor shall replace up to \$10,000 worth of equipment each year. Notwithstanding this provision, Lessor shall be under no obligation to provide additional or new equipment.

14. SIGNS. Lessor shall have the exclusive right to control the placement, size, content and quality of any signs installed at the Premises. Subject to the provisions of the previous sentence, Lessee shall have the right to install, at Lessee's sole cost and expense, exterior signage at the Premises in compliance with the terms and conditions of all applicable Laws and/or Orders. Any signs not in conformity with the requirements of this Lease may be removed by Lessor at Lessee's expense. All signs of Lessee shall be removed by Lessee, and all damage caused by the installation, maintenance, operation and/or removal of such signs shall be restored by Lessee at its expense prior to the expiration or sooner termination of the Lease. Subject to Lessor's direction and at Lessee's sole cost and expense, Lessee shall be permitted to occupy one section of the monument sign located on the Project.

15. ENTRY BY LESSOR. Lessor, its employees, agents and contractors shall have the right to enter the Premises at all reasonable times upon reasonable notice (except under circumstances which Lessor reasonably deems to constitute an emergency, in which event no notice shall be required) for the purpose of inspecting the same, showing the Premises to prospective Lessees during any portion of the lease term, or placing upon the Premises any usual or ordinary "for sale" signs, without any abatement of Rent and without any liability to Lessee for any loss of quiet enjoyment of Premises thereby occasioned. Lessee shall permit Lessor at any time during the term of this lease to place upon the Premises any usual or ordinary "to let" or "to lease" signs. No such entry by Lessor shall constitute any forcible, unlawful, actual or constructive eviction.

16. ABANDONMENT; VACATION. Lessee shall not abandon the Premises during the Lease Term or permit the Premises to remain unoccupied for a period longer than fifteen (15) consecutive days during the Lease Term. If Lessee abandons, vacates or surrenders the Premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Lessee left in or about the Premises will, at the option of Lessor be deemed abandoned and may be disposed of by Lessor in the manner provided for by the laws of Iowa.

17. DAMAGE OR DESTRUCTION.

17.1 Repair of Damage by Lessor. Lessee agrees to notify Lessor in writing promptly of any damage to the Premises resulting from fire, vandalism, or any other identifiable event of a sudden, unexpected or unusual nature ("Casualty"). If the Premises or the means of access thereto are damaged by a Casualty and if neither Lessor nor Lessee has elected to terminate this Lease pursuant to the applicable provisions of this Section 17, Lessor shall promptly and diligently restore the Premises (and access thereto) to substantially the same condition as existed before the Casualty. Lessor's obligation to restore is subject to reasonable delays for insurance

adjustment and other matters beyond Lessor's reasonable control and subject to the other clauses of this Section 17.

17.2 **Repair Period Notice.** Lessor shall, within the later of (a) sixty (60) days after the date on which Lessor determines the full extent of the damage caused by the Casualty or (b) thirty (30) days after Lessor has determined the extent of the insurance proceeds available to effectuate repairs, provide written notice to Lessee indicating the anticipated period for repairing the Casualty (the "Repair Period Notice"). The Repair Period Notice shall also state, if applicable, Lessor's election either to repair or to terminate the Lease pursuant to the provisions of this Section 18.

17.3 **Lessor's Option to Terminate or Repair.** Lessor may elect either to terminate this Lease or to effectuate repairs if: (a) the Repair Period Notice estimates that the period for repairing the Casualty exceeds one hundred eighty (180) days from the date of the commencement of the repair; (b) the estimated repair cost exceeds the insurance proceeds, if any, available for such repair, plus any amount that Lessee is obligated or elects to pay for such repair; (c) the estimated repair cost of the Premises, even though covered by insurance exceeds twenty-five percent (25%) of the full replacement cost of the improvements on the Premises, or (d) such improvements cannot be restored except in a substantially different structural or architectural form that existed before the Casualty. Lessor's election shall be stated in the Repair Period Notice.

17.4 **Lessee's Option to Terminate.** If the Repair Period Notice provided by Lessor indicates that the anticipated period for repairing the Casualty exceeds one hundred eighty (180) days, Lessee may elect to terminate this Lease by providing written notice ("Lessee's Termination Notice") to Lessor within ten (10) days after receiving the Repair Period Notice. If Lessee does not elect to terminate within this ten (10) day period Lessee shall be considered to have waived Lessee's option to terminate.

