



W3045990

E# 3045990 PG 1 OF 8
Leann H. Kilts, WEