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Doc#: 1815849096 Fee: \$70.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/07/2018 09:37 AM Pg: 1 of 12

Drafted by and after recording return to:

Jim Sager
CAPITAL FITNESS-CENTRAL, INC.
47W210 Route 30
Big Rock, Illinois 60511

(Space Above For Recorder's Use Only)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") made as of this 4 day of April, 2018, by and among STANDARD INSURANCE COMPANY, an Oregon corporation ("Lender"), ALBANY BANK AND TRUST COMPANY, N.A., as trustee under the Trust Agreement dated May 12, 1997, Trust No. 11-5320 (whose sole beneficiary is Skyline Investment Corporation), successor-in-interest to Skyline Investments, L.L.C. and SKYLINE PROPERTIES, L.L.C., an Illinois limited liability company (collectively and individually herein the "Landlord"), and CAPITAL FITNESS-CENTRAL, INC., an Illinois corporation ("Tenant").

RECITALS:

A. Tenant has executed that certain lease dated May 13, 1999 (as amended and extended from time to time, the "Lease", a Memorandum of Lease dated May 19, 1999 was recorded May 9, 2002 with the Cook County Recorder of Deeds, and a Memorandum of Lease dated October 10, 2013 was recorded November 15, 2013 with the Cook County Recorder of Deeds evidencing the Lease), with Landlord, as lessor, covering the premises described in the Lease consisting of the land legally described in Exhibit A attached hereto and made a part hereof by this reference, and the building, other improvements, and parking lots located thereon (and any rights to use adjacent parking lots owned by others, if any) (the "Premises"); and

B. Lender has made a loan (the "Loan") to Landlord secured by a mortgage from Landlord to Lender (the "Mortgage") dated 4/9/2018 and recorded 5/10/18 as document 1813629224 encumbering the Premises and Landlord has assigned Landlord's interest in the rents from the Premises to Lender pursuant to that certain assignment of rents (the "Assignment of Rents") dated 4/9/2018 and recorded 5/10/18 as document 1813629225 (said Mortgage and Assignment of Rents and any and all other documents executed in connection with the Loan, together with any amendments, renewals, increases, modifications, substitutions or consolidations of any of them from time to time, collectively, the "Security Instrument"); and

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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. Lender agrees that so long as the Lease shall be in full force and effect, and so long as Tenant is not in default under the Lease (beyond any applicable grace or cure period), Successor Owner (as hereinafter defined) agrees to the following:

(a) Successor Owner shall not disturb Tenant's possession, use or occupancy of the Premises, or the operation of its business from the Premises, or Tenant's other rights arising out of the Lease, during the term of the Lease, and all extensions and renewals thereof, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding brought upon the Security Instrument or for the foreclosure of the Security Instrument or the enforcement of any rights under the Security Instrument, or by any judicial sale or execution or other sale of the Premises, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Security Instrument or other documents as a matter of law, or (ii) any default under the Security Instrument; and

(b) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure, deed in lieu of foreclosure, or otherwise, of the Security Instrument or to enforce any rights under the Security Instrument; and

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises shall be applied and paid in the manner set forth in the Lease.

2. Provided that Successor Owner (as hereinafter defined) agrees not to disturb Tenant's possession, use or occupancy of the Premises, or the operations of its business from the Premises, or Tenant's other rights arising out of the Lease, during the term of the Lease, and all extensions and renewals thereof, so long as Tenant is not in default under the Lease beyond any grace or cure period granted to Tenant, the Lease and any extensions, modifications or renewals thereof, is and shall continue to be subject and subordinate in all respects to the Security Instrument and the lien created thereby.

3. If Lender or its nominee or designee, successors or assigns, or another purchaser of the Premises 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, or Tenant's other rights arising out of the Lease, during the term of the Lease, and all extensions and renewals thereof, 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 Premises as may be provided in the Lease. Tenant shall have all of its rights and obligations under the Lease during any such period of attornment, and Successor Owner shall have all of the rights and obligations of Landlord during any such period.

