

RESOLUTION NUMBER 5051

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FULL AND FINAL SETTLEMENT AGREEMENT, RELEASE AND LEASE TERMINATION FOR PROPERTY LOCATED AT 1090 MONTGOMERY HIGHWAY

WHEREAS, on December 20, 2010, Gold’s Gym, LLC, (hereinafter known as “Lessee”) an Alabama limited liability company, executed and delivered a lease agreement with BAC Vestavia Realty, LLC, an Alabama limited liability company and the property owner of property and improvements located at 1090 Montgomery Highway; and

WHEREAS, on May 31, 2017, the City of Vestavia Hills, a municipal corporation, purchased the property and improvements located at 1090 Montgomery Highway and subsequently became the Landlord of the 5.27 acre tract of property together with a 2-story building and other improvements leased by Lessee’s; and

WHEREAS, Lessee has presented to the City a Full and Final Settlement Agreement Release and Lease Termination (“Agreement”) in order to terminate the present agreement and vacate the premises, a copy of which is marked as Exhibit A and is attached to and incorporated into this Resolution Number 5051 as though written fully therein; and

WHEREAS, the City Manager has reviewed the Agreement and recommended acceptance of said Agreement; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to authorize the City Manager to execute and deliver said Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized to execute and deliver the attached Agreement for property located at 1090 Montgomery Highway; and
2. This Resolution Number 5051 shall become effective immediately upon approval and adoption.

APPROVED and ADOPTED this the 14th day of May, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**FULL AND FINAL SETTLEMENT
AGREEMENT, RELEASE, AND LEASE
TERMINATION**

This Full and Final Settlement Agreement, Release, and Lease Termination (the “Agreement”) is made and entered into effective as of the ___ day of May 2018 (the “Effective Date”) by and among Gold’s Alabama LLC and the City of Vestavia Hills, Alabama.

DEFINITIONS

As used in this Agreement, and for the purpose of this Agreement only, the following terms shall have the following meanings:

1. **“Gold’s”** shall mean Gold’s Alabama LLC, and all of its present and former members, officers, directors, stockholders, partners, employees, agents, attorneys, administrators, executors, insurers, reinsurers, parent companies, subsidiaries, affiliates, related companies, heirs, predecessors, successors, assigns, and guarantors.
2. **“Landlord”** shall mean the City of Vestavia Hills, Alabama, a municipal corporation, and all of its present and former members, officers, directors, stockholders, partners, employees, agents, attorneys, administrators, executors, insurers, reinsurers, parent companies, subsidiaries, affiliates, related companies, heirs, predecessors, successors, and assigns.
3. **“Parties”** shall mean Gold’s and Landlord, collectively.
4. **“Lease”** shall mean that certain Lease Agreement dated December 20, 2010, by and between Gold’s and BAC Vestavia Realty LLC, and all subsequent amendments and assignments of same.
5. **“Premises”** shall mean the leased premises located at 1090 Montgomery Highway, Vestavia Hills, Alabama 35216.
6. **“Claims”** shall mean any actual, potential, threatened or alleged past, present or

future claims, actions, counts, cross-claims, counterclaims, third-party actions, rights, benefits, obligations, liabilities, duties, demands, requests, letters, notices, suits, lawsuits, administrative proceedings, arbitrations, mediations, causes of action, and any other assertions of liability of any kind, whether legal or equitable, and whether currently known or unknown, fixed or contingent, mature or unmature, liquidated or unliquidated, direct or consequential, foreseen or unforeseen, and whether sounding in tort, contract, equity, or any other statutory, administrative or common law cause of action of any sort which relate to the Premises or the obligations under the terms of the Lease arising before the Effective Date of this Agreement.

AGREEMENTS, COVENANTS, AND RELEASES

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements herein contained, and intending to be legally bound, the Parties agree as follows:

1. Lease Termination. The Parties agree that the Lease is hereby modified and shall terminate effective June 30, 2018 (the "Termination Date"). Gold's shall discontinue all use of the Premise on or before the Termination without further notice to Landlord. No obligations under the Lease shall survive the Termination Date.

Notwithstanding anything in this Agreement, the Lease shall continue in full force and effect through and until the Termination Date. Gold's specifically agrees to pay to Landlord Base Rent and Additional Rent as set forth sections 5.1 and 5.2 of the Lease for the month of June 2018.

2. Lease Termination Payment. In exchange for the Lease termination, Gold's hereby agrees to pay to Landlord the total sum of \$510,000.00 (Five Hundred Ten Thousand Dollars) on or before July 9, 2018 (the "Termination Payment"). The Termination Payment shall be made by a check payable to "City of Vestavia" and sent to

the following address: Jeff Downes, City Manager, City of Vestavia Hills, 1032 Montgomery Hwy, Vestavia Hills, AL 35216.

