C-10611
01/13/2016

CITY CLERK
ORIGINAL

Egis FLOORLIFE

3710 BEECHMONT COURT, CINCINNATI, OHIO 45226
PHONE (513) 619-6172 FAX (513) 871-7998

Egis Floorlife Performance Agreement Renewal

Egis Floorlife LLC renews this agreement with Glendale Adult Center (5970 W. Brown Street, Glendale, AZ 85302) with the listed services, provided through Stout Hardwood Floor Company (Egis Authorized Dealer) for the recreational floor(s) located at Glendale Adult Center, 5970 W. Brown Street, Glendale, AZ 85302. (Exhibit A)

Effective Date: **November 25, 2015**

Expiration Date: **November 23, 2016**

This proposal is valid for 30 days from September 30, 2015

Price for the year of this agreement is: **$3,660.00**

Estimated renewal price: $3,824.70

Egis Floorlife LLC agrees to provide:

- Recoating of the floor with 3 coat(s) of SuperSport Finish finish; and any work detailed at Exhibit B.
- Guarantee the floor will have proper appearance (Service Provider [Exhibit C] warranty extended for each year this agreement is renewed).
- Factory-certified installers and finishers.
- *Maintenance training for the facility staff, and instructions on how to protect your investment.*
- An annual supply of 1 pails of Bona Sport & Commercial Cleaner Concentrate.
- One pre-scheduled inspections of the floor, facility and maintenance during the year.
- With annual renewals, recoating with 3 coat(s) of SuperSport Finish finish to meet your schedule, providing you with the proper products, and applied by a professional team.
- With the 10th renewal, sand, paint same graphics as on the floor now, seal with 1 coat(s) of SuperSport Seal and finish with 3 coats of SuperSport Finish finish at the same renewal price (increases limited to cumulative annual increases of Producer price Index).
- Technical support regarding activities or conditions outside normal.
- This agreement is renewable annually. Any cost increases will not exceed the Producer price Index data published by the U.S. Department of Labor. The Floorlife Performance Program is provided on an annually renewable basis to ensure you are satisfied with the service you receive.

Facility Owner *agrees to:*

- Pay fees with five (5) days of the due date(s) agreed to.
- Allow final finish coat to dry a minimum 72 hours before use.
- Have only Stout Hardwood Floor Company perform agreed to services and repairs to the floors(s).
- Use only products supplied or approved by **Egis Floorlife LLC** and for maintenance and recoating of the floor(s).
- Comply with maintenance procedures provided by **Egis Floorlife LLC** and the **Egis Authorized Dealer.**
- Provide access to the facility for delivery of services and inspections at the agreed-to dates.
- **Ensure the Environmental Conditions Monitor remains as placed by Egis Floorlife LLC.**
- Maintain proper temperature and relative humidity conditions within the facility (see consultation).

Definitions, disputed resolution procedures and indemnification are described fully in the attachment.

Signature	Recreation Manager Glendale Adult Center	10-13-15 Date
Signatur	President Stout Hardwood Floor Company	10/20/15 Date
Signature	General Manager & NSM Egis Floorlife LLC	9/30/2015 Date

EgisBronze Plus 0510

ATTEST:

City Clerk

Approved as to form:

City Attorney

EXHIBIT A
To Floorlife Performance Agreement

I. THE FLOOR:

Facility:	Glendale Adult Center		
Address:	5970 W. Brown Street, Glendale, AZ 85302		
Flooring System:	Aerobics Room	Square Footage:	2,450

Installation Date:	November 25, 2015
Representative:	Lori Bye

III. INSTALLER:

Installer:	Stout Hardwood Floor Company
Address:	695 S. Compress, Ste. 1, Las Cruces NM 88005

Installer's Warranty, if any, is attached as Exhibit C.