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Notwithstanding anything to the contrary herein, Successor Owner shall not be liable for or bound by any of the following matters:

- a. Claims Against Landlord. Any offset rights that Tenant may have against any prior landlord pursuant to the Lease, including without limitation the Landlord (herein together "Prior Landlord" – provided that Successor Owner, including without limitation Lender, and their successors and assigns are not included in the definition of Prior Landlord) relating to any event or occurrence before the date of attornment, except any offset rights available to Tenant relating to (i) any Prior Landlord default (or set of facts) giving rise to the offset for which Successor Owner received written notice of prior to the date of attornment and the opportunity to cure; or (ii) events occurring, or continuing to occur, after the date of attornment, or (iii) any event or occurrence to the extent Successor Owner benefits or benefited from such event or occurrence.
 - b. Prior Landlord's Acts or Omissions. Any act, omission, default, misrepresentation, or breach of warranty by Prior Landlord, except to the extent relating to (i) any Prior Landlord act, omission, default, misrepresentation, or breach of warranty for which Successor Owner received written notice of prior to the date of attornment and the opportunity to cure; or (ii) any Prior Landlord act, omission, default, misrepresentation, or breach of warranty to the extent Successor Owner benefits or benefited therefrom.
 - c. Prepayments. Any payment of rent that Tenant may have made to Prior Landlord more than thirty (30) days before the date such rent was first due and payable under the Lease, unless actually received by Successor Owner; provided that, the foregoing shall not apply to prepayments or estimated payments which Tenant is required to pay Landlord pursuant to the Lease, including without limitation estimated prepayments of Real Estate Taxes pursuant to the Lease.
 - d. Security Deposit. Except for the \$16,000.00 security deposit currently held by landlord pursuant to Section 3 of the Lease, any obligation with respect to any security deposited with Prior Landlord, unless such security was actually delivered to Successor Owner.
 - e. Modification; Amendment; or Waiver. Any material modification or material amendment of the Lease which either reduces the amount of the rent payable under the Lease or shortens the term of the Lease shall not be binding upon Successor Owner unless consented to by Successor Owner in writing, which consent shall not be unreasonably withheld, conditioned or delayed.
4. Tenant agrees to deliver to Lender, in the manner set forth in Paragraph 9 of this Agreement, a copy of any notice of default sent to Landlord by Tenant (the "Default Notice"). If Lender receives a Default Notice, Lender shall have the same period of time provided Landlord under the Lease within which to cure such default on behalf of Landlord. Lender's cure period shall begin to run upon receipt of the Default Notice, and may run simultaneously with Landlord cure period.
5. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable grace or cure periods granted to Landlord, Lender shall be entitled, but not obligated, to require that Tenant pay all rent under the Lease as directed by Lender, with such payments satisfying 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, and Landlord agrees to hold Tenant harmless with respect to any such payments made by Tenant to Lender.

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6. 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.

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

8. Neither the Security Instrument nor any other security instrument executed in connection therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned property regardless of the manner or mode of attachment thereof.

9. All notices and all other communication with respect to this Agreement shall be directed as follows: (i) if to Lender StanCorp Mortgage Investors, LLC, 19225 NW Tanasbourne Drive, Hillsboro, Oregon 97124, or such other address as Lender may designate in writing to Tenant and Landlord; and, (ii) if to Tenant, at the address set forth in the Lease or at such other address as Tenant may designate in writing to Lender and Landlord; and, (iii) if to Landlord, at the address set forth in the Lease or at such other address as Landlord may designate in writing to Tenant and 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 addressee's return receipt or the expiration of three business days after the date of mailing, whichever is earlier in time.

10. 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.

11. 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.

