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RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 01/20/2016 01:24 PM Pg: 1 of 10

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THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

David J. O'Keefe
Schain, Banks, Kenny & Schwartz, Ltd.
70 West Madison Street
Suite 5300
Chicago, Illinois 60602

SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (the "Agreement") is made as of the 12 day of January, 2016, by and between **BRIDGEVIEW BANK GROUP** ("Senior Lender") and **MATRIX CHEETAH LP**, a Delaware limited partnership ("Subordinated Lender").

RECITALS:

A. **140 SHERIDAN ROAD, LLC**, an Illinois limited liability company ("**Borrower**"), is currently indebted to Senior Lender pursuant to the terms of that certain Loan Agreement dated as of October 20, 2012, as modified January 13, 2014 (collectively the "**First Loan Agreement**") as evidenced by Mortgage Note of even date therewith wherein Borrower promised to pay to the order of Senior Lender the maximum principal amount of **Eight Hundred Fifty Four Thousand Two Hundred Six and 70/100 Dollars (\$854,206.70)**, as modified January 13, 2014, to increase the maximum principal amount thereof to **One Million Four Hundred Eighteen Thousand Seven Hundred Fifty Four and 91/100 Dollars (\$1,418,754.91)** (collectively the "**First Note**").

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B. Borrower is currently indebted to Senior Lender pursuant to the terms of that certain Loan Agreement dated as of the date hereof (the "**Second Loan Agreement**") as evidenced by Mortgage Note as even date hereof (the "**Second Note**") wherein Borrower promises to pay to the order of Senior Lender the maximum principal amount of **One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00)**.

C. Borrower has guaranteed the obligations of **Wild Kingdom Fitness Enterprises, Inc.**, an Illinois corporation ("**Tenant**"), under that certain Lease Agreement dated as of January 11, 2016 (the "**Lease**") by and between Subordinated Lender as landlord and Tenant as tenant (collectively the "**Lease Obligations**").

Now, therefore, in consideration of the mutual promises and undertakings set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Subordinated Lender agree as follows:

1. *Definitions.* As used in this Agreement, the following terms shall have the meanings specified below:

"**Default**" shall have the meaning set forth in the Senior Loan Documents.

"**First Debt**" shall mean (a) all obligations of Borrower now or later existing under the First Loan Agreement and the First Note, whether for principal, interest (including interest accruing after the filing of a petition initiating a proceeding described in Section 2(b) of this Agreement and whether or not such interest accrues after the initiation of a proceeding described in Section 2(b) or is an allowed claim in such proceeding), prepayment premium, fees and expenses (including without limitation attorneys' fees, paralegals' fees, and all out-of-pocket expenses incurred in connection with the enforcement of Borrower's obligations).

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“First Loan Agreement” shall mean the agreement referred to in Paragraph A of the Recitals, together with all amendments, renewals and extensions.

“First Loan Documents” shall mean, collectively, the First Loan Agreement, the First Note, the First Mortgage, and all other documents executed by or on behalf of Borrower and delivered to Senior Lender to evidence and/or secure the First Loan.

“First Mortgage” shall mean that certain Mortgage made by Borrower in favor of Senior Lender dated of even date herewith and recorded with the Recorder of Deeds of Cook County on January 15, 2014, as Document No. 1401519085, securing the First Debt and repayment of the First Note.

“First Note” shall mean the Mortgage Note referred to in Paragraph A of the Recitals.

“Lease” shall mean the agreement referred to in Paragraph C of the Recitals, together with all amendments to and renewals and extensions thereof.

“Property” shall have the meaning set forth in the First Mortgage and as described on Exhibit “A” attached hereto.

“Second Debt” shall mean (a) all obligations of Borrower now or later existing under the Second Loan Agreement and the Second Note, whether for principal, interest (including interest accruing after the filing of a petition initiating a proceeding described in Section 2(b) of this Agreement and whether or not such interest accrues after the initiation of a proceeding described in Section 2(b) or is an allowed claim in such proceeding), prepayment premium, fees, expenses (including without limitation attorneys’ fees, paralegals’ fees, and all out-of-pocket expenses incurred in connection with the enforcement of Borrower’s obligations).

“Second Loan Agreement” shall mean the agreement referred to in Paragraph B of the Recitals, together with all amendments, renewals and extensions.