IV. Egis Floorlife LLC
3710 Beechmont Court, Cincinnati OH, 45226

EXHIBIT B

To Floorlife Performance Agreement

Additional Services

Facility	Scope	Date	Price (part of Total)
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

EXHIBIT C

To Floorlife Performance Agreement

The undersigned Installer (the 'Installer') hereby warrants for a period of one year that the installation of the material at (the 'material') will be free from installation defects, beginning:

November 25, 2015

This Warranty does not cover material. Furthermore, this Warranty does not cover problems with the installation caused in whole or in part by accident, circumstances beyond the Installer's control, neglect, negligence, ordinary wear and tear, abuse, use for which the material is not designed, faulty construction of the building(s) in which the material is installed, failure to comply with recommended maintenance instructions, repair or alteration of the material by anyone other than the Installer without the prior express written consent of the Installer, settlement of the building walls, failure to maintain proper temperature and humidity in the facility, excessive dryness, or excessive moisture from humidity, spillage, migration through the slab or walls, or any other source (the 'excluded conditions').

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATION ON THE PART OF THE INSTALLER. The Installer makes no warranty or representation that the material complies with the requirements of federal, state, and local laws and/or industrial codes, or any other warranty or representation, express or implied, not specified herein. Any and all representations or warranties by the Installer or any other party that differ in any manner from the terms of this written Warranty shall be of no force or effect.

This Warranty completely and exclusively states the obligation of the Installer for any breach of this Warranty. If this Warranty is breached, the Installer's liability for such breach shall be limited to repairing the installation errors. In no event shall any breach of this Warranty render the Installer liable for any other damages of any kind, whether special, direct, indirect, incidental, consequential, or of any other sort, associated with the use of or the inability to use the improperly installed material. In no event shall the Installer be obligated to pay for or otherwise assume the responsibility for repair work ordered or performed by the buyer without the prior written consent of the Installer to such repairs. The Installer's obligation under this Warranty shall be contingent upon the receipt by the Installer within the Warranty period of a written notice of a claimed defect from the buyer, and proof to the Installer's satisfaction that the installation was improper and that the claimed installation problem was not caused by one or more of the excluded conditions.

Date: November 25, 2015

By:

Title: President

Stout Hardwood Floor Company

695 S. Compress, Ste. 1, Las Cruces, 88005

Section 1. Definitions. Initially-capitalized terms not otherwise defined in this Agreement shall have the meanings set forth below.

Authorized Dealer: An organization authorized by Egis Floorlife LLC to install and service maple sports flooring under the Egis Floorlife Performance Program.

Defect: A deficiency in the floor finish coating that does not comply with industry or product standards.

Egis Floorlife LLC: An Ohio limited liability company organized for the purpose of providing the Floorlife Performance Program.

Facility Owner: The person or group of persons ultimately owning the facility for which the contract is in force.

Floor: A maple hardwood flooring system.

Floorlife Performance Agreement: A contract by and between Egis and the Facility Owner providing Service Provider warranty coverage for *one year.*

Floorlife Performance Program (Bronze-Plus): The integrated combination of ongoing maintenance, annual recoating and regular inspections through the Floorlife Performance Agreement, which provides a Facility Owner with an independent arbitrator of complaints, a service program that is monitored on its behalf, and an economic benefit of providing the best overall total value for its Floor.

Prep and Recoat: The process of preparing the surface of the floor with a conditioning pad and PREP, then coating with BonaKemi finishes.

Term: A "Term" is a one-year period from the date the Agreement is placed in force.

Tri-Annual Inspection Report: A documented report of the conditions of the Floor.

Section 2. Term of Agreement. This Agreement shall be deemed to be effective as between EGIS and the Facility Owner from the Effective Date and continue for one year (the "Term"), unless earlier terminated by mutual written agreement or by EGIS's exercise of its rights under Section 9. This Agreement may be *converted to an Egis Floorlife Performance Agreement™ (Gold) or Egis Floorlife Performance Agreement™ (Silver)* prior to the expiration of a Term for up to thirty-nine additional Terms of one year each, by the mutual written agreement of EGIS and the Facility Owner. No refunds shall be made by EGIS as a result of any expiration or termination.

Section 3. Services. Subject to the timely payment by the Facility Owner of the fees set forth in the Floorlife Performance Agreement, EGIS shall arrange for an Authorized Dealer of EGIS (the "Authorized Dealer") to perform the following services (the "Services") during each one year Term:

3.1 Facility Owner Consultation. The Authorized Dealer will set up a consultation with the Facility Owner to review all aspects of this Agreement, within five days after refinishing of the Floor and the finish is cured. The Authorized Dealer will furnish the Facility Owner with an installation fact sheet detailing climatic conditions, how to maintain climatic conditions, and the importance of controlling the moisture environment of the Facility where the Floor is located.