17.5 **Rent Abatement Due to Casualty.** Lessor and Lessee agree that Lessee shall be provided with a proportionate abatement of Base Monthly Rent based on the rentable square footage of the improvements on the Premises rendered unusable and not used by Lessee, but only to the extent that Lessor is reimbursed from the proceeds of rental interruption insurance purchased by Lessor as a part of Insurance Expenses. Such proportional abatement, if any, shall be provided during the period beginning on the later of (a) the date of the Casualty or (b) the date on which Lessee ceases to occupy the Premises and ending on the date of Substantial Completion of Lessor's restoration obligations as provided in this Section 18.5. Except for the express provisions of Section 18.4, the Rent abatement provided in this Section 18.5 shall be Lessee's sole remedy in the event of any Casualty. Lessor shall not be liable to Lessee or any other person or entity for any direct, indirect, or consequential damage (including but not limited to lost profits of Lessee or loss of or interference with Lessee's business), whether or not caused by the negligence of Lessor or Lessor's employees, contractors, licensees, or invitees, due to, arising out of, or as a result of any Casualty (including but not limited to the termination of the Lease in connection therewith).

17.6 **Damage Near End of Term.** Notwithstanding any other provision of Section 18, if any portion of the Premises is destroyed or damaged by any Casualty during the last twelve (12) months of the Lease Term, Lessor shall have the option to terminate this Lease by giving written notice to Lessee of the exercise of that option within thirty (30) days after that damage or destruction. If because of the occurrence of any Casualty during the last twelve (12) months of the Lease Term Lessee's ability to conduct business in the Premises would (despite Lessee's best

efforts) be substantially impaired for more than sixty (60) consecutive days, Lessee shall have the option to terminate this Lease by giving written notice to Lessor of the exercise of that option within thirty (30) days after the occurrence of the damage or destruction.

17.7 Waiver of Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

18. ASSIGNMENT, SUBLETTING AND TRANSFERS OF OWNERSHIP.

18.1 No Transfer. Lessee shall not, without Lessor's prior written consent, which shall not be unreasonably withheld, assign, sell, mortgage, encumber, convey, or otherwise transfer to any person ("Transferee") all or any part of Lessee's leasehold estate granted hereunder, or permit the Premises to be occupied by anyone other than Lessee and Lessee's employees, or sublet the Premises or any portion thereof (Collectively called "Transfer"). If Lessee is a partnership, a non-publicly traded corporation, or a limited liability partnership or company, any Transfer of general partnership interest, any transfer or issuance of stock, or any change in membership interest resulting in a change in control of Lessee, shall be deemed to be an assignment hereunder.

18.2 Refusal to Grant Consent. Reasonable grounds for denying consent include any of the following: (a) Transferee's character, reputation or business is not consistent with Lessor's reasonable business standards; (b) the proposed Transferee or its business is subject to compliance with additional requirements of any Law or Order which would require new construction in the Premises; (c) Transferee is either a government agency or an instrumentality of one; (d) Transferee's intended use of the Premises is inconsistent with Lessee's Permitted Use or will materially and adversely affect Lessor's interest; (e) Transferee's financial condition is or may be inadequate to support the Lease obligations of Transferee under the Transfer documents, or (f) the Transfer would cause Lessor to violate another lease or agreement to which Lessor is a party.

18.3 Conditions. Lessor may require that, as conditions precedent to such consideration of any proposed Transfer, (a) at least thirty (30) days prior to the proposed effective date of any such Transfer, Lessee shall provide Lessor with a statement containing (i) the name and address of the proposed Transferee; (ii) a financial statement, prepared in accordance with generally accepted accounting principles, of the proposed Transferee containing bank and credit references; and (iii) all of the principal terms and conditions of the proposed Transfer, including, but not limited to, the commencement and expiration dates, the rent payable, and the precise area of the Premises subject to such Transfer; (b) Lessee shall deliver to Lessor an original assignment or sublease executed by Lessee and the proposed Transferee which shall expressly provide (i) for the assumption by such proposed Transferee of all of Lessee's obligations under this Lease; (ii) that in no event shall Lessee be deemed relieved of any obligation or liability under this Lease; and (iii) that any proposed Transfer shall not be deemed effective for any purpose unless and until Lessor's written consent thereto is obtained; and (c) Lessee shall pay Lessor, as a condition to any Transfer becoming effective and as Additional Rent hereunder, (i) all reasonable attorneys' fees and costs incurred in connection with such review, and (ii) any rent or other payments pursuant to any sublease which exceed the amounts payable under this Lease and any other consideration paid, or to be paid, by reason of the assignment or sublease.

18.4 Right to Collect Rent. If this Lease is assigned, Lessor may collect Rent directly from Transferee. If all or part of the Premises is subleased and Lessee defaults, Lessor may collect Rent directly from Transferee. Lessor may then apply the amount collected from Transferee to Lessee's monetary obligations under this Lease. Collecting Rent from a Transferee or applying that Rent to Lessee's monetary obligations does not waive any rights of Lessor or obligations of Lessee hereunder.

18.5 No Waiver. No consent to any Transfer which may be given by Lessor or the acceptance of any Rent, charges or other consideration by Lessor from Lessee or any third party, shall constitute a waiver by Lessor of the provisions of this Lease or a release of Lessee from the full performance of any of its obligations hereunder, and no consent given by Lessor to any Transfer shall relieve Lessee (or any Transferee) from the above requirements for obtaining the written consent of Lessor to any subsequent Transfer.

18.6 Collection. If a default under this Lease should occur while the premises or any part of the Premises is subject to any Transfer, Lessor, in addition to any other remedies provided for within this Lease or by law, may at its option collect directly from the Transferee all rent or other consideration coming due to Lessee pursuant to the Transfer and apply such monies against any sums due to Lessor by Lessee and Lessee authorizes and directs any Transferee to make payments of rent or other consideration directly to Lessor upon receipt of notice from Lessor. No direct collection by Lessor from any Transferee should be construed to constitute a novation or a release of Lessee or any guarantor of Lessee from the further performance of their respective obligations in connection with this Lease.

19. LESSEE'S DEFAULT.

19.1 Events Constituting Default. The occurrence of any of the following shall constitute a default by Lessee under this Lease.

(a) Lessee's failure to pay when due any Rent required to be paid under this Lease if the failure continues for three (3) days after written notice of the failure from Lessor to Lessee;

(b) Lessee's failure to provide any instrument of subordination or attornment, any estoppel certificate, or any insurance coverage required by this Lease if the failure continues for five (5) days after written notice of the failure from Lessor to Lessee;

(c) Lessee's failure to perform any other obligation under this Lease if the failure continues for fifteen (15) days after written notice of the failure from Lessor to Lessee;

(d) Lessee's abandonment of the Premises, including Lessee's absence from the Premises for three (3) consecutive business days while in default under any provision of this Lease;

(e) To the extent permitted by law; (i) a general assignment by Lessee or any guarantor of the Lease for the benefit of credits; (ii) the filing by or against Lessee, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of all or substantially all the assets

of Lessee or any guarantor, unless possession is unconditionally restored to Lessee or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved; (iv) any execution or other judicially authorized seizure of all or substantially all the assets of Lessee located on the Premises, or of Lessee's interest in this Lease, unless that seizure is discharged within thirty (30) days; or

(f) The failure by Lessee to make any payment required to be made by Lessee under this Lease within three (3) days after written notice that the same is due and unpaid for any two (2) months (consecutive or nonconsecutive) during any twelve (12) month period, or any four (4) months (consecutive or nonconsecutive) in the aggregate during the entire Lease Term. In the event of any such chronic delinquency, at Lessor's option, Lessor shall have the additional right to require that Base Monthly Rent and other periodic Rent payments be made by Lessee quarter-annually, in advance.

