

# UNOFFICIAL COPY

Prepared by and after  
recording, return to:  
Kelly M. Greco  
Polsinelli PC  
150 N. Riverside Plaza, Suite 3000  
Chicago, Illinois 60606

\*1915817058\*

Doc# 1915817058 Fee \$88.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 06/07/2019 12:47 PM PG: 1 OF 12

## FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "**Amendment**") entered into as of June 4, 2019 (the "**Effective Date**") amends the Declaration of Covenants, Conditions, Restrictions and Easements dated July 7, 1987, and recorded by the Cook County Recorder of Deeds on November 22, 1995, as Document No. 95812460 (the "**Declaration**").

### RECITALS:

A. GW NILES 2E, LLC, an Illinois limited liability company ("**GW**"), is the sole owner of a parcel of land situated in the Village of Niles, County of Cook, State of Illinois, described on Exhibit A attached hereto and incorporated herein ("**GW Parcel**").

B. NILES 572, LLC, a New Jersey limited liability company ("**Niles 572**"), is the sole owner of a parcel of land situated in the Village of Niles, County of Cook, State of Illinois, described on Exhibit B attached hereto and incorporated herein ("**Niles 572 Parcel**," and together with the GW Parcel, "**Lot 1**").

C. AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER PROVISIONS OF A CERTAIN TRUST AGREEMENT DATED JULY 31, 1995 AND KNOWN AS TRUST NUMBER 120670-05 ("**Lot 2 Owner**"), is the sole owner of a parcel of land situated in the Village of Niles, County of Cook, State of Illinois, described on Exhibit C attached hereto and incorporated herein ("**Lot 2**").

D. Lot 1 and Lot 2 are collectively referred to herein as the "**Development**".

E. The Development is encumbered by the terms and provisions of the Declaration, which, among other things, provides for the use of a Service Drive as an access way.

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F. The term “**Benefited Party**” means each of GW, Niles 572 and Lot 2 Owner (including any tenant(s) and/or occupant(s) of each such party), and “**Benefited Parties**” refers collectively to all of GW, Niles 572 and Lot 2 Owner (including any tenant(s) and/or occupant(s) of such parties).

G. The Benefited Parties desire to amend the Declaration in certain respects.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Benefited Parties hereby agree as follows:

1. Incorporation and Defined Terms. The recital paragraphs set forth above are hereby incorporated herein as if fully set forth herein. Capitalized terms not otherwise defined herein shall have the same meanings as are ascribed to such terms in the Declaration.

2. Service Drive. Notwithstanding anything to the contrary contained in the Declaration, the Benefited Parties acknowledge and agree that the Service Drive is revised so that it shall be limited to the Access Driveway depicted on the site plan attached hereto as Exhibit D (the “**Site Plan**”). Notwithstanding the foregoing, the Benefited Parties hereby acknowledge and agree that the retail customers of the Benefited Parties shall have the non-exclusive right to park in the parking spaces depicted on the Site Plan and labeled as the “**Shared Parking Spaces**”. Notwithstanding anything herein to the contrary, in no event will any of the Shared Parking Spaces be used by the Benefited Parties for any other purpose. Further to and without limiting the immediately preceding sentence, in no event will any of the Shared Parking Spaces be used (i) by any employee of the Benefited Parties, nor (ii) for storage of automobiles, inventory or other personal property of the Benefited Parties.

3. Section 3.03. The second sentence of Section 3.03 of the Declaration is hereby deleted in its entirety and replaced with the following:

“All other covenants and restrictions of this Declaration shall run and bind the land for a term expiring upon the earlier to occur of (i) the termination of that certain Retail Lease dated August 27, 2018, by and between GW, as landlord, and Fitness International, LLC, a California limited liability company, as tenant, affecting the GW Parcel, or (ii) January 1, 2055.”

4. Integration of Declaration and Controlling Language. This Amendment and the Declaration shall be deemed to be, for all purposes, one instrument. In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Declaration, the terms and provisions of this Amendment, in all instances, shall control and prevail.