“Second Loan Documents” shall mean, collectively the Second Loan Agreement, the Second Note, the Second Mortgage, and all other documents executed by or on behalf of Borrower and delivered to Senior Lender to evidence and/or secure the Second Loan.

“Second Mortgage” shall mean that certain Mortgage made by Borrower in favor of Senior Lender dated of even date herewith and recorded with the Recorder of Deeds of Cook County on 1-20-
2016, as Document No. 1602001274, securing the Second Debt and repayment of the First Note.

“Second Note” shall mean the Mortgage Note referred to in Paragraph B of the Recitals.

“Senior Debt” shall mean, collectively, the First Debt and the Second Debt.

“Senior Loan Documents” shall mean, collectively the First Loan Documents and the Second Loan Documents.

“Subordinated Debt” shall mean the Lease Obligations and all other obligations of Tenant under the Lease that are or may become payable by Borrower as a guarantor thereof, all amounts payable by Borrower in connection therewith and any other obligations now or hereafter secured by the Subordinated Mortgage.

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“**Subordinated Loan Documents**” shall mean, collectively the Lease, the Subordinated Mortgage and all other documents executed by or on behalf of Borrower and delivered to Subordinated Lender to evidence and/or secure the Subordinated Debt.

“**Subordinated Mortgage**” shall mean that certain Subordinated Mortgage, Assignment of Leases and Rents and Security Agreement made by Borrower in favor of Subordinated Lender dated as of January 11, 2016, and recorded with the Recorder of Deeds of Cook County on 1-30-, 2016, as Document No. 1609001277, securing the Tenant’s obligations under the Lease.

2. *Subordination.* Subordinated Lender covenants and agrees that the Subordinated Debt is and shall be subordinate in right of payment to the prior payment in full of the Senior Debt as and to the extent provided in this Section 2. The Senior Debt shall not be deemed to have been paid in full until: (i) Senior Lender’s obligation to make advances under Senior Loan Documents shall have been terminated as provided in the Senior Loan Documents and Senior Lender shall have received full payment of the Senior Debt. The priority of the Subordinated Mortgage and all other present and future security interests of Subordinated Lender in the Property (and any other property of Borrower) shall be subordinated to the First Mortgage and the Second Mortgage and all present and future security interests of Senior Lender in the Property (and any other property of Borrower). In no event Subordinated Lender shall be entitled to receive from Borrower any payments on account of the Subordinated Debt until the Senior Debt has been paid in full.

(a) *No Payments by Borrower on Subordinated Debt.* Until the Senior Debt has been paid in full, (i) all Senior Debt shall be paid in full before any payment or distribution of any kind or character, whether in cash, property, or securities, however arising or evidenced, is made to Subordinated Lender by Borrower, and (ii) Subordinated Lender shall not directly or indirectly take, set off, or accept any payment from Borrower for all or any portion of the Subordinated Debt. All payments or distributions that, but for the subordination provisions of this Agreement, would otherwise be payable or deliverable to Subordinated Lender shall instead be paid and delivered to Senior Lender until the Senior Debt is paid in full.

(b) *Dissolution, Liquidation, and Bankruptcy.* In the event of any dissolution, winding up, or liquidation of Borrower, any receivership, insolvency, reorganization, or bankruptcy proceedings of Borrower, any assignment by Borrower for the benefit of its creditors, any payment or distribution of all or substantially all of the assets or securities of Borrower of any kind or character, whether in cash, property, or securities, or any proceeding initiated by or against Borrower for any relief under any federal or state bankruptcy, reorganization, or insolvency law, or any other federal or state law relating to the relief of debtors, readjustment of indebtedness, reorganization, composition, or extension of indebtedness, (i) all Senior Debt shall be paid in full before any payment or distribution of any kind or character, whether in cash, property, or securities, however arising or evidenced, is made to Subordinated Lender, and (ii) Subordinated Lender shall not directly or indirectly take, set off, accept, or demand any payment for or institute any legal action or proceedings for the collection of all or any portion of the amounts owing to Subordinated Lender. All such payments or distributions that, but for the subordination provisions of this Agreement, would otherwise be payable or deliverable to Subordinated Lender shall instead be paid and delivered to Senior Lender until the Senior Debt is paid in full.

