

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:
PITTSBURGH ATHLETIC
ASSOCIATION, *et al*¹
Debtors,

Jointly Administered at:
Case No. 17-22222-JAD

Bankruptcy Case Nos:
17-22222-JAD, and
17-22223-JAD

PITTSBURGH ATHLETIC
ASSOCIATION,

Chapter 11

Movant,

Hearing:

v.

PHOENIX FUNDING GROUP, LLC,
GYM SOURCE, AND ISLAND
EQUIPMENT AND LEASING FINANCE,
INC.,

Respondents.

**MOTION TO REJECT UNEXPIRED LEASE WITH PHOENIX
FUNDING GROUP, LLC, GYM SOURCE, AND ISLAND
EQUIPMENT LEASING AND FINANCE, INC. PURSUANT TO
11 U.S.C §§ 105 AND 365, FED.R.BANKR.P. 6006 AND 9014
AND WDPA LBR 6006-1**

The Pittsburgh Athletic Association, as the Debtor in Possession and Movant (the “Debtor”), files this Motion to Reject the Lease with Phoenix Funding Group, LLC, Gym Source, and Island Equipment Leasing and Finance, Inc. (the “Respondents”), pursuant to 11 U.S.C. §§ 105 and 365, Fed. R. Bankr. P. 6006 and 9014, and W.D.Pa. LBR 6006-1. The Debtor represents as follows:

¹ The Debtors have the following case pending Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter constitutes a “core” proceeding pursuant to 28 U.S.C. §§ 157(b)(2).
3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 157(a), 1408 and 1409.
4. The statutory predicate for the relief sought herein is 11 U.S.C. §§ 105(a) and 365, and Fed. R. Bankr. P. 6006 and 9014, and W.D.Pa. LBR 6006-1.

BACKGROUND

5. The Debtor commenced this case by filing a voluntary bankruptcy petition under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. §101, *et seq.*, in the United States Bankruptcy Court for the Western District of Pennsylvania on May 30, 2017 (the “Petition Date”).

6. On or about May 30, 2017, the Pittsburgh Athletic Association Land Company (the “PAA-LC”) also filed a case under Chapter 11 of the Bankruptcy Code which is currently pending at 17-22223-JAD.

7. The Debtor’s case and the PAA-LC’s case are being jointly administered under Bankruptcy Case No. 17-22222-JAD.

8. Based on information and belief, on or about May 19, 2015, the Debtor, as lessee, entered into lease for certain fitness/gym equipment (the “Equipment”) with the Respondent, Island Equipment Leasing and Finance, Inc., as lessor (the “Lease”), Gym Source was the vendor of the Equipment. Based on information and belief, Island Equipment subsequently assigned its rights in the Lease to Phoenix Funding Group, LLC. A true and correct copy of the Lease and a recent invoice from Phoenix Funding Group, LLC are attached hereto as **Exhibit “A”**.

9. Prior to the Petition Date, on or about May 20, 2017, the Debtor temporarily ceased

operations at the club to pursue its restructuring and potential redevelopment. Accordingly, there is no need for the Debtor to retain the Equipment or the Lease as PAA members are not using the Equipment and, in the future, the potential redevelopment of the PAA club will likely include obtaining new equipment.

10. Rejection of the Lease by the Debtor will benefit the Debtor's Bankruptcy Estate by eliminating an unnecessary monthly expense.

RELIEF REQUESTED

11. The Debtor seeks entry of an Order authorizing rejection of the Lease under Section 365 of the Bankruptcy Code, deeming the Lease rejected as of the date of the filing of the within Motion.

DISCUSSION

12. Section 365 of the Bankruptcy Code provides, in relevant part that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a).

13. Section 105(a) of the Bankruptcy Code provides that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

14. Taken together, Sections 365 and 105 permit the Court to authorize a debtor to assume or reject executory contracts and unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992). ("The resolution of this issue of

assumption or rejection will be a matter of business judgment by the bankruptcy court....”).

15. The Debtor, in its business judgment, has determined it is in its best interests and the best interests of the estate’s creditors to reject the Lease to eliminate an unnecessary monthly expenditure for the Equipment which is not being used.