5. Severability. If any provision of this Amendment or the application thereof to any person or circumstance is or shall be deemed illegal, invalid or unenforceable, the remaining

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provisions hereof shall remain in full force and effect and this Amendment shall be interpreted as if such legal, invalid or unenforceable provision did not exist herein.

6. Entire Agreement. This Amendment and the Declaration contain the entire integrated agreement between the parties respecting the subject matter of this Amendment and the Declaration and supersede all prior and contemporaneous understandings and agreements, other than the Declaration, between the parties respecting the subject matter of this Amendment and the Declaration. There are no representations, agreements, arrangements or understandings, oral or in writing, between or among the parties to this Amendment relating to the subject matter of this Amendment or the Declaration which are not fully expressed in this Amendment and the Declaration, and no party hereto has relied upon any other such representations, agreements, arrangements or understandings. The terms of this Amendment and the Declaration are intended by the parties as the final expression of their agreement with respect to those terms and may not be contradicted by evidence of any prior agreement or of any contemporaneous agreement. The parties further intend that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Amendment.

7. Successors and Assigns. Each provision of the Declaration and this Amendment shall extend to and shall bind and inure to the benefit of the Benefited Parties and their respective successors and assigns.

8. Time of the Essence. Time is of the essence of this Amendment and the Declaration and each provision hereof.

9. Multiple Counterparts. This Amendment may be executed in counterparts, all of which, when taken together, shall constitute a fully executed instrument. Counterparts transmitted by email or other electronic means shall have the same force and effect as an original counterpart.

10. Authority. Each Benefited Party represents and warrants that it has full authority to execute and deliver this Amendment.

11. Ratification. Except as amended and modified hereby, the Declaration shall be and shall remain unchanged and in full force and effect in accordance with its terms, and, as the Declaration is amended and modified hereby, the Declaration is hereby ratified, adopted and confirmed.

*[Execution page follows]*

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

**GW:**

**GW NILES 2E, LLC,**  
an Illinois limited liability company

By: Mitchell Goltz  
Name: Mitchell Goltz  
Its: Authorized Signatory

STATE OF ILLINOIS }  
                                      } SS.  
COUNTY OF COOK }

I, the undersigned a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named Mitchell Goltz being the Authorized Signatory of GW NILES 2E, 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 Authorized Signatory appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and Notary Seal, this 11 day of April, 2019.

Notary Public Natalie Renee Acerto  
My Commission Expires: 8/4/20



[Signatures continue on next page]

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**NILES 572:**

**NILES 572, LLC,**  
a New Jersey limited liability company

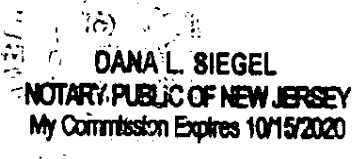
By: David Lowenstein  
Name: David C. Lowenstein  
Its: Manager

STATE OF New Jersey }  
  } SS.  
COUNTY OF Essex }

I, the undersigned a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named David C. Lowenstein, being the Manager of Niles 572, LLC, a New Jersey limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and Notary Seal, this 12<sup>th</sup> day of October, 2018.

Notary Public  
My Commission Expires: Dana Siegel



DANA L. SIEGEL  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 10/15/2020

[Signatures continue on next page]

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LOT 2 OWNER:

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, AS TRUSTEE UNDER  
PROVISIONS OF A CERTAIN TRUST  
AGREEMENT DATED JULY 31, 1995 AND KNOWN  
AS TRUST NUMBER 120670-05

By: TODD Berman  
Name: TODD BERMAN  
Its: Authorized Signatory

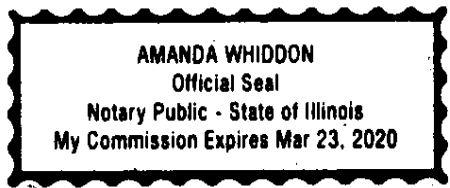
STATE OF IL }  
                                      } SS.  
COUNTY OF COOK }

I, the undersigned a Notary Public in and for the County and State aforesaid, DO  
HEREBY CERTIFY, that the above named TODD BERMAN, being the  
Authorized Signatory of AMERICAN NATIONAL BANK AND TRUST COMPANY OF  
CHICAGO, AS TRUSTEE UNDER PROVISIONS OF A CERTAIN TRUST AGREEMENT  
DATED JULY 31, 1995 AND KNOWN AS TRUST NUMBER 120670-05, personally known  
to me to be the same person whose name is subscribed to the foregoing instrument as such  
TODD BERMAN, appeared before me this day in person and acknowledged that he/she  
signed and delivered the said instrument as his/her own free and voluntary act and as the free and  
voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and Notary Seal, this 11 day of April, 2019.

Notary Public  
My Commission Expires:

Amanda Whiddon  
April 11, 2019



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## EXHIBIT A

### GW PARCEL

LOT 2 AND 2A IN THE FINAL PLAT OF RAYMOND HARA FIRST ADDITION RESUBDIVISION RECORDED AUGUST 23, 2011 AS DOCUMENT NUMBER 1123534015, A RESUBDIVISION OF LOT 1 IN RAYMOND HARA SUBDIVISION RECORDED SEPTEMBER 30, 1994 AND RECORDED AS DOCUMENT NUMBER 94847852, BEING A SUBDIVISION OF THE NORTHEAST FRACTIONAL 1/4 OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT B

### NILES 572 PARCEL

LOT 1 IN THE FINAL PLAT OF RAYMOND HARA FIRST ADDITION RESUBDIVISION RECORDED AUGUST 23, 2011 AS DOCUMENT NUMBER 1123534015, A RESUBDIVISION OF LOT 1 IN RAYMOND HARA SUBDIVISION RECORDED SEPTEMBER 30, 1994 AND RECORDED AS DOCUMENT NUMBER 94847852, BEING A SUBDIVISION OF THE NORTHEAST FRACTIONAL 1/4 OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.



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## EXHIBIT C

### LOT 2

LOT 2 IN RAYMOND HARA SUBDIVISION, BEING A SUBDIVISION OF THE NORTHEAST FRACTIONAL QUARTER OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

5700-5729 West Touhy Avenue  
Niles, IL 60714

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EXHIBIT D

SITE PLAN

See attached.