(c) *Payments Received by Subordinated Lender.* In the event that, notwithstanding the foregoing provisions prohibiting such payment or distribution, Subordinated Lender shall receive any payment or distribution in respect of the Subordinated Debt contrary to the provisions of this Agreement, Subordinated Lender shall promptly remit these payments or distributions to Senior Lender. Pending delivery to Senior Lender, Subordinated Lender shall be deemed to have received and be holding such payments or distributions in trust for the benefit of Senior Lender.

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3. *No Action by Subordinated Lender without Senior Lender's Consent.* For so long as the Senior Debt has not been indefeasibly paid in full, Subordinated Lender shall not avail itself of any of its rights or remedies under the Subordinated Loan Documents following a default by Borrower thereunder. The commencement of foreclosure proceedings with respect to the Subordinated Mortgage, application for the appointment of a receiver for the Property, or the commencement and/or prosecution of any other remedy under the Subordinated Loan Documents without the prior written consent of Senior Lender constitutes a Default under the Senior Loan Documents and shall constitute a default under this Agreement, at the time such enforcement or remedial action is commenced.

4. Representations

(a) *Subordinated Lender.* Subordinated Lender represents to Senior Lender as follows:

(i) *Other Indebtedness.* Except for the Subordinated Debt, Borrower is not indebted to Subordinated Lender.

(ii) *Liens of Subordinated Lender.* Except as expressly set forth in the Subordinated Loan Documents, Subordinated Lender has no lien, security interest, or other charge or encumbrance in or on the Property or any other property of Borrower, whether real, personal, or mixed, as security for Borrower's obligations to Subordinated Lender.

(iii) *Authority and Validity.* This Agreement has been duly executed and delivered by Subordinated Lender and is the valid and binding obligation of Subordinated Lender, enforceable against Subordinated Lender in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws affecting Senior Lender's rights generally and by principles of equity.

(b) *Senior Lender.* Senior Lender represents to Subordinated Lender as follows:

(i) *Authority and Validity.* This Agreement has been duly executed and delivered by Senior Lender and is the valid and binding obligation of Senior Lender, enforceable against Senior Lender in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws affecting Senior Lender's or Subordinated Lender's rights generally and by principles of equity.

5. *Covenants of Subordinated Lender.* Subordinated Lender covenants and agrees with Senior Lender that, unless Senior Lender shall otherwise agree in writing, prior to the termination of the First Loan Agreement and the Second Loan Agreement and payment in full of the Senior Debt, Subordinated Lender shall not:

(a) sell, transfer, assign, pledge, encumber, or otherwise dispose of any of the Subordinated Debt unless that sale, assignment, pledge, encumbrance, or disposition is expressly made subject to this Agreement;

(b) permit the terms of any of the Subordinated Loan Documents to be changed in a manner that will have an adverse effect on any rights or interests of Senior Lender under this Agreement; or

(c) accept additional collateral security for the payment of any Subordinated Debt or any other obligation of Borrower to Subordinated Lender, or obtain a lien, security interest, or other charge or encumbrance of any nature whatsoever against the Property or any other property of Borrower, whether now owned or later acquired.

6. *Rights of Senior Lender and Second Not to Be Impaired.* No right of Senior Lender to enforce the subordination as provided in this Agreement shall at any time in any way be prejudiced or impaired by any act by

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Senior Lender so long as such act is done in good faith and in accordance with reasonable commercial prudence or by any noncompliance by Borrower with the terms, provisions, and covenants of this Agreement, regardless of any actual or imputed knowledge of such noncompliance of Senior Lender. The provisions of this Agreement are for the benefit of and shall be enforceable directly by Senior Lender.

7. *Authority of Senior Lender and Second to Effect Subordination.* Senior Lender is irrevocably authorized and empowered (in its own name or in the name of Subordinated Lender or otherwise), but shall have no obligation, to demand, sue for, collect, and receive every payment referred to in Section 2 above and give acquittance for them and to file claims and proofs of claim and to take any other action (including without limitation voting the Subordinated Debt or enforcing any security interest or other lien securing payment of the Subordinated Debt) Senior Lender may deem necessary or advisable for the exercise or enforcement of any of its rights or interests in respect of the Senior Debt. In addition, and without limiting the generality of the foregoing, Subordinated Lender hereby irrevocably designates Senior Lender to act as the agent of Subordinated Lender for the purpose of voting or consenting in any bankruptcy or other similar proceeding with respect to any and all claims relating to the Subordinated Debt.

