



Doc#: 1405604005 Fee: \$54.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/25/2014 08:25 AM Pg: 1 of 9

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Eric M. Roberson
Urban Partnership Bank
7936 South Cottage Grove Avenue
Chicago, Illinois 60619
Attention: Legal Department

AGREEMENT OF SUBORDINATION, NONDISTURBANCE AND ATTORNMENT

THIS AGREEMENT OF SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (this "Agreement") is dated and effective as of July 19th, 2013 by and among Urban Partnership Bank (as successor in interest to the Federal Deposit Insurance Corporation as receiver of ShoreBank) whose address is 7936 South Cottage Grove Avenue, Chicago, Illinois 60619 ("Lender"), Fitness International, LLC, a California limited liability company, whose address is 3161 Michelson Drive, Suite 600, Irvine, California 92612 ("Tenant"), and Chicago Title Land Trust Company, an Illinois corporation, as successor trustee to LaSalle National Trust, NA, as trustee under Trust Agreement dated July 29, 1993 and known as Trust No. 118122, whose address is c/o Diaper and Kramer, Incorporated, 33 West Monroe Street, 19th Floor, Chicago, Illinois 60603 ("Borrower").

RECITALS:

- A. Tenant has executed that certain lease dated July 17th, 2013 (the "Lease") covering the premises described in the Lease ("Premises") in that certain building located at 3445 South Martin Luther King Drive, Chicago, Illinois 60616 (the "Property") and more particularly described in Exhibit A, attached hereto and made a part hereof, by this reference; and
- B. Borrower is the landlord (the "Landlord") under the Lease; and
- C. Lender has made or has agreed to make a mortgage loan to Borrower secured by a mortgage or deed of trust encumbering the Property which includes an assignment of the landlord's interest in the Lease (the "Mortgage"); and
- D. Tenant, Borrower and Lender desire to confirm their understanding with respect to the Lease and the Mortgage.

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

- 1. Subject to the terms and conditions of this Agreement, the Lease and any extensions, modifications or renewals thereof, including but not limited to any option to purchase

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or right of first refusal to purchase the Property or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the lien of the Mortgage and to any advancements made thereunder and to any consolidations, extensions, modifications or renewals thereof.

2. In the event Landlord receives from Tenant a written notice that Landlord is in default of Landlord's obligations under the Lease ("Tenant Default Notice"), Landlord shall give a copy of the Tenant Default Notice to Lender no later than three (3) days after receipt thereof ("Notice Date"). Tenant shall use commercially reasonable efforts to give Lender a copy of the Tenant Default Notice concurrently with delivery of the Tenant Default Notice to Landlord; provided however, that, Tenant's failure to deliver a copy of the Tenant Default Notice to Lender shall not be a Tenant default hereunder and shall not affect the terms of this Agreement. Notwithstanding anything in the Lease or this Agreement to the contrary, no exercise by Tenant of any right to terminate the Lease, reduce the rent, or to credit or offset any amounts against future rents, pursuant to a default by Landlord under the Lease shall be effective unless and until the expiration of the Lender Cure Period (as hereinafter defined). Lender, having no obligation to do so, shall have the right to cure any Landlord default within the same cure periods available to Landlord under the Lease; provided however, the applicable cure period shall not commence until the earlier of the Notice Date and, if applicable, the date Tenant gives Lender a copy of the Tenant Default Notice ("Lender Cure Period"). Lender hereby agrees to notify Tenant in writing of any default by Landlord under the Mortgage, regardless of whether Lender will require Tenant to pay rent or other sums due under the Lease pursuant to Section 8 below. Subject to the terms and conditions of this Agreement and the Lease, Tenant hereby agrees that no action taken by Lender to enforce any rights under the Mortgage or related security documents, by reason of any default thereunder (including without limitation, the appointment of a receiver, any foreclosure or any demand for rent under any assignment of rents or leases) shall give rise to any right of Tenant to terminate the Lease nor shall such action invalidate or constitute a breach of any of the terms of the Lease.

3. So long as Tenant is not in material default under the Lease beyond any applicable notice or cure period, Tenant's use, possession, occupancy or enjoyment of the Premises and Tenant's rights, remedies and privileges under the Lease shall not be disturbed, diminished or interfered with by Lender in connection with any enforcement of the Mortgage, and whether ownership of the Property be obtained by Lender or its nominee or a purchaser at a foreclosure sale, by deed given in lieu of foreclosure or otherwise, nor shall the leasehold estate granted by the Lease be affected in any manner in any foreclosure or any action or proceeding instituted under or in connection with the Mortgage, during the term of the Lease or any extension or renewals which Tenant may exercise under the terms and provisions of the Lease. Tenant shall not be named in any foreclosure action nor will Lender join Tenant as a party defendant in any action or proceeding to terminate Tenant's interest, estate or rights under the Lease because of any default under the Mortgage.