Property of Cook County Clerk's Office

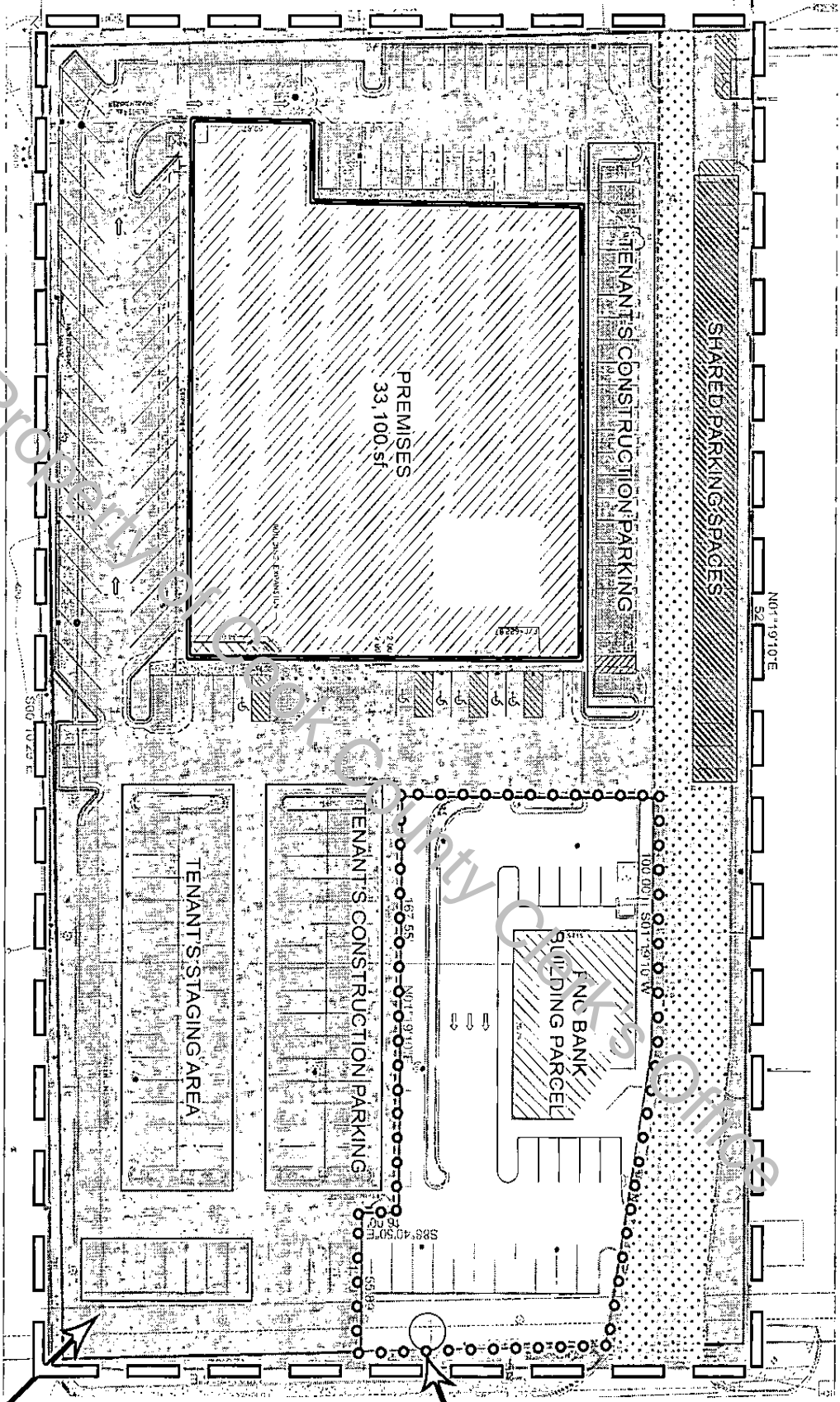
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PARKING SPACES: 193 + 7 H.A. = 200 (NOT INCLUDING BANKING PARKING)  
 PNC PARKING : 21 SPACES  
 TOTAL PARKING ON SITE : 221 SPACES



PROJECT  
 TENANT AREA OF CONTROL  
 SHARED PARKING SPACES  
 ACCESS DRIVEWAY

TRAILER (PRESALES)  
 PNC BANK BUILDING PARCEL  
 The PNC Bank Building Parcel is not part of the Project

EXISTING  
 MONUMENT SIGN

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## LENDER CONSENT

The undersigned, the beneficiary under that certain Mortgage, Security Agreement and Assignment of Leases and Rents dated as of December 11, 2018, and recorded by the Cook County Recorder of Deeds on December 28, 2018 as Document No. 1836219281, as the same may be amended or supplemented from time to time (the "Mortgage"), which Mortgage encumbers the GW Parcel, which is subject to the Plat, hereby consents to and approves (but does not subordinate its lien or any rights to) the Agreement. The Plat, as modified hereby, shall not be extinguished, limited or affected to any extent by any foreclosure of the Mortgage.

OLD PLANK TRAIL COMMUNITY BANK, N.A.

By: Umar Riaz  
Name: Umar Riaz  
Title: AVP

STATE OF ILLINOIS

COUNTY OF COOK

The foregoing Lender Consent was acknowledged before me this 23<sup>rd</sup> day of MAY 2019, by UMAR RIAZ as AVP of OLD PLANK TRAIL COMMUNITY BANK, N.A.

Witness my hand and official seal.

My commission expires: 11/20/22



Notary Public