8. *Cooperation of Subordinated Lender.* Subordinated Lender shall duly and promptly take any action Senior Lender may request to (i) collect the Subordinated Debt for the account of Senior Lender, (ii) execute, verify, deliver and file appropriate claims or proofs of claim in respect of the Subordinated Debt, (iii) execute and deliver to Senior Lender any powers of attorney, consents, assignments, or other instruments Senior Lender may reasonably request to enable Senior Lender to enforce any and all claims with respect to and any security interests and other liens securing payment of the Subordinated Debt, and (iv) collect and receive any and all payments or distributions that may be payable or deliverable upon or with respect to the Subordinated Debt.

9. *Invalidity of Senior Debt.* All rights and interests of Senior Lender under this Agreement and all agreements and obligations of Subordinated Lender under this Agreement shall remain in full force and effect irrespective of (a) any lack of validity or enforceability of any of the Senior Loan Documents, (b) any change in the time, manner, or place of payment or in any other term of the Senior Debt, or any other amendments or waivers of or any consents to or departures from the terms of any of the Senior Loan Documents, (c) any exchange, release, or non-perfection of the First Mortgage, the Second Mortgage or any other interest of Senior Lender in any collateral, or any release, amendment, or waiver of or consent to departure from any guaranty, for all or any part of the Senior Debt, or (d) any other circumstance that might otherwise constitute a defense available to or a discharge of Borrower.

10. *Effect of Bankruptcy of Borrower.* The provisions of this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Debt is rescinded or must otherwise be returned by Senior Lender upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all as though the payment had not been made.

11. *Subrogation.* Subordinated Lender shall not be subrogated to the rights of Senior Lender to receive payments or distributions of assets of Borrower applicable to the Senior Debt until Senior Lender has received payment in full of the Senior Debt. Upon payment in full of the Senior Debt, Subordinated Lender shall be subrogated to the rights of Senior Lender to receive payments or distributions of assets of Borrower applicable to the Senior Debt until the Subordinated Debt is paid in full.

12. *Additional Credit Extensions.* Notwithstanding anything contained in the Subordinated Loan Agreement, Subordinated Lender agrees that Subordinated Lender shall not extend additional credit to Borrower unless Senior Lender has consented in writing thereto.

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13. *Specific Performance.* Senior Lender is hereby authorized and empowered to demand specific performance at any time when Subordinated Lender shall have failed to comply with any of the provisions of this Agreement. Subordinated Lender (a) irrevocably waives any defense based on the adequacy of a remedy at law that might be asserted as a bar to the remedy of specific performance and (b) acknowledges that the provisions of this Agreement are intended to be enforceable at all times, whether before or after the commencement of a proceeding referred to in Section 2(b).

14. *Waiver.* The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

15. *Continuing Agreement.* The provisions of this Agreement constitute a continuing agreement and shall (a) remain in full force and effect until Senior Lender's obligation to make advances under the Senior Loan Documents shall have been terminated as provided and the Senior Debt shall have been paid in full, (b) be binding on Subordinated Lender and its successors and assigns, and (c) inure to the benefit of and be enforceable by Senior Lender and its successors, transferees and assigns. Without limiting the generality of the foregoing, Senior Lender may assign or otherwise transfer the Senior Debt or any portion thereof held by Senior Lender, or grant any participation in any of its rights or obligations under the Senior Loan Documents to any other person or entity, and such other person or entity shall then become vested with all the rights in respect of the Senior Debt or such portion thereof transferred by Senior Lender.

16. *Amendments.* No amendment or waiver of any provision of this Agreement or consent to any departure from the terms hereof by Subordinated Lender shall in any event be effective unless in writing and signed by Senior Lender, and then only in the specific instance and for the specific purpose for which it was given.

17. *Legal Fees.* In connection with any litigation arising out of this Agreement the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs including all fees and costs incurred prior to and at all trial and appellate levels. Any court of competent jurisdiction entering a final judgment or order in such a matter shall determine which is the prevailing party, and shall include such costs as part of the final judgment or order entered.