3.2 Prep & Recoat. The Authorized Dealer will perform an annual Prep and Recoat of the Floor.

3.3 Training of Facility Personnel. The Authorized Dealer will train and coach the Facility personnel in the proper techniques for maintaining the Floor. The Authorized Dealer will provide a one hour maintenance workshop with the Facility Owner's maintenance staff to outline and review the proper maintenance procedures. Additional training may be provided during periodic inspections if requested in advance by the Facility Owner at a negotiated fee.

3.4 Periodic Inspections. The Authorized Dealer will perform three inspections of the Floor and Facility Owner's maintenance procedures prior to *the expiration of the Term* to assess additional remedial work requirements.

3.5 **Refinishing. If this Agreement is renewed for a number Terms defined in the Floorlife Performance Agreement, the Authorized Dealer will provide a complete Sand and Refinish of the Floor in lieu of the Prep and Recoat, and every tenth consecutive Term thereafter, unless such services are waived or deferred by the Facility Owner in writing. Any changes to game lines and any existing logos may incur an additional charge, with such changes and charges to be negotiated at least thirty days prior to the Sand and Refinish.**

3.6 Technical Support. EGIS will provide or cause to be provided a toll-free hotline to answer any questions or process any claims from the Facility Owner with respect to the Floor.

3.7 Maintenance Products. The Facility Owner shall receive a one year supply of EGIS-approved maintenance products. Such products shall include the necessary materials for performing standard monthly maintenance of the Floor, including, but not limited to, floor cleaner and buffer pads. Only products supplied or otherwise approved in writing by EGIS shall be used on the Floor.

Section 4. Services to be Provided by the Authorized Dealer. The Facility Owner agrees that the Prep and Recoat of the Floor shall be performed exclusively by the Authorized Dealer and other EGIS-approved entities.

Section 5. Fees. The fees for the Services of this Agreement shall be as set forth in the Floorlife Performance Agreement attached hereto.

Section 6. Cooperation and Access. The Facility Owner shall reasonably cooperate with EGIS and the Authorized Dealer so as to facilitate the Authorized Dealer's performance of the Services. Such cooperation shall include but not be limited to providing access to the Floor. Service calls will be made by the Authorized Dealer at the Facility during the Authorized Dealer's regular business hours.

Section 7. Nonscope Work. Work other than the Services are outside the scope of this Agreement, and may be performed by the Authorized Dealer at such prices and terms as agreed by the Facility Owner and Authorized Dealer.

Section 8. Warranties.

8.1 **Finish Adhesion. Finish adhesion with recoating cannot be guaranteed if the Floor has not been completely sanded to bare wood and refinished, and previous maintenance and recoating has not been conducted with and according to usage instructions for BonaKemi coatings and maintenance products.**

8.2 Service Provider's Warranty. Provided The Facility Owner complies with the provisions of this Agreement, continuing coverage for recoating defects covered under the Service Provider's Warranty attached hereto as Exhibit B and made a part hereof, if any, shall be provided by EGIS.

8.3 Exclusions. If any of the following events shall occur, any claims with respect to the Floor will not be covered under this Agreement: (i) the Facility Owner fails to timely pay any fees under this Agreement; (ii) the Facility Owner uses someone other than the Authorized Dealer or another EGIS-authorized entity to perform any repair or maintenance services on the Floor; (iii) the Facility Owner uses products on the Floor which are not supplied or approved by EGIS; (iv) the Facility Owner fails to comply with any recommended maintenance instructions provided by EGIS or the Authorized Dealer; or (v) the Facility Owner fails to maintain proper temperature and relative humidity conditions within the Facility (as discussed in paragraph 3.1).