RESERVATION OF RIGHTS

16. Nothing in the within Motion shall be deemed as an admission by the Debtor as to existence or validity of any of the Lease and/or damages or amounts due by the Debtor. The Debtor expressly reserves all rights and remedies to object to any and all claims filed by the Respondents or otherwise dispute an amounts claimed against the Debtor and/or any equitable remedy claimed by the Respondents.

WHEREFORE, the Debtor prays this Honorable Court to enter of an Order authorizing the rejection of the Lease pursuant to §§ 105 and 365 of the Bankruptcy Code, deeming the Lease and any related service or maintenance agreements with the Respondents, rejected, *nunc pro tunc*, to the date of the filing of the within Motion and any additional relief the Court deems appropriate.

TUCKER ARENSBERG, P.C.

DATED: August 31, 2017

/s/ Jordan S. Blask
Jordan S. Blask, Esquire
PA ID No. 308511
Matthew J. Burne, Esquire
PA ID. No. 314888
1500 One PPG Place
Pittsburgh, PA 15222
Phone: 412-566-1212
jblask@tuckerlaw.com
mburne@tuckerlaw.com
Counsel for the Debtor

Exhibit “A”

(Gym Source/Island Equipment Leasing & Financing, Inc. Lease)

Leasing Customer ("You"):

Company Name (Exact business name): PITTSBURGH ATHLETIC ASSOCIATION, INC.

Address: 4215 FIFTH AVENUE PITTSBURGH PA 15213
Street City State Zip

Phone: (412) 621-2400 Fax: Business Type: Corporation

Equipment Location: SAME AS ABOVE

Vendor: GYM SOURCE Address: DEPT 106042 PO BOX 150468 HARTFORD CT 06115-0648

Description of Leased Equipment (This should include make, model, serial number):
SEE SCHEDULE A

Payment Schedule:				
36	36	\$1,459.22	\$4,649.68	Monthly
Lease Term (months)	Total # of Pmts.	Amount of Each Pmt. (plus applicable taxes)	Security Deposit	Pmt. Frequency

Terms of Lease

1. REQUEST FOR US TO ACQUIRE EQUIPMENT FOR YOU. You (the Leasing Customer identified above) wish to acquire certain equipment from the equipment vendor identified above. Rather than purchasing it yourself, you have come to us (the leasing company) and asked us to purchase it and then lease it back to you. In exchange for our agreement to do this, you have agreed to the terms in this lease agreement (the "Lease"). We have given you an opportunity to discuss and negotiate these terms with us, and the following is the final version of our contract. If there is any information deleted from the above boxes, you give us permission to fill it in. This Lease is not binding on us until we sign it.

2. THE EQUIPMENT. We agree to lease to you, and you agree to lease from us, the equipment identified above and on any schedules attached to this Lease. This Lease also covers any and all replacement equipment, add-ons, substitutions or accessories (collectively referred to as the "Equipment"). The other details of the Lease such as the rental amount, the initial Lease term and other matters are set forth in the boxes above.

3. YOUR SELECTION OF THE EQUIPMENT VENDOR AND THE EQUIPMENT. You hereby acknowledge and agree that:

(a) YOU SELECTED THE EQUIPMENT VENDOR AND THE EQUIPMENT BASED ON YOUR OWN SKILL AND KNOWLEDGE.

(b) WE DID NOT SELECT OR INSPECT THE EQUIPMENT, HAVE NEVER SEEN THE EQUIPMENT AND HAVE NO EXPERT KNOWLEDGE REGARDING IT.

(c) YOU AGREE THAT THIS LEASE IS A FINANCE LEASE AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. IT IS ALSO A "TRUE LEASE," MEANING THAT IT IS NOT A "LEASE INTENDED AS SECURITY," A CONDITIONAL SALE, A LOAN OR A SIMILAR ARRANGEMENT.

(d) PRIOR TO EXECUTING THE LEASE, YOU RECEIVED AND APPROVED THE SUPPLY CONTRACT (IF ANY) BETWEEN US AND THE EQUIPMENT VENDOR, AND YOU HAVE BEEN ADVISED IN WRITING (OR ARE NOW ADVISED HEREBY) THAT YOU MAY HAVE RIGHTS AGAINST THE VENDOR UNDER THE SUPPLY CONTRACT (IF ANY) AND THAT YOU MAY CONTACT THE VENDOR FOR INFORMATION ABOUT WHAT YOUR RIGHTS AGAINST THE VENDOR ARE (IF ANY).