20. REMEDIES OF LESSOR.

20.1 Remedies. Upon the occurrence of any one or more of such events of default, Lessor may at its election (i) terminate this Lease, (ii) terminate Lessee's right to possession only, without terminating the Lease, (iii) not terminate the lease or Lessee's possessory rights hereunder and continue to collect rent as it comes due, and/or (iv) exercise any other remedy available to Lessor under the Law. Upon termination of the Lease, or upon any termination of the Lessee's right to possession without termination of the Lease, the Lessee shall surrender possession and vacate the Premises immediately, and deliver possession thereof to the Lessor, and hereby grants to the Lessor the full and free right, without demand or notice of any kind to Lessee (except as in this Lease above expressly provided for), to enter into and upon the Premises in such event with or without process of law and to repossess the premises as the Lessor's former estate and to expel or remove the Lessee and any others who may be occupying or within the Premises without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom and without relinquishing the Lessor's rights to rent or any other right given to the Lessor hereunder or by operation of law. Upon termination of the Lease, Lessor shall be entitled to recovery as damages all rent and other sums due and payable by Lessee on the date of termination, plus (i) an amount equal to the value of the rent and other sums provided in this Lease to be paid by Lessee for the balance of the stated term hereof, less the fair rental value of the Premises for the balance of the stated term (taking into account the time and expenses necessary to obtain a replacement Lessee or Lessees, including expenses hereinafter described relating to recovery of the Premises, preparation for reletting and for reletting itself), and (ii) the cost of performing any other covenants to be performed by the Lessee. If the Lessor elects to terminate the Lessee's right to possession only without terminating the Lease, the Lessor may, at the Lessor's option, enter into the Premises, remove the Lessee's signs and other evidences of tenancy, and take and hold possession thereof as hereinabove provided without such entry and possession terminating the Lease or releasing the Lessee, in whole or in part, from the Lessee's obligations to pay the rent hereunder for the full term or from any other of its obligations under this Lease, Lessor may, but shall be under no obligation so to do, relet all or any part of the Premises for such rent and upon such terms as shall be satisfactory to Lessor (including the right to change the character or use made of the Premises). For the purpose of such reletting, Lessor may decorate or make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient. If Lessor does not relet the Premises, Lessee shall pay to Lessor on demand damages equal to the amount of the rent, and other sums provided in this Lease to be paid by Lessee for the remainder of the Lease term. If the premises are relet and a sufficient sum shall not be realized

from such reletting after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom (including, but not by way of limitation, attorneys' fees and brokers' commissions), to satisfy the rent and other charges in this Lease provided to be paid for the remainder of the Lease term, Lessee shall pay to Lessor on demand any deficiency and Lessee agrees that Lessor may file suit to recover any sums falling due under the terms of this Section from time to time.

20.2 Replacement of Statutory Notice Requirements. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Iowa Code Section 648, et seq, or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by this Lease shall replace and satisfy the statutory service of notice procedures.

20.3 Subleases. If Lessor elects to terminate this Lease on account of any default by Lessee, Lessor may (a) terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Lessee and affecting the Premises, or (b) choose to succeed to Lessee's interest in such an arrangement. If Lessor elects to succeed to Lessee's interest in such an arrangement, Lessee shall, as of the date of notice by Lessor of that election, have no further right to or interest in, the rent or any other consideration receivable under that arrangement.

20.4 Form of Payment After Default. If Lessee fails to pay any amount due under this Lease within five (5) days after the due date or if Lessee draws a check on an account with insufficient funds, Lessor shall have the right to require that any subsequent amounts paid by Lessee to Lessor under this Lease (to cure a default or otherwise) be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to Lessor or other form approved by Lessor despite any prior practice of accepting payments in a different form.

20.5 Efforts to Re-let. Lessee's right to possession shall not be considered to have been terminated by Lessor's efforts to relet the Premises, by Lessor's acts of maintenance or preservation with respect to the Premises or by appointment of a receiver to protect Lessor's interests under this Lease, or by any other acts of Lessor except those expressly intended to effect a termination hereof.

20.6 Acceptance of Rent Without Waiving Rights. Lessor may accept Lessee's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Lessor accepts payments after serving a notice of default, Lessor may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default without giving Lessee any further notice or demand.

20.7 Lessee's Remedies on Lessor's Default. Lessee waives any right to terminate this Lease and to vacate the Premises on Lessor's default under this Lease. Lessee's sole remedy on Lessor's default is an action for damages or injunctive or declaratory relief.

20.8 Right to Cure. Lessor may, but shall not be obligated to, cure any default on the part of Lessee under this Lease (whether or not such default would entitle Lessor to terminate this Lease), at any time and without notice to Lessee. Whenever Lessor shall so elect, all costs incurred by Lessor shall be paid by Lessee to Lessor on demand as Additional Rent.

20.9 Lessor's Designation. Lessee hereby irrevocably waives any right Lessee may have to designate the items against which any payments made by or on behalf of Lessee are to be credited, and Lessor may apply any payments made by or on behalf of Lessee to such items as Lessor may determine, regardless of and notwithstanding any designation or request by Lessee as to the items against which any such outstanding payments are to be credited.