3. Mutual Release

(a) Landlord acknowledges and agrees that the Termination Payment is in exchange for a full and complete release of any and all actual or potential Claims and damages arising out of or in any way connected with any aspect of the Premises or the Lease Landlord may have against Gold's through the date this Agreement is executed. Landlord further acknowledges and agrees that, to the knowledge of Landlord, Gold's is not in breach of the Lease, that no condition exists that would allow Landlord to claim Gold's is in breach of the Lease, and that Gold's has fulfilled all of its obligations under the Lease through the date this Agreement is executed.

(b) Gold's hereby acknowledges and agrees that the Lease termination is in exchange for a full and complete release of any and all actual or potential Claims and damages arising out of or in any way connected with any aspect of the Premises or the Lease Gold's may have against Landlord for matters which have arisen through the date this Agreement is executed. Gold's further acknowledges and agrees that, to the knowledge of Gold's, Landlord is not in breach of the Lease, that no condition exists that would allow Gold's to claim Landlord is in breach of the Lease, and that Landlord has fulfilled all of its obligations under the Lease through the date this Agreement is executed.

4. Representations and Warranties. Each of the Parties represent and warrant the following to the other party: (1) the representations contained in this Agreement are true and correct; (2) the signatories to the Agreement have full legal right, power and authority to execute the Agreement and bind the party for whom that

signatory acts; and (3) the execution, delivery, and performance of the Agreement and terms herein have been duly authorized by appropriate action.

5. No Reliance on Representations. In entering into this Agreement, the Parties each represent and warrant that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, that they have read the terms of this Agreement, that those terms have been completely explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by each of the Parties. The Parties further represent and warrant that they do not rely and have not relied upon any representation or statement made, unless otherwise provided herein, by any other party or any of their officers, agents, representatives or attorneys with regard to any facts pertaining to or relating to this controversy, any rights or asserted rights they may have, or regarding this Agreement, and they hereby assume the risk of any mistake of fact in connection with the true facts involved in said controversy or with regard to any facts which are now unknown to them relating thereto.

6. No Assignment. The Parties represent and warrant that each is the full and sole owner of each of the Claims released by this Agreement and that they have not assigned, transferred or otherwise encumbered any portion of or interest in the Claims released by this Agreement to any other person or entity.

7. Construction of Agreement. This Agreement shall be deemed to have been jointly drafted by all Parties for the purposes of applying any rule of contract construction, and the terms of this Agreement shall not be presumptively construed against any of the Parties or be subject to the doctrine of contra proferentum.

8. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, and all disputes relating to or arising from this Agreement shall be governed by the laws of Alabama, without regard to rules or principles regarding conflicts of laws.

9. Entire Agreement. This Agreement contains, embodies, merges, and integrates the entire agreement between the Parties with regard to the matters set forth in it, and supersedes all prior discussions, representations, agreements, and understandings, both written and oral, between the Parties with respect hereto. No oral understandings, statements, promises or inducements contrary to the terms of the Agreement exist. This Agreement shall be binding upon and inure to the benefit of the Parties, as well as the executors, administrators, personal representatives, and successors and assigns of each.

10. Severability. If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the parties hereto.

11. Additional Necessary Documents. The Parties agree to cooperate fully in the drafting, execution and delivery of any and all supplemental documents and to take additional actions that may be necessary or appropriate to effectuate and give full force and effect to the terms and intent of this Agreement and which are not inconsistent with its terms.

12. Headings. The section titles, captions, and headings contained within this Agreement are used only for convenience and ease of reference, and shall not be construed to define, limit, or extend the scope of this Agreement or any of its terms.

13. Multiple Counterparts, Facsimiles Deemed Originals. The Parties may execute multiple originals of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. This Agreement may be executed using DocuSign eSignature technology, facsimile signatures, pdf signatures, or any such similar technology with sufficient reliability to determine the signing party intended to sign and be bound by this Agreement and such signatures shall be given the authority of original signatures for purposes of executing and enforcing the validity of this Agreement.

14. Amendments. Neither this Agreement nor any term set forth herein may be amended, waived, altered, or terminated except by a writing signed by all of the parties hereto.

AGREED:

City of Vestavia Hills, Alabama

By: _____

Printed Name:

Title:

Date:

Gold's Alabama LLC

By: _____

Printed Name: Jeremy Williams

Title: Vice President & Senior Counsel

Date: