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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Capital Fitness-South Barrington, LLC,
Tenant

AND

CIBC INC.,
Lender



Doc#: 1132004051 Fee: \$86.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/16/2011 09:43 AM Pg: 1 of 9

Section: 33
Block: N/A
Lot: 8
County: Cook
State: Illinois

Premises: 100 W. Higgins Road
South Barrington, IL 60010

Dated: as of November 4, 2011

Prepared by and after recording mail to:

MCKENNA LONG & ALDRIDGE LLP
303 Peachtree St., Suite 5300
Atlanta, GA 30308
Attention: Barbara McIntyre, Esq.

{B0750991 2}

Box 400-CTCC

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this 4th day of November, 2011, by and among Arboretum Mall Owner LLC ("**Landlord**"), CIBC INC., a Delaware corporation ("**Lender**"), and Capital Fitness-South Barrington, LLC, an Illinois limited liability company ("**Tenant**").

RECITALS:

A. Tenant has executed that certain lease dated May 12, 2008, as amended by written agreement dated June 9, 2008 and June 20, 2008 (the foregoing, the "**Lease**"), with Arboretum of South Barrington, LLC, Landlord, as lessor, covering the premises described in the Lease consisting of approximately a 11,097 square foot space (the "**Premises**") in that certain building located at 100 W Higgins Road, South Barrington, IL 60010 (the "**Property**") and more particularly described in Exhibit A attached hereto and made a part hereof by this reference; and

B. Lender has made (or agreed to make) a loan to Landlord secured by a mortgage or deed of trust encumbering the Property and an assignment of Landlord's interest in the Lease (said mortgage or deed of trust and assignment of leases, together with any amendments, renewals, increases, modifications, substitutions or consolidations of either of them, collectively, the "**Security Instrument**"); and

C. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Security Instrument, and to have Landlord confirm its agreement therewith.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and agreements contained herein, the parties hereto agree as follows:

1. Provided that Successor Owner (as hereafter defined) agrees not to disturb, hinder, or limit Tenant's use, occupancy or operation of its business at the Premises, absent a default which is not cured within any applicable grace or cure period, the Lease and any extensions, modifications or renewals thereof, including but not limited to any option to purchase, right of first refusal to purchase or right of first offer to purchase the Property or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the Security Instrument and the lien created thereby.

2. Tenant agrees to deliver to Lender, in the manner set forth in Paragraph 11 of this Agreement, a copy of any notice of default sent to Landlord by Tenant. If Landlord fails to cure such default within the time provided in the Lease, Lender shall have the right, but not the obligation, to cure such default on behalf of Landlord within the time provided for Landlord to cure such default in the Lease.

3. Notwithstanding anything to the contrary contained herein, so long as Tenant is not in default under the Lease (beyond any applicable grace or cure period), Successor Owner (as hereafter defined) agrees not to disturb Tenant's possession, use or occupancy of the Premises, or the operation of its business from the Premises, during the term of the Lease, and all extensions and renewals thereof.

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4. If Lender or its nominee or designee, or another purchaser of the Property upon a Foreclosure, deed in lieu of foreclosure, or otherwise (any such person or entity, a "Successor Owner") succeeds to the interest of Landlord under the Lease, the Lease will continue in full force and effect, in accordance with its terms. Thereupon, Successor Owner shall recognize the Lease and Tenant's rights thereunder and (provided Successor Owner recognizes Tenant's rights, and agrees not to disturb Tenant's possession, use, and occupancy of the Premises, or the operation of its business from the Premises, during the term of the Lease, and all extensions and renewals thereof, beyond any applicable grace or cure period granted to Tenant, Tenant shall make full and complete attornment to Successor Owner as substitute landlord upon the same terms, covenants and conditions as provided in the Lease, including, but not limited to, any option to purchase, right of first refusal to purchase or right of first offer to purchase the Property as may be provided in the Lease.

5. Tenant agrees that, if Successor Owner shall succeed to the interest of Landlord under this Lease, Successor Owner shall not be:

- (a) liable for any prior act or omission of Landlord or any prior landlord or consequential damages arising therefrom (i) except to the extent that any damage (excluding consequential damages) incurred by Tenant is a result, in whole or in part, of Successor Owner's intentional acts or omissions or gross negligence, however, notwithstanding the foregoing, the parties to this Agreement explicitly acknowledge that should Successor Owner benefit from any such prior act or omission, Tenant may offset against rent or additional rent for damages (excluding consequential damages) Tenant may incur; or (ii) except for damages (excluding consequential damages) arising out of any continuing default of Landlord that Successor Owner fails to cure and to the extent such damages first accrue after the date Successor Owner succeeds to the interests of Landlord; or
- (b) subject to any offsets or defenses which Tenant might have as to Landlord or any prior landlord unless Lender has failed to cure any default by Landlord as herein provided and to the extent such offset accrues or which continues to accrue after the date that Successor Owner succeeds to the interest of Landlord; or, except to the extent that such Successor Owner has benefited from the act or omission of Landlord or any prior landlord which gave rise to the offset or defenses; or
- (c) required or obligated to credit Tenant with any rent or additional rent for any rental period beyond the then current month which Tenant might have paid Landlord, except to the extent actually received by Successor Owner, or Successor Owner has received a monetary credit for such amounts; or
- (d) liable for refund of all or any part of any security deposit unless such security deposit shall have been actually received by Lender, or Lender has received a monetary credit for such amounts.

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6. Tenant agrees that, without the prior written consent of Lender in each case, Tenant shall not (a) terminate or cancel the Lease, or tender a surrender of the Lease (except as provided for in the Lease, it is intended that Tenant's rights to terminate the Lease under the terms and conditions of the Lease shall remain in full force and effect, unmodified by the terms of this Agreement), or (b) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to require that Tenant pay all rent under the Lease as directed by Lender, which payment shall to the extent made, satisfy the obligations of Tenant under the Lease. Landlord agrees to hold Tenant harmless with respect to any such payments made by Tenant to Lender, and such payments to the Lender shall satisfy Tenant's obligations to make such payments to Landlord under the Lease, without Tenant having to inquire as to the validity of Lender's request or requirement.

8. Nothing in this Agreement shall impose upon Lender any liability for the obligations of Landlord under the Lease unless and until Lender takes title to the Property, or otherwise succeeds to Landlord's interest under the Lease. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor Owner shall acquire title to the Property or the portion thereof containing the Premises, Successor Owner shall have no obligation, nor incur any liability, beyond Successor Owner's interest in the Property, and Tenant shall look exclusively to the interests of Successor Owner in the Property for the payment and discharge of any obligations imposed upon Successor Owner hereunder or under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor Owner, Tenant shall look solely to the estate or interest owned by Successor Owner in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Owner, other than its estate, interest and rights in, to and under the Property.

9. EACH OF TENANT, LENDER AND LANDLORD HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

10. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. All notices and all other communication with respect to this Agreement shall be directed as follows: if to Lender, 200 West Madison, Suite 2610, Chicago, Illinois 60606, Attn: Real Estate Group, or such other address as Lender may designate in writing to Tenant; and, if to Tenant, at the address set forth in the Lease or at such other address as tenant may designate in writing to Lender. All notices shall be in writing and shall be (a) hand-delivered, (b) sent by United States express mail or by private overnight courier, or (c) served by certified mail postage prepaid, return receipt requested, to the appropriate address set forth above. Notices served as provided in (a) and (b) shall be deemed to be effective upon delivery or upon refusal thereof. Any notice served by certified mail shall be deposited in the United States mail with postage thereon fully prepaid and shall be deemed effective on the day of actual delivery as shown by the

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addressee's return receipt or the expiration of three business days after the date of mailing, whichever is earlier in time.

12. This Agreement (along with the Lease) contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

13. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

14. Notwithstanding any other provision hereof to the contrary or otherwise, Tenant's past, present and future affiliates, related parties, members, trustees, beneficiaries, partners, shareholders, officers, directors, employees, agents, successors, assigns and any direct or indirect owner of Tenant, and their successors and assigns (collectively "**Non-Liable Parties**") shall not have any liability, personal or otherwise, hereunder, or in connection herewith, or related to this transaction, or otherwise under any circumstances whatsoever. Landlord, Lender, Successor Owner and anyone claiming by, through or under Landlord, Lender, or Successor Owner agrees, to look solely to the assets of Tenant; provided, however, in no event, shall any deficiency judgment, or any money judgment, or any judgment of any kind, or any judicial process of any kind be sought or obtained against any of the Non-Liable Parties by Landlord, Lender, Successor Owner or by any person or entity claiming by, through or under Landlord, Lender, Successor Owner or otherwise. This paragraph shall be absolute and without exception whatsoever and shall indefinitely survive the termination of this Agreement, and shall be binding upon Landlord, Lender, Successor Owner, anyone claiming by, through or under Landlord, Lender, or Successor Owner, and any of their successors, affiliates and assigns.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

Capital Fitness-South Barrington, LLC

Capital Fitness, Inc., its sole member

By: _____

Name: Evan M. Rayman

Title: Not individually but as Vice-President

Property of Cook County Office

STATE OF ILLINOIS
COUNTY OF KANE

I, the undersigned, a Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY THAT Evan M. Rayman, personally known to me to be the Vice President of Capital Fitness, Inc., a Illinois corporation, whose name is subscribed to the foregoing instrument, as having executed the same, appeared before me this day in person and acknowledged that he / she signed, sealed and delivered the said instrument as his / her free and voluntary act and as the act of said limited partnership for the uses and purposes therein set forth.

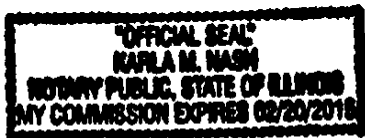
Given under my hand and Notary Seal this 15th day of NOVEMBER, 2011.

Karla M. Nash

Notary Public

My Commission Expires:


2-20-15



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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CIBC INC., a Delaware corporation

By: 
Name: Todd Roth
Title: Authorized Signatory

Property of County Clerk's Office

STATE OF NEW YORK
COUNTY OF NEW YORK

On the 27th day of OCTOBER in the year 2011, before me, the undersigned, personally appeared Todd ROTH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Authorized Signatory of Effie Inc., and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

My commission expires: _____

CHRISTOPHER E. GRAHAM
NOTARY PUBLIC, State of New York
No. 02GR8071200
Qualified in Westchester County
Commission Expires March 11, 2014

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EXHIBIT A

Legal Description of Property

PARCEL 1:

LOTS 1 AND 3 IN ARBORETUM OF SOUTH BARRINGTON, BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33 TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 AS DOCUMENT 0721115094 IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 7 AND 8 IN THE ARBORETUM OF SOUTH BARRINGTON SECOND RESUBDIVISION, BEING A RESUBDIVISION OF LOT 6 IN ARBORETUM OF SOUTH BARRINGTON FIRST RESUBDIVISION, IN PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 30, 2008 AS DOCUMENT 0812122096 IN COOK COUNTY, ILLINOIS.

Address: 100 West Higgins Road, South Barrington Illinois

PIN: 01-33-209-002-0000
01-33-209-006-0000
01-33-209-007-0000
01-33-209-013-0000
01-33-209-014-0000
01-33-209-015-0000
01-33-209-016-0000