4. If the interests of Landlord in all or any part of the Premises shall be transferred to Lender by reason of foreclosure or other proceedings brought by Lender, or by any other manner, and Lender succeeds to the interest of Landlord under the Lease, Tenant shall be bound

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to Lender under all of the terms, covenants and conditions of the Lease for the balance of the Lease term (including any extension or renewals which Tenant may exercise under the terms and provisions of the Lease) with the same force and effect as if Lender were the landlord under the Lease; and Lender shall recognize and accept the rights of Tenant and shall thereafter assume the obligations of Landlord under the Lease in respect of the obligations under the Lease thereafter becoming due. Tenant hereby attorns to, this attornment to be effective and self-operating without the execution of any further instruments.

5. Subject to the terms and conditions of this Agreement, Tenant agrees that, if Lender shall succeed to the interest of the landlord under the Lease, Lender, its successors and assigns, shall not be: (a) liable for any prior act or omission of the landlord or any prior landlord or consequential damages arising therefrom; provided, however: (i) any abatements and offsets against rent as expressly provided in the Lease shall continue to be available to Tenant based on events occurring prior to Lender's acquiring ownership of the Property, and (ii) Lender may, but shall not have the obligation, to cure any defaults of a prior landlord that continue to exist after the date Lender acquires ownership of the Property; or (b) subject to any offsets or defenses which Tenant might have as to the landlord or any prior landlord; provided, however, any abatements and offsets against rent as expressly provided in the Lease shall continue to be available to Tenant, based on events occurring prior to Lender's acquiring ownership of the Property; 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 to the landlord unless any such payment (i) is specifically required by the Lease, (ii) has been previously delivered to Lender, or (iii) represents any overpayment of prepaid triple net expenses; or (d) bound by any early cancellation or termination of the Lease (other than a termination right exercised by Tenant pursuant to the terms of the Lease) or any material amendments or modifications of the Lease entered into without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed, where a "material amendment or modification" is deemed to mean a modification of the Lease of such nature that results in the reduction of rent, any offset against future rents, or a change in the term of the Lease (exclusive of option terms pursuant to the Lease); or (e) liable for refund of all or any part of any security deposit unless such security deposit shall have been received by Lender. The foregoing shall not, however: (i) relieve Lender or any other party succeeding to the interests of Landlord as a result of any foreclosure of the obligation to remedy or cure conditions at the Premises which constitute a landlord default under the Lease and which continue at the time of such succession or acquisition, and (ii) constitute a waiver by Tenant of any claims or causes of action it may have against the landlord as a result of conditions or events which occurred prior to the succession by Lender to the interests of the landlord. Notwithstanding the foregoing, Lender shall in no event be personally liable to perform any term, covenant or provision of the Lease, Lender's liability being limited in all cases to its interest in the Property, including rents, insurance proceeds or consideration from the sale or other disposition of Lender's right, title and interest in the Property.

6. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The words, "Lender," "Borrower"

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and "Tenant" shall include their respective heirs, legatees, executors, administrators, beneficiaries, successors and assigns.

7. All notices, and all other communication with respect to this Agreement, shall be directed as follows: if to Lender, c/o Urban Partnership Bank, 7936 South Cottage Grove Avenue, Chicago, Illinois 60619, Attention: Legal Department, or such other address as Lender may designate in writing to Tenant and, if to Tenant or Landlord, at the address set forth in the Lease or at such other address as such party 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. 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 addressee's return receipt or the expiration of three business days after the date of mailing, whichever is earlier in time.

8. Provided Tenant shall have previously received a copy of this Agreement having been signed by Lender and Landlord, Tenant shall be under no obligation to pay rent or any other sums to Lender or otherwise to recognize Lender under the Lease until Tenant receives written notice from Lender that either of them are entitled to receive rent pursuant to the terms of this Agreement. Landlord hereby authorizes Tenant, upon receipt of such written notice, to pay directly to Lender all rent and other sums due (including all sums which are then past due and unpaid), and Tenant agrees to make such payments. Tenant shall be under no obligation to inquire or determine the actual existence of any default or other event claimed by Lender and shall be entitled to rely upon such notice as presumptive evidence of the occurrence of such event. Landlord agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Landlord, and Tenant is hereby instructed to disregard any notice to the contrary received from Landlord or any third party. Landlord hereby releases Tenant from all claims, losses, and liabilities arising from Tenant's payment of rent or other sums to Lender following Tenant's receipt of written notice directing Tenant to make such payments to Lender. All such payments made by Tenant to Lender shall be credited to installments of rent otherwise payable to Landlord under the Lease. Except as otherwise set forth in this Agreement, the respective rights and obligations of Tenant, as tenant, and Lender, as landlord, under this attornment shall be the same as now set forth in the Lease, it being the intention of the Tenant and Lender to incorporate the Lease by reference in this Agreement with the same force and effect as if the Lease were set forth at length in this Agreement.

9. This Agreement 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.

10. This Agreement may be executed in one or more counterparts, and all such counterparts taken together shall for all purposes constitute one and the same Agreement binding on the parties hereto. This Agreement, if executed by Tenant but not by all parties necessary to fully execute the same, is valid for only thirty (30) days from the date Tenant executed this

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Agreement. This Agreement is contingent upon Tenant receiving a fully executed copy of the Agreement within such 30-day period, the failure of which shall automatically cause this Agreement to become null and void. Notwithstanding anything herein to contrary, the previous two sentences shall not be operative until the Lease has been executed by the Landlord and the Tenant and the Lender has been provided a copy thereof.

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

LENDER:

TENANT:

URBAN PARTNERSHIP BANK

FITNESS INTERNATIONAL, LLC,
a California limited liability company

By: [Signature]
Printed name: Robert Dennis
Its: Chief Credit Officer

By: [Signature]
William B. Horner
Senior Vice President
Chief Real Estate Officer

BORROWER:

CHICAGO TITLE LAND TRUST COMPANY,
an Illinois corporation, as successor trustee to
LaSalle National Trust, NA, as trustee under Trust
Agreement dated July 29, 1993 and known as Trust No. 118122



By: [Signature]
Printed name: Harriet Denisevicz
Its: Trust Officer

TRUSTEE'S EXCULPATION

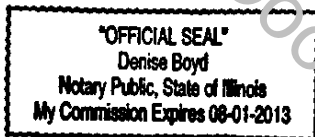
It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS:

On July 19, 2013, before me, DENISE BOYD, a Notary Public in and for the State of ILLINOIS, personally appeared ROBERT DENNIS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the same in his or her authorized capacity and that, by his or her signature on the instrument, the person or the entity upon behalf of which he or she acted, executed the instrument.

WITNESS my hand and official seal.



Denise Boyd Notary
Public in and for said State

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STATE OF CALIFORNIA)

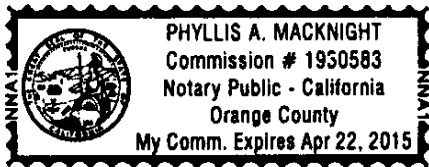
) ss.

COUNTY OF ORANGE)

On July 11, 2013, before me, Phyllis A. MacKnight, Notary Public, personally appeared William B. Horner, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Phyllis A. MacKnight

Signature of Notary Public

SEAL

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STATE OF Illinois)

COUNTY OF Cook)

SS:

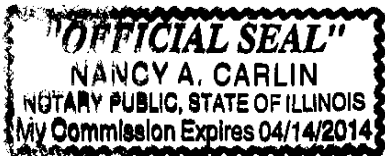
On July 17, 2013, before me, Nancy A. Carlin, a Notary Public in and for the State of Illinois, personally appeared Harriet Denisewicz, Trust/ Officer of Chicago Title Land Trust, Company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that ~~he~~ she executed the same in ~~his~~ her authorized capacity and that, by his or her signature on the instrument, the person or the entity upon behalf of which he or she acted, executed the instrument.

WITNESS my hand and official seal.

Nancy A Carlin

Illinois

Notary Public in and for said State



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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot "A" in the Lake Meadows Number 1; a consolidation of lots and parts of lots and vacated streets and alleys in John DeWitt's Addition to Chicago and in University Subdivision and certain Resubdivisions, all in the North East fractional $\frac{1}{4}$ of Section 34, Township 39 North, Range 14 in Cook County, Illinois recorded July 8, 1954 as document 15954451 and filed in the Office of the Registrar of Titles as document LR1539045.

LAKE MEADOWS STOPPING CENTER
 NORTHEAST CORNER OF 35TH +
 MARTIN LUTHER KING DR
 CHICAGO, IL 60606

17-34-216-043-0000

17-34-216-044-0000

17-34-216-045-0000

EXHIBIT A