18. *Notices.* Any notice that Senior Lender or Subordinated Lender may desire or be required to give hereunder shall be in writing and shall be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if deposited in the United States certified or registered mail, postage prepaid, return receipt requested, on the third business day after depositing in the mail, or (iii) if delivered by reputable overnight express carrier, freight prepaid, the next business day after delivery to such carrier, addressed to such party as follows:

If to Subordinated Lender: 910 West Van Buren Street
Suite 705
Chicago, IL 60607

with a copy to: Horwood Marcus & Berk Chartered
500 West Madison Street, Suite 3700
Chicago, Illinois 60661
Attn: Kristin L. Dunlap, Esq.

If to Senior Lender: 4753 North Broadway
Chicago, Illinois 60640
Attn: Andrew J. Rosa

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with a copy to:

Schain, Banks, Kenny & Schwartz, Ltd.
70 West Madison Street
Suite 5300
Chicago, Illinois 60602
Attn: David J. O'Keefe

Any party may change the address to which notices may be sent by notice to the other party or parties as provided herein.

19. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the internal laws and not the conflict of laws rules of the State of Illinois. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision.

***[BALANCE OF PAGE INTENTIONALLY BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]***

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IN WITNESS WHEREOF, Senior Lender and Subordinated Lender have executed this Agreement as of the date set forth above.

SENIOR LENDER:

BRIDGEVIEW BANK GROUP

By: 

Name: EDDY K NUNEZ

Title: VICE PRESIDENT

SUBORDINATED LENDER:

MATRIX CHEETAH LP, a Delaware limited partnership

By: **Matrix Holdings USA I LLC**, a Delaware limited liability company, its General Partner

By: 

Nicholas Roussos, Manager

ACKNOWLEDGMENT

Borrower acknowledges and agrees to the terms and conditions of the foregoing Subordination and Intercreditor Agreement, agrees to comply therewith and further agrees not to take any action that would result in a violation of thereof.

BORROWER:

140 SHERIDAN ROAD, LLC, an Illinois limited liability company

By: 

Name: 140 Sheridan Reza

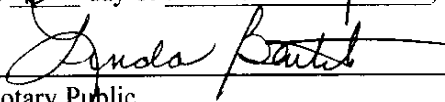
Title: Manager

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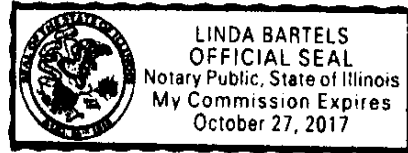
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, LINDA BARTELS, a Notary Public in and for said County, in the State aforesaid, do hereby certify that EDDY NUFIO, VICE PRESIDENT of **BRIDGEVIEW BANK GROUP**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VICE PRESIDENT, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of JANUARY, 2016.



Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF ~~COOK~~ DAKE @

I, Patrick H. Kennedy, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Nicholas Roussor**, Manager of **Matrix Holdings USA I LLC**, a Delaware limited liability company, the General Partner of **MATRIX CHEETAH LP**, a Delaware limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such General Partner, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said Company and Limited Partnership, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14 day of January, 2016.



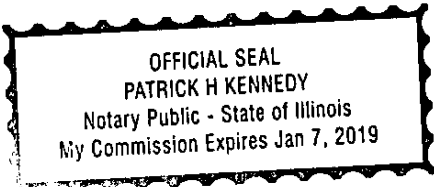


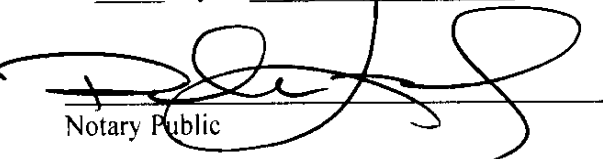
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF ~~COOK~~ DAKE @

I, Patrick H. Kennedy, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Raza Tamara, Manager of **140 SHERIDAN ROAD, LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14 day of January, 2016.





Notary Public

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EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 1 & 2 IN BREEN'S SUBDIVISION OF LOTS 7, 8 AND 9 AND PART OF LOTS 10 & 11 IN ETHELBURT'S SUBDIVISION OF PART OF LOT 3 IN CIRCUIT COURT PARTITION OF BLOCKS 3 AND 4 IN SIMON AND OTHERS SUBDIVISION OF PART OF FRACTIONAL SECTION 21, AND SECTION 22 TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS: 05-21-418-047-0000; AND
05-21-418-048-0000.

COMMON ADDRESS: 140 SHERIDAN ROAD
WINNETKA, IL 6009

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