20.10 Incidental Rights. No effort by Lessor to mitigate the damages caused by Lessee's breach of this Lease shall waive Lessor's right to recover the damages set forth above. Nothing in this Lease shall be construed to limit, impair or otherwise affect other provisions of this Lease regarding Lessor's right to indemnification from Lessee for liability arising prior to the termination of this Lease. No right or remedy conferred upon or reserved to Lessor in this Lease is intended to be exclusive of any other right or remedy granted to Lessor by statute or common law, and each and every such right and remedy shall be cumulative.

21. SURRENDER; HOLDOVER.

21.1 At End of Lease Term. At the end of the Lease Term, Lessee shall surrender the Premises to Lessor, together with all additions, improvements and other alterations thereto, in broom-clean condition and in good order, condition and repair. Prior to the end of the Lease Term, Lessee shall have removed all additions, improvements and other alterations made to the Premises by Lessee, repaired all damage to the Premises caused by such removal and restored the Premises to the condition in which they were prior to the making of the alterations so removed. Notwithstanding the foregoing, Lessee shall leave in place any and all alterations which Lessor requests Lessee to leave in place.

21.2 Requirements. No act or thing done by Lessor or any employee or other agent of Lessor during the Lease Term shall be deemed to constitute an acceptance by Lessor of a surrender of all or part of the Premises unless such an intent is specifically acknowledged in a writing duly signed by Lessor, without limiting the generality of the foregoing, the delivery of keys to the Premises to Lessor or any employee or other agent of Lessor shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Lessor.

21.3 Merger. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof will, at the option of Lessor, (a) either constitute a merger of the leasehold estate into Lessor's interest(s) in the Premises, or (b) not constitute a merger (if no written election is made, no merger shall occur); and (c) either terminate all or any existing subleases or other Transfers, or (d) at the option of Lessor, operate as an assignment to it of any or all of such Transfers.

21.4 Holdover. If Lessee remains in the Premises after the Lease Expiration Date, such continuance of possession by Lessee shall be deemed to be a month-to-month tenancy, terminable on thirty (30) days notice at any time by either party. All provisions of this Lease, except those pertaining to term and Rent, shall apply to the month-to-month tenancy. During the holdover period Lessee shall pay Base Monthly Rent in an amount equal to one hundred fifty percent (150%) of all Rents allocable to the last full calendar month of the regular Lease Term.

22. ATTORNEYS FEES/COLLECTION CHARGES.

22.1 Proceedings. In the event of any legal action or arbitration proceeding between the parties hereto, reasonable attorneys' fees and consultants' fees and expenses of the prevailing

party in any such action or proceeding shall be added to the judgment or award in this Lease, provided, however, that where a party files multiple causes of action against the other party, or where there are crossclaims or counterclaims, the court or arbitrator shall award reasonable attorneys' fees to the prevailing party only to the extent such fees reflect services performed in connection with those causes of action on which the prevailing party has prevailed.

22.2 Collection. If Lessor utilizes the services of any attorney for the purpose of collecting any Rent due and unpaid by Lessee or in connection with any other breach of this Lease by Lessee, Lessee agrees to pay Lessor actual attorneys' fees as determined by Lessor for such services, regardless of the fact that no legal action may be commenced or filed by Lessor.

24. SUBORDINATION.

24.1 Subordination. This Lease is subject and subordinate to; (a) the lien of any mortgages, deeds of trust, or other encumbrances ("Encumbrances") of the Premises; (b) all present and future ground or underlying leases ("Underlying Leases") now or hereafter in force against the Premises; (c) all renewals, extensions, modifications, consolidations, and replacements of the items described in (a) and (b) above; and (d) all advances made or hereafter to be made on the security of the Encumbrances. Despite any other provision hereof, any Encumbrance holder or lessor may elect that this Lease shall be senior to and have priority over that Encumbrance or Underlying Lease whether this Lease is dated before or after the date of the Encumbrance or Underlying Lease. This subordination is self-operative, and no further instrument of subordination shall be required to make it effective. To confirm this subordination, however, Lessee shall, within five (5) days after Lessor's request, execute any further instruments or assurances in recordable form that Lessor reasonably considers necessary to evidence or confirm the subordination or superiority of this Lease to any such Encumbrances or Underlying Leases. Lessee irrevocably appoints Lessor, as Lessee's agent to execute and deliver in the name of Lessee any such instrument(s) if Lessee fails to do so. This authorization shall in no way relieve Lessee of the obligation to execute such instrument(s) of subordination or superiority. Lessee's failure to execute and deliver such instrument(s) shall constitute a default under this Lease.