4. NO RIGHT TO CANCEL. OTHER IMPORTANT TERMS OF THE LEASE. YOU AGREE AS FOLLOWS:

(a) LEASE CANNOT BE REVOKED; NO "TEST PERIOD," BECAUSE WE ARE PURCHASING THE EQUIPMENT FOR YOU AT YOUR REQUEST AND CANNOT GET A REFUND, THIS LEASE CANNOT BE CANCELLED OR REVOKED BY YOU FOR ANY REASON AT ANY TIME, INCLUDING BUT NOT LIMITED TO EQUIPMENT FAILURE OR

DEFECTS, DAMAGE OR LOSS. THE LEASE CANNOT BE PREPAID EXCEPT WITH OUR PRIOR WRITTEN PERMISSION ON TERMS ACCEPTABLE TO US. THERE IS NO "TEST PERIOD" FOR THE EQUIPMENT.

(b) LESSOR IS NOT RELATED TO MANUFACTURER OR VENDOR; NO CLAIMS TO BE MADE AGAINST LESSOR. WE ARE NOT RELATED IN ANY WAY TO THE EQUIPMENT MANUFACTURER OR VENDOR. NEITHER THE VENDOR NOR ANYONE ELSE IS AN AGENT OF OURS, AND NO STATEMENT, REPRESENTATION, GUARANTEE OR WARRANTY MADE BY THE VENDOR OR OTHER PERSON IS BINDING ON US OR WILL AFFECT YOUR OBLIGATIONS TO US. ONLY AN EXECUTIVE OFFICER OF THE LEASING COMPANY IS AUTHORIZED TO WAIVE OR ALTER ANY OF THE TERMS OF THIS LEASE, AND THEN ONLY IN WRITING. IF THE EQUIPMENT FAILS TO OPERATE PROPERLY, OR THE VENDOR OR ANY OTHER PERSON FAILS TO PROVIDE ANY MAINTENANCE OR OTHER SERVICE, YOU WILL MAKE ANY COMPLAINT ONLY AGAINST THE VENDOR OR OTHER PERSON AND NOT AGAINST US (EITHER BY WAY OF A CLAIM, COUNTERCLAIM, DEFENSE OR EXCUSE TO PAYMENT).

(c) LESSOR MAKES NO WARRANTIES. THE EQUIPMENT IS LEASED BY US TO YOU "AS IS," "WHERE IS" AND WITH ANY AND ALL FAULTS. WE HAVE MADE NO STATEMENT, REPRESENTATION, OR WARRANTY REGARDING THE EQUIPMENT. WE DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE SHALL TRANSFER TO YOU ALL EXPRESS WARRANTIES, IF ANY, MADE BY THE EQUIPMENT VENDOR TO US, BUT THIS DOES NOT IMPLY THAT THERE ARE ANY SUCH WARRANTIES, IF ANY.

(d) BARGAINED FOR WAIVER OF RIGHTS. YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES YOU HAVE UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE, INCLUDING SECTIONS 508 THROUGH 522 THEREOF.

(e) DISCLAIMER OF LIABILITY. WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING LOST PROFITS, SPECIAL DAMAGES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES) OR INJURY TO YOU, YOUR EMPLOYEES OR ANY OTHER PERSON OR PROPERTY CAUSED BY THE EQUIPMENT.

5. RENTAL AMOUNT; INTERIM RENT; LATE FEE; DOCUMENTATION FEE. The monthly or other periodic rent you have agreed to pay is stated above. The rental amount is based on the estimated cost of all the Equipment and it may be adjusted higher or lower if the actual cost of the Equipment is higher or lower than the estimate. You also agree to pay a partial rental payment (interim

(Agreement continues on reverse side)

Acceptance of Lease Agreement

Signature of Leasing Customer

This is a binding contract. It cannot be canceled. Read it carefully before signing, and call us if you have any questions.