12. Notwithstanding any other provision hereof to the contrary or otherwise, Tenant's past, present and future affiliates, related parties, managers, members, trustees, beneficiaries, partners, shareholders, officers, directors, employees, agents and any direct or indirect owner of Tenant, and any successors and assigns of the aforementioned (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. In no event, shall any deficiency judgment, or any money judgment, or any judgment of any kind, or any judicial process of any kind, or any other process or claim of any kind, be sought or obtained against any of the Non-Liable Parties by Landlord and anyone 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 the Lease and this Agreement, and shall be binding upon Landlord, Lender and Successor Owner, and anyone claiming by, through or under Landlord, Lender and Successor Owner, and any of their successors, affiliates and assigns.

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13. Tenant executed this Agreement on April 4 2018. This Agreement shall be null and void and of no force and effect whatsoever and shall automatically terminate without any further action required by any party in the event that a fully executed copy of this Agreement is not recorded in the Cook County recorder office by 5:00 PM Central Day Light Time on April 30, 2018.

[APPROPRIATE SIGNATORIES, NOTARIES AND EXHIBITS TO BE ATTACHED]

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[Landlord Signatures Continued from Preceding Page]

LANDLORD (Continued):

ALBANY BANK AND TRUST COMPANY, N.A., as trustee under the Trust Agreement dated May 12, 1997, Trust No. 11-5320 (whose sole beneficiary is Skyline Investment Corporation), successor-in-interest to Skyline Investments, L.L.C.

By: _____

Name: _____

Its: _____

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
) SS.
COUNTY OF)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that _____, the _____ of _____ who is 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 signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said _____, for the uses and purposes herein set forth.

GIVEN under my hand and notarial seal this _____ day of _____ 2016.

Notary Public

My Commission Expires:

[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

TENANT:

CAPITAL FITNESS-CENTRAL, INC., an Illinois corporation

By: _____

Name: Evan M. Bayman

Title: Not individually but as Vice-President

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STATE OF ILLINOIS)

) SS.

COUNTY OF KANE)

DIANA BROWN

I, ~~Karla Nash~~, a Notary Public in and for Kane County, Illinois, do hereby certify that Evan M. Rayman, as Vice President of Capital Fitness-Central, Inc., an Illinois corporation, who is personally known to me to be the same person as whose name is subscribed to the foregoing instrument, who appeared before me on this day and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of Capital Fitness-Central, Inc., for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 23rd day of April, 2018

Diana L Brown
Notary Public

My Commission Expires: 9/21/18



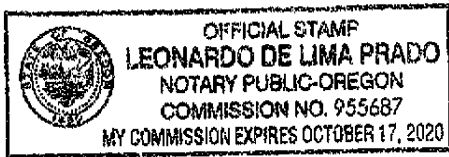
[Signatures Continue on Following Page]

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STATE OF OREGON)
) ss:
COUNTY OF WASHINGTON)

On this 24th day of April, 2018, before me, Leonardo De Lima Prado, appeared AMY FRAZEY and JASON F. WELLS, both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President of STANDARD INSURANCE COMPANY, an Oregon corporation, the within named corporation, and that the seal affixed to said document is the corporate seal of said corporation, and that the said document was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, an Oregon limited liability company, as Servicer of STANDARD INSURANCE COMPANY and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.



Leonardo L. Prado
Notary: Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PREMISES

THE EAST 228.42 FEET (EXCEPTING THEREFROM THE WEST 106 FEET OF THE SOUTH 161 FEET THEREOF ALSO EXCEPT THE WEST 89.42 FEET OF THE EAST 122.42 FEET OF THE SOUTH 156.45 FEET THEREOF, ALSO EXCEPT THE EAST 33 FEET TAKEN FOR CENTRAL AVENUE AND EXCEPT THAT PART TAKEN FOR MELROSE AVENUE) OF THE SOUTH 5 ACRES OF THE EAST 40 ACRE OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TOGETHER WITH

LOT 1 (EXCEPT THE EAST 150 FEET THEREOF) IN BLOCK 2 IN FIELD AND MARTIN'S SUBDIVISION OF OF BLOCKS 5 AND 6 OF THE SUBDIVISION OF LOTS D, E AND F IN THE PARTITION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 6, 1910 AS DOCUMENT 4535254, IN COOK COUNTY, ILLINOIS.

Cook County Clerk's Office