25. BREACH BY LESSOR/LIMITATION OF LIABILITY.

25.1 Lessor's Breach. In the event of any breach by Lessor hereunder, Lessee shall give notice of such breach and Lessor shall have a reasonable opportunity to cure the same. A copy of such notice shall be delivered to any mortgagee or beneficiary under any mortgage or deed of trust encumbering the Premises, and to any ground lessor of the Premises, if any such parties request such notice, and no such notice shall be deemed effective until all such parties are in receipt thereof.

25.2 Notice of Default; Right to Cure. Lessee agrees to give written notice of any default by Lessor to the holder of any prior Encumbrance or Underlying Lease. Lessee agrees that, before it exercises any rights or remedies under the Lease, the lienholder or lessor shall have the right, but not the obligation, to cure the default within the same time, if any, given to Lessor to cure the default, plus an additional thirty (30) days. Lessee agrees that this cure period shall be extended by the time necessary for the lienholder to begin foreclosure proceedings and to obtain possession of the Premises as applicable. If Lessee is notified of the identity and address of Lessor's lender or ground or underlying lessor, Lessee shall give to that lender or ground or underlying lessor written notice of any default by Lessor under the terms of this Lease.

25.3 Limitation of Liability. Except to the extent prohibited by applicable law, the liability of Lessor for any breach of this Lease (including all persons and entities that comprise Lessor, and any successor Lessor) and any recourse by Lessee against Lessor shall be limited to the interest of Lessor and Lessor's successors in interest in and to the Premises. On behalf of itself and all persons claiming by, through, or under Lessee, Lessee expressly waives and releases Lessor from any personal liability for breach of this Lease.

26. MISCELLANEOUS.

26.1 Independent Covenants. This Lease shall be construed as though the covenants between Lessor and Lessee are independent. Lessee expressly waives the benefit of any statute to the contrary and agrees that if Lessor fails to perform its obligations under this Lease, Lessee shall not be entitled: (a) to make any repairs or perform any acts at Lessor's expense; or (b) to any setoff of the Rent or other amounts owing under this Lease against Lessor. The foregoing, however, shall in no way impair Lessee's right to bring a separate action against Lessor for any violation by Lessor of the provisions of this Lease if notice is first given to Lessor and any lender of whose address Lessee has been notified, and an opportunity is granted to Lessor and that lender to correct such violations as provided in this Lease.

26.2 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers or agreements under this Lease by either party to the other shall be in writing. Notice shall be sufficiently given for all purposes as follows: (a) when personally delivered to the recipient, notice is effective on delivery; (b) when mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery; (c) when mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt, (d) when delivered by nationally recognized overnight delivery service with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service; (e) when sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service. Addresses for purposes of giving notice are set forth in Section 1. Either party may change its address by giving the other party notice of the change in any manner permitted by this Section.

26.3 Waivers. The failure of Lessor to insist in any case upon the strict performance of any term, covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition, nor shall any delay or omission by Lessor to seek a remedy for any breach of this Lease or the acceptance of Rent by Lessor, be deemed a waiver by Lessor of its remedies or rights with respect to such a breach. No waiver by either party shall be deemed effective unless in writing and signed by the waiving party. Lessee hereby waives all rights under any Law or Order in existence during the Lease Term authorizing a Lessee to make repairs at the expense of a Lessor or to terminate a lease upon the complete or partial destruction of the Premises. **TO THE EXTENT PERMITTED BY LAW, LESSOR AND LESSEE EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING, INCLUDING ANY COUNTERCLAIMS, BROUGHT BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY**

CONNECTED WITH THE LEASE, THE RELATIONSHIP OF THE PARTIES, OR THE OCCUPANCY OR USE OF THE PREMISES BY ANY PERSON.

26.4 Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm, partnership, or association. If there be more than one Lessee, the obligations imposed upon Lessee under this Lease shall be joint and several.