THOMAS P. TRIMBUR
Print Name of Signer
CARP A PINE
Print Name of Signer

PRESIDENT
Title
President
Title

5/19/15
Date
6/2/15
Date

Accepted and Signed by LESSOR

Personal Guaranty

IN CONSIDERATION OF MY RECEIVING BENEFIT AND VALUE FROM THE ABOVE LEASE, I (OR WE, IF THERE IS MORE THAN ONE OF US, INDIVIDUALLY, JOINTLY AND SEVERALLY) HEREBY PERSONALLY AND UNCONDITIONALLY GUARANTEE ALL PAYMENTS AND OBLIGATIONS OWED BY THE LEASING CUSTOMER UNDER THIS LEASE, AND I ALSO AGREE TO PAY THE LEASING COMPANY'S LEGAL FEES AND COSTS INCURRED IN ENFORCING THE LEASE AND THIS PERSONAL GUARANTY. I WAIVE NOTICE OF ACCELERATION, DEFAULT, RENEWALS, EXTENSIONS, TRANSFERS, AMENDMENTS AND OTHER CHANGES IN THE TERMS OF THE LEASE AND AGREE THAT I WILL BE BOUND BY ANY AND ALL SUCH CHANGES. I AGREE THE LEASING COMPANY MAY PROCEED AGAINST ME SEPARATELY FROM THE LEASING CUSTOMER. I AGREE THAT ANY SUIT RELATING TO THIS LEASE SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT IN MICHIGAN OR OTHER JURISDICTION THAT THE LESSOR MAY CHOOSE AND I IRREVOCABLY CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND I WAIVE TRIAL BY JURY. I AGREE THAT THIS PERSONAL GUARANTY WILL BE BINDING UPON MY HEIRS AND PERSONAL REPRESENTATIVES. I HAVE AUTHORIZED THE LEASING COMPANY OR ITS DESIGNEE TO USE MY CONSUMER CREDIT REPORTS FROM TIME TO TIME IN ITS CREDIT EVALUATION AND COLLECTION PROCESSES.

GUARANTOR #1 (Print Name)

X MIA
Signature (Individually, No Titles) Date

GUARANTOR #2 (Print Name)

X MIA
Signature (Individually, No Titles) Date

Acceptance of Delivery

I AM AUTHORIZED TO SIGN THIS CERTIFICATE ON BEHALF OF THE LEASING CUSTOMER. I CERTIFY TO THE LEASING COMPANY THAT THE EQUIPMENT HAS BEEN DELIVERED AND IS FULLY INSTALLED AND WORKING PERFECTLY. I AUTHORIZE YOU TO PAY THE VENDOR AND COMMENCE THE LEASE.

X
Authorized Signature

Name and Title

Equipment Delivery Date

Exhibit A Page 3 of 5

TERMS OF LEASE (continued)

rent) covering the period between the delivery date and the date the first regular payment is due. If we do not receive your payment by its due date, there will be a late fee equal to the greater of \$20.00 or 15% of the late amount (or, if less, the maximum amount allowable under applicable law), which you agree is a reasonable estimate of the costs we incur with respect to late payments and is not a penalty. Upon your request, we will waive the first assessed late charge. We may charge you a one-time documentation fee up to \$495.

6. **LEASE COMMENCEMENT AND TERM.** This Lease will commence when the Equipment is delivered to you and will continue for the entire Lease term plus any interim rent period and any renewal term. The monthly (or other periodic) due date will be established by us. The due date for the first regular rental payment will also be established by us; however, it will not be greater than 30 days from the date on which the Equipment was delivered to you.

7. **ADVANCE PAYMENT(S) AND/OR SECURITY DEPOSIT.** You have paid us one or more advance payments and/or a security deposit in the amount(s) indicated above. If the Lease does not commence for reasons other than our own negligence, we may retain such monies to compensate us for our credit and other administrative costs. You agree the security deposit will not bear interest and that we may apply it to any amount owed to us, and should we do so, you agree to restore the security deposit to its original amount. You may request the return of the security deposit only after all of your obligations under the Lease have been met in full.

8. **EQUIPMENT DELIVERY.** You understand and agree that we are not responsible for packaging, delivery, installation or testing of the Equipment. You (and/or the Vendor, if you have made such arrangements with the Vendor) are responsible for all such matters. You agree that you will not have any complaint against us if the Vendor or any other person improperly packages the Equipment or delays in delivering or installing it.