Section 9. Events of Default. The Facility Owner will be in default under this Agreement upon the happening of any one or more of the following events or conditions ("Events of Default"): (i) the Facility Owner fails to pay any amount due under this Agreement within five days after the same is due; (ii) the Facility Owner breaches any provision of this Agreement or fails to comply with any recommended maintenance instructions provided by EGIS or the Authorized Dealer; or (iii) the Facility Owner files a petition for bankruptcy or files for a reorganization or for the appointment of a receiver or trustee of all or substantially all of its

property, or makes an assignment or petitions for or enters into an arrangement for the benefit of creditors, or a petition in bankruptcy is filed against the Facility Owner.

Section 10. Remedies upon Default. Upon the occurrence of any Event of Default, EGIS, in its discretion, may immediately terminate this Agreement without any further notice, provided, however, that such termination will not serve to waive or release the Facility Owner from any obligations hereunder.

Section 11. Indemnification. The Facility Owner and EGIS each shall hold harmless, defend and indemnify the other party and the other party's employees, agents, successors and assigns ("Indemnitees") from and for any and all damages, liabilities, costs (including reasonable attorney's fees) and expenses Indemnitees may incur as a result of the provision of Services hereunder to the extent such damages, liabilities, costs or expenses are caused by the indemnifying party or anyone directly or indirectly employed by the indemnifying party or as a result of their unlawful, willful or grossly negligent misconduct or breach of this Agreement. The provisions of this Section 11 shall survive the termination of this Agreement.

Section 12. Miscellaneous.

12.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Each party submits to the exclusive jurisdiction of any state or federal court sitting in Hamilton County, Ohio, in any action or proceeding arising out of or relating to this Agreement, and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, and agrees not to bring any such action or proceeding in any other court.

12.2 Dispute Resolution. All disputes arising with respect to this Subcontract, including without limitation those with respect to its interpretation or enforceability, shall be settled by mutual agreement of EGIS and the Facility Owner or, if a mutual agreement cannot be reached, the exclusive venue for the resolution of such disputes shall be through binding arbitration in Cincinnati, Ohio, under the Rules of the American Arbitration Association ("AAA"). Disputes may be submitted for binding arbitration by either party only after a thirty-day period following written notice of such dispute. The final award of the arbitrator(s) shall be final and binding on the parties to the extent permitted by the laws of the State of Ohio. Each party shall bear his, her or its own attorneys', accountants' and other fees and charges, and all fees and charges of the AAA and the arbitrator(s) shall be borne as the arbitrator(s) shall determine as stated in the award. The decision of the arbitrator(s) may be enforced by any court having jurisdiction.

12.3 Assignment. This Agreement shall be binding upon, and enure to the benefit of, the Facility Owner and EGIS, their successors, assigns and legal representatives; provided, however, that the Facility Owner may not assign this Agreement without EGIS's prior written consent.

12.4 Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the designated representative of the party hereto or to an officer of the company for which it was intended, or if delivered at or sent by certified mail or a nationally recognized overnight courier service (which provides a receipt of delivery) to the address set forth on Exhibit A, as such address may be changed from time to time by notice to the other party in accordance herewith.

12.5 Entire Agreement. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by a writing signed by both the Facility Owner and EGIS.

12.6 Nonwaiver. No action or failure to act by the Facility Owner or EGIS shall constitute a waiver of a right or duty afforded them under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

12.7 Independent Agreement. EGIS, its personnel and subcontractors are not, nor shall they be deemed to be at any time during the term of this Agreement, employees of the Facility Owner. EGIS will be solely responsible for payment of all compensation owed to the Authorized Dealer for the Services or to EGIS personnel and subcontractors under this Agreement.

12.8 Force Majeure. EGIS shall not be responsible or liable for any costs, expenses or delays in the provision of Services due to acts of God, strikes, lockouts, labor disputes, floods, fires, war, terrorist acts, hurricane, typhoon, other extreme weather, earthquake, lightning, explosion, riots, disturbance, civil commotion, malicious mischief, vandalism, epidemics, embargoes, quotas, shortage of labor or material, delays in transportation, communication line failure, power failure, failure of equipment, government action, including but not limited to price controls, currency controls or detention of goods by authorities, or any other causes beyond the direct control of EGIS ("Force Majeure"). The existence of such Force Majeure delays or expenses shall extend the time for performance on the part of EGIS to such extent as may be necessary to enable EGIS to perform after the cause of delay has been removed.

12.9 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

12.10 Headings. The headings of the several sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.