26.5 Captions; Construction. As used in this Lease, unless the context otherwise requires: (i) references to "Section" are to a section hereof, (ii) all "Exhibits" referred to in this Lease are to Exhibits attached hereto, each of which is hereby incorporated in this Lease by reference and made a part hereof, (iii) "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; and (iv) the headings of the various sections hereof are for convenience or reference only and shall not modify, define or limit any of the terms or provisions hereof.

26.6 Entire Agreement. This instrument contains all of the agreements and conditions made between the parties to this Lease and may not be modified orally or in any other manner than by an agreement in writing signed by all parties to this Lease. Lessee acknowledges that neither Lessor nor Lessor's agents has made any representation or warranty as to the suitability of the Premises for the conduct of Lessee's business. Any agreements, warranties or representations not expressly contained in this Lease shall in no way bind either Lessor or Lessee, and Lessor and Lessee expressly waive all Claims for damages by reason of any statement, representation, warranty promise or agreement, if any not expressly contained in this Lease.

26.7 Time. Time is of the essence of each term and provision of this Lease.

26.8 Binding Effect. The terms and provisions of this Lease are binding up and inure to the benefit of the heirs, executors, administrators, successors and assigns of Lessor and Lessee.

26.9 Consent. If Lessee shall request Lessor's consent and Lessor shall fail or refuse to give such consent, Lessee shall not be entitled to any damages for any withholding by Lessor of its consent, Lessee's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only in those cases where Lessor has expressly agreed in writing not to unreasonably withhold its consent or where as a matter of Law Lessor may not unreasonably withhold its consent.

26.10 Deposits. Lessor and Lessee hereby agree that Lessor shall be entitled to immediately endorse and cash the Rent check(s) accompanying this Lease. It is further agreed and understood that such action shall not guarantee acceptance of this Lease by Lessor, but, in the event Lessor does not accept this Lease, such deposits shall be refunded in full to Lessee. This Lease shall be effective only after Lessee has received a copy fully executed by Lessor.

26.11 Governing Law. This Lease is governed by and construed in accordance with the laws of Iowa and venue of any suit shall be in Iowa County, Iowa.

26.12 Negotiated Terms. This Lease is a result of negotiations of the parties, each of which is knowledgeable in commercial leasing matters and each of which has had the opportunity to be represented by counsel, and all of the terms have been agreed to by both Lessor and Lessee after negotiations. Accordingly, any rule of law or legal decision that would require

interpretation of any provision of this Lease against the party that has drafted it is not applicable and is waived. The provisions of this Lease shall be interpreted in a reasonable manner to effect the purposes of the parties hereto.

26.13 Severability. If any provision of this Lease is found to be unenforceable, all other provisions shall remain in full force and effect.

26.14 Lessor's Lien. Lessor shall have the benefit of, and the right to, any and all lessor's liens provided under the law by which this Lease is governed.

26.15 Force Majeure. If performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes for those items, government actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused, except that Lessee's obligation to pay Rent shall not be excused.

26.16 Counterparts. This Lease may be executed in one or more counterpart copies, and each of which, so executed, irrespective of the date of execution and delivery, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

26.17 No Third-Party Benefits. Except as may be specifically provided to the contrary, this Lease is solely to establish various rights between parties to this Lease, and no "third-party" or other person will be entitled to any rights or benefits from this Lease or to rely on this Lease in any way, nor may this Lease serve as the basis of any obligation or other liability of a party to a person who is not a party.

26.18 Survival. Each obligation of Lessor or Lessee (including without limitation all indemnification obligations expressed in the Lease) that by its nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after the expiration or termination of the Lease Term, and any liability for a payment or other obligation that shall have accrued or otherwise relates to any period ending prior to or at the time of expiration or other termination of the Lease Term, or the end of Lessee's occupancy of the Premises if later, shall survive the expiration or other termination of this Lease.

26.19 Commissions. Lessee represents and warrants to Lessor that there are no persons entitled to the payment of a commission and no other commissions are payable as a result of Lessee and Lessor entering into this Lease, and Lessee agrees to indemnify, protect, defend and hold Lessor harmless from and against any claims for any commissions or other fees arising out of a claim therefore by any broker, finder or salesperson.

26.20 No Partnership. No provision of this Lease and no actions of the parties hereto shall be construed to create a partnership or joint venture between Lessor and Lessee, or make either party responsible for the debts and losses of the other.

26.21 Payments. All amounts payable hereunder shall be paid in lawful money of the United States of America.

26.22 Interest. If any amount payable by Lessee hereunder is not received by Lessor by the date when due, it shall bear interest at the lesser of the highest legal rate or eighteen percent (18.0%) per annum from the date due until paid. All interest, and any late charges imposed pursuant to Section 27.24 shall be considered Additional Rent due from Lessee to Lessor under the terms of this Lease. Despite any other provision of this Lease, the aggregate liability for interest payments shall not exceed the limits, if any, imposed by the usury laws of the State of Iowa. Any interest paid in excess of those limits shall be refunded to Lessee by application of the amount of excess interest paid against any sums outstanding in any order that Lessor requires. If the amount of excess interest paid exceeds the sums outstanding, the portion exceeding those sums shall be refunded in cash to Lessee by Lessor. To ascertain whether any interest payable exceeds the limits imposed, any nonprincipal payment (including late charges) shall be considered to the extent permitted by law to be an expense or a fee, premium, or penalty rather than interest.

26.23 Late Charges. Lessee acknowledges that, in addition to interest costs, the late payments by Lessee to Lessor of any Base Monthly Rent or other sums due under this Lease will cause to Lessor incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation processing, administrative and accounting charges and late charges that may be imposed on Lessor by the terms of any mortgage, deed of trust or related loan documents encumbering the Premises. Accordingly, if any monthly installment of Base Monthly Rent or any other amount payable by Lessee hereunder is not received by Lessor by the due date thereof, Lessee shall pay to Lessor an additional sum of ten percent (10%) of the overdue amount as a late charge, but in no event more than the maximum late charge allowed by law. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Lessor will incur by reason of any late payment as hereinabove referred to by Lessee, and the payment of late charges and interest are distinct and separate in that the payment of interest is to compensate Lessor for the use of Lessors' money by Lessee, while the payment of late charges is to compensate Lessor for Lessor's processing, administrative and other costs incurred by Lessor as result of Lessee's delinquent payments. Acceptance of a late charge or interest shall not constitute a waiver of Lessee's default with respect to the overdue amount or prevent Lessor from exercising any of the other rights and remedies available to Lessor under this Lease or at law or in equity now or hereafter in effect.

28. AUTHORITY. If Lessee is a corporation, each individual executing this Lease on behalf of that corporation represents and warrants that: (a) the individual is authorized to execute and deliver this Lease on behalf of that corporation in accordance with a duly adopted resolution of the corporation's board of directors and in accordance with that corporation's articles of incorporation or charter and bylaws; (b) this Lease is binding on that corporation in accordance with its terms; (c) the corporation is a duly organized and legally existing corporation in good standing in the State of Iowa; and (d) the execution and delivery of this Lease by that corporation shall not result in any breach of or constitute a default under any mortgage deed of trust, lease loan, credit agreement, partnership agreement or other contract or instrument to which that corporation is a party or by which that corporation may be bound. If Lessee is a corporation, Lessee shall, within fifteen (15) days after the date of this Lease, deliver to Lessor a copy of a resolution of Lessee's board of directors authorizing or ratifying the execution and delivery of this Lease, which resolution shall be dully certified by the secretary or assistant secretary of the corporation.

THIS LEASE, WHETHER OR NOT EXECUTED BY LESSEE, IS SUBJECT TO ACCEPTANCE AND EXECUTION BY LESSOR, ACTING ITSELF OR BY ITS

AUTHORIZED AGENT. SUBMISSION OF THIS DOCUMENT FOR EXAMINATION OR SIGNATURE BY THE PARTIES DOES NOT CONSTITUTE AN OPTION OR OFFER TO LEASE THE PREMISES ON THE TERMS IN THIS DOCUMENT OR A RESERVATION OF THE PREMISES IN FAVOR OF LESSEE. THIS DOCUMENT IS NOT EFFECTIVE AS A LEASE OR OTHERWISE UNTIL EXECUTED AND DELIVERED BY BOTH LESSOR AND LESSEE.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease to be effective as of the day and year first indicated above.

LESSOR

LESSEE

Aaron Sandersfeld, Mayor

Adam Hocker, Member/Manager
212 Sports Academy, LLC

ATTEST:

Nicole Osweiler, City Clerk