9. **USE OF THE EQUIPMENT.** YOU REPRESENT TO US THAT THE EQUIPMENT WILL BE USED ONLY FOR COMMERCIAL, BUSINESS OR AGRICULTURAL PURPOSES, AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES. In addition, you agree not to attach the Equipment to any realty or otherwise permit to become a "fixture" to real estate or a structure thereon, nor will you trade it in, make alterations to it, sell or dispose of it without our prior written permission. You shall not allow any liens or encumbrances (for example, a mechanic's lien) to be placed on the Equipment. You will keep and use the Equipment only at the address listed above and will not move it or return it prior to the end of the Lease term.

10. **MAINTENANCE AND SERVICE.** You agree that we are not responsible for maintenance, repairs or service to the Equipment. You agree to use the Equipment strictly in the manner for which it is intended by the manufacturer, and you shall maintain the Equipment in good operating order. At the end of the term of the Lease, unless you have been given a written option to purchase the Equipment and you make the purchase, you will be liable for all damage or distress to the Equipment.

11. **LEASE ASSIGNMENT; SUBLEASE OF EQUIPMENT.** THIS LEASE WAS MADE TO YOU BASED ON YOUR OWN CREDIT. THEREFORE YOU AGREE THAT YOU MAY NOT ASSIGN, TRANSFER OR SELL ANY OF YOUR RIGHTS OR INTERESTS UNDER THE LEASE TO ANY OTHER PERSON OR ENTITY, NOR MAY YOU SUBLEASE OR RENT ANY OF THE EQUIPMENT TO ANY OTHER PERSON OR ENTITY. HOWEVER, YOU AGREE THAT WE MAY ASSIGN, TRANSFER, SELL, PLEDGE OR OTHERWISE ENCUMBER ANY OR ALL OF OUR RIGHTS AND INTERESTS UNDER THIS LEASE (INCLUDING OUR RIGHTS AND INTERESTS IN THE EQUIPMENT) TO ANY OTHER PERSON OR ENTITY (INCLUDING A BANK OR OTHER SECURED PARTY OR A BUYER) (COLLECTIVELY, A "THIRD PARTY") WITHOUT PRIOR NOTICE TO YOU. SUCH THIRD PARTY MAY ALSO ASSIGN, TRANSFER, SELL, PLEDGE OR OTHERWISE ENCUMBER ITS RIGHTS AND INTERESTS. IN THIS EVENT, YOU AGREE THAT SUCH THIRD PARTY, OR ITS ASSIGNEE OR TRANSFeree, WILL RECEIVE ALL THE RIGHTS AND INTERESTS WE HAD UNDER THE LEASE BUT NONE OF OUR OBLIGATIONS OR LIABILITIES. IF ANY, WE WILL CONTINUE TO BE RESPONSIBLE FOR ALL SUCH LIABILITIES AND WILL RETAIN AND HONOR ALL SUCH OBLIGATIONS. IF ANY, YOU PROMISE AND AGREE THAT YOU WILL NOT ASSERT ANY CLAIMS, COUNTERCLAIMS, DEFENSES OR SETOFFS AGAINST SUCH THIRD PARTY. YOU HEREBY ACKNOWLEDGE THAT ANY TRANSFER OF OUR RIGHTS AND/OR INTERESTS TO A THIRD PARTY WOULD NOT MATERIALLY CHANGE YOUR OBLIGATIONS UNDER THE LEASE OR INCREASE YOUR RISKS.

12. **DAMAGE TO EQUIPMENT; RISK OF LOSS OF EQUIPMENT; INSURANCE.** You agree that we are not liable or responsible for any damage to the Equipment, or any loss of or casualty to the Equipment from any cause whatsoever. NO SUCH DAMAGE, CASUALTY OR LOSS WILL AFFECT YOUR RESPONSIBILITIES AND OBLIGATIONS UNDER THE LEASE. You must maintain acceptable public liability insurance naming us as "additional insured". You must keep the Equipment insured against all risks of loss in an amount equal to the replacement cost and have us listed on the policy as "loss payee." If you do not give us proof of the property insurance within 30 days after the Lease commences, then depending on the original cost of the Equipment we may either (i) obtain property insurance to cover our interests and charge you a fee for such coverage (including a monthly administration fee and a profit to us) or (ii) charge you a monthly non-compliance fee up to \$50 (which provides no insurance benefit). You can cancel the insurance coverage fee or non-compliance fee at any time by delivering the required proof of insurance.

13. **TAXES AND CERTAIN FEES RELATING TO THE LEASE OF THE EQUIPMENT.** You agree and understand that the amounts we are charging you to rent the Equipment do NOT cover taxes, governmental fees and similar types of costs. Accordingly, you agree to pay us upon demand for all taxes (including but not limited to sales, property, use and other taxes), administrative costs and other charges and fees relating to this Lease or to the use or ownership of the Equipment. We may adjust this Lease and the monthly (or other periodic) payment amount to finance for you any taxes due at Lease inception. We may bill you based on our estimate of the taxes. We may charge you an annual property tax administration fee up to \$15. If we gave you a \$1.00 purchase option, we may require you to file all personal property tax returns.

14. **TITLE TO THE EQUIPMENT.** You agree that the Equipment is and will remain throughout the term of the Lease solely our property. We will have title to the Equipment throughout the term, and this is a "true lease." You hereby grant us a first priority security interest in the Equipment and you authorize us and our agents to file Uniform Commercial Code Financing Statements recording such security interest (in case this is later determined not to be a "true lease").

15. **YOUR REPRESENTATIONS TO US.** The person signing this Lease on behalf of the leasing customer hereby represents and warrants to the leasing company that: This Lease has been authorized by any and all action required of the corporation, partnership, limited liability company or other form of business (whichever applies in your case), and no consent of any other person or entity is necessary; the lessee entity has complete power to enter into this Lease, and the person signing on behalf of the lessee has been authorized to do so; the Lease is a legal, valid and binding obligation of the lessee entity, and enforceable against the lessee in accordance with its terms; all factual statements made in this Lease and all other information supplied to us by the lessee entity or your representatives, is accurate and complete in all material respects.

16. **DEFAULT DEFINED.** You will be in default under this Lease if any of the following events occur: (a) you fail to make any rental payment or pay any other amount due under this Lease by its due date; (b) you fail to comply with any other term or condition of this Lease or any other agreement between us, or fail to perform any obligation imposed upon you relating to this Lease or any such other agreement; or (c) you become deceased (if the lessee entity under this Lease is one or more natural persons), go out of business, admit your inability to pay your debts as they fall due, become insolvent, make an assignment for the benefit of your creditors, file (or have filed against you) a petition in bankruptcy, a trustee or receiver of your business assets is appointed, or you sell all or substantially all of such assets.

17. **OUR REMEDIES UPON DEFAULT.** In the event you default under this Lease, as defined above, we will have the right to take ANY OR ALL of the following actions, in addition to any and all other remedies that may be available to us under law:

(a) terminate the Lease without prior notice or warning to you,
(b) directly debit (charge) your bank account(s) and/or file a lawsuit against you to collect all past due rent and ALL RENT THAT WILL BECOME DUE IN THE FUTURE DURING THE UNEXPIRED TERM, plus the "residual value" of the Equipment as determined by us in our sole but reasonable judgment, plus all other fees, charges or amounts that are then due. You agree to pay all of our reasonable legal costs, including but not limited to reasonable attorney's fees, and reasonable overhead for employee time spent on preparing for suit or attempting to collect payments,
(c) repossess the Equipment or apply to a court for an order allowing repossession. In this event, you agree that, after the Equipment is repossessed, you will have no further rights in the Equipment, and you agree we may resell, re-lease or otherwise remarket the Equipment without notice to you. You agree (and you waive any rights that may provide to the contrary) that we will NOT be required to repossess, resell, re-lease or otherwise remarket the Equipment at any time, and that our failure to do so will not affect our other rights of collection and other rights under this Lease or under law.

18. **PERSONAL JURISDICTION OVER YOU IN MICHIGAN, AND PLACE FOR ANY LAWSUIT.** You hereby acknowledge that this Lease was accepted by us in MICHIGAN, YOU HEREBY CONSENT TO PERSONAL JURISDICTION IN THE STATE OF MICHIGAN. YOU AGREE THAT THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MICHIGAN. YOU AGREE THAT ANY SUIT RELATING TO THIS LEASE SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT IN MICHIGAN OR ANY OTHER JURISDICTION THAT THE LESSOR MAY CHOOSE, AND YOU IRREVOCABLY CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS. IN THE EVENT WE SELL OR ASSIGN THIS LEASE TO A THIRD PARTY, YOU AGREE THE LEASE WILL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE THIRD PARTY MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS, AND YOU CONSENT TO PERSONAL JURISDICTION IN SUCH STATE. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL. Any action by you against us must be commenced within one year after the cause of action arises or be forever barred.

19. **TAX BENEFITS BELONG TO LEASING COMPANY.** The following applies to this Lease UNLESS, at the commencement of this Lease, we execute and deliver to you a document signed by an executive officer of Lessor giving you the option at the end of the Lease term to purchase the Equipment for one dollar (\$1.00). For all state, federal and local tax purposes, we (or our successors and assigns) are the sole owner of the Equipment and we are entitled to all tax benefits relating to the Equipment, including but not limited to tax credits, depreciation and deductions. You agree not to do anything that is inconsistent with our ownership of the Equipment. You agree not to claim to be the owner of the Equipment on any tax returns or in any other document or for any other purpose. IF YOU DO ANYTHING OR FILE ANYTHING THAT CAUSES US TO LOSE ANY SUCH TAX BENEFIT CONTEMPLATED ABOVE, OR IF WE SUFFER ANY HARM, DAMAGE, COST, LOSS, LIABILITY (FOR EXAMPLE, IF INTEREST OR TAX PENALTIES ARE IMPOSED AGAINST US), OR IF ANY SUIT OR PROCEEDING IS BROUGHT AGAINST US, ARISING OUT OF YOUR BREACH OF ANY OF THE AGREEMENTS YOU HAVE MADE IN THIS SECTION, YOU AGREE TO HOLD US HARMLESS, DEFEND US AND INDEMNIFY (REIMBURSE OR PAY) US WITH RESPECT TO THE AMOUNT OF SUCH LOSS, DAMAGE, COST, LOSS, LIABILITY, LOSS, COST (INCLUDING REASONABLE ATTORNEYS FEES) OR LIABILITY. THIS DUTY TO INDEMNIFY US SHALL SURVIVE THE TERMINATION OF THIS LEASE.

20. **OTHER INDEMNIFICATION.** You understand that we have no control over your use of the Equipment and, in any event, for the amount of rent we are charging we cannot agree to accept any financial, liability or other risks relating to the use or ownership of the Equipment. Accordingly, you agree to hold us harmless, indemnify (pay or reimburse) and defend us against all claims, liabilities, losses, suits, proceedings, damages, costs (including reasonable legal fees) relating to this Lease or to the use or ownership of the Equipment, including but not limited to claims for death or injury to persons and claims for property damage. This duty to indemnify shall survive the termination of this Lease.

21. **RETURN OF THE EQUIPMENT; RENEWAL.** Unless we have given you a written option to buy the Equipment at the end of the Lease term for \$1.00 or \$101.00, you must notify us by certified mail between 90 and 180 days prior to the end of the Lease term if you intend on returning the Equipment. If you do not notify us, the Lease will automatically extend for 12 months under the same terms and conditions. If you give us the proper notice, then at the end of the Lease term you shall return the Equipment in good working order in a manner and to a location designated by us. You agree to reimburse us for our costs to refurbish returned Equipment.

AS A CONVENIENCE TO YOU (THE LEASING CUSTOMER) AND TO FURTHER EXPEDITE THIS TRANSACTION FOR YOU, WE BOTH HAVE AGREED THAT A PHOTOCOPY OR FACSIMILE OF THIS LEASE WHICH INCLUDES A PHOTOCOPY OR A FACSIMILE OF THE SIGNATURES OF BOTH PARTIES SHALL BE AS VALID, AUTHENTIC AND LEGALLY BINDING AS THE ORIGINAL VERSION OF ALL PURPOSE AND SHALL BE ADMISSIBLE IN COURT AS FINAL AND CONCLUSIVE EVIDENCE OF THIS TRANSACTION AND OF THE EXECUTION OF THE DOCUMENT.

Thomas P. Turch

Schedule "A" to Lease - Equipment Description

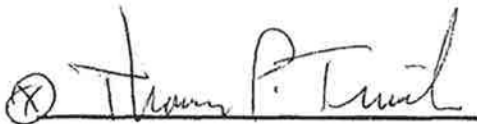
Lease Application No.: 0519015-01 **Page** 1 **of** 1
Leasing Customer: PITTSBURGH ATHLETIC ASSOCIATION, INC.
Vendor Name: GYM SOURCE
Lessor: Island Equipment Leasing & Finance, Inc.

This Schedule "A" is attached to and a part of the equipment lease agreement by and between the above leasing customer and Lessor relating to the lease transaction referenced above. The following is a full and complete description of the leased equipment:

<u>Quantity</u>	<u>Equipment Type</u>	<u>Serial #</u>
<u>5</u>	<u>CYBEX 625T-900 TREADMILLS</u>	<u></u>
<u>2</u>	<u>CYBEX 625A/DA-900 ARC TRAINERS</u>	<u></u>
<u>2</u>	<u>CYBEX 625C-RECVR UPRIGHT BIKES</u>	<u></u>
<u>1</u>	<u>CONCEPT II PM5 ROWER</u>	<u></u>
<u>1</u>	<u>OCTANE LATERAL X9 ELLIPTICAL</u>	<u></u>
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This lease also covers any and all present and future replacement equipment, substituted equipment, additional equipment, trade-ups and add-ons without requiring a separate agreement. (However, the leasing customer understands that Lessor's consent will be required for any of these things.)

The leasing customer agrees that a facsimile of this document or the signature shall be as valid and binding as the original and will be admissible in court as conclusive evidence of this document.


Signature of Leasing Customer

5/19/15
X Date


Accepted by Lessor Date



2950 W. Square Lake Road Suite 211
Troy, MI 48098

877-824-2460 fax

billing@phoenixfundingonline.com

Invoice

Invoice #: 1704-7014
Invoice Date: 3/9/2017
Lease #: 1507014

Bill To: Pittsburgh Athletic Association, Inc.

Ship To:

4215 Fifth Avenue
Pittsburgh, PA 15213

Date Due	Item	Description	Amount Due
Upon Receipt		Past Due balance	\$12,490.88
4/1/2017	Pmt	Monthly Lease Payment	\$1,459.22
4/1/2017	Tax	Tax on Monthly Lease Payment	\$102.14
***** A 15% late fee will be included for any payments received 5 days after the due date *****			
TOTAL DUE:			\$14,052.24

Reminder: Please include the Invoice number on your check.

****Documentation Fee and Interim Rent are only billed once at the inception of the lease****

REMITTANCE	
Customer Name:	Pittsburgh Athletic Association, Inc.
Lease Number:	1507014
Invoice Number:	1704-7014
Date:	
Amount Due:	\$14,052.24
Amount Enclosed:	

Please remit payment to: Phoenix Funding Group, LLC, 2950 W. Square Lake Rd Suite 211, Troy, MI 48098

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:
PITTSBURGH ATHLETIC
ASSOCIATION, *et al*¹
Debtors,

Jointly Administered at:
Case No. 17-22222-JAD

Bankruptcy Case Nos:
17-22222-JAD, and
17-22223-JAD

PITTSBURGH ATHLETIC
ASSOCIATION,
Movant,

Chapter 11

Related Document No. _____

v.

PHOENIX FUNDING GROUP, LLC,
GYM SOURCE, AND ISLAND
EQUIPMENT LEASING AND FINANCE,
INC.,
Respondents.

ORDER

AND NOW this _____ day of _____, **2017**, upon consideration of the Debtor’
*Motion to Reject Unexpired Lease with Phoenix Funding Group, LLC, Gym Source, and Island
Equipment Leasing and Finance, Inc., pursuant to 11 U.S.C §§ 105 And 365* (the “Motion”), it is
hereby **ORDERED, ADJUDGED** and **DECREED**, that Lease as set forth on **Exhibit “A”** to the
Motion, and any related service or maintenance agreements with the Respondents are rejected by the
Debtor as of the date of filing the Motion.

JEFFERY A. DELLER
Chief U.S. Bankruptcy Judge

¹ The Debtors have the following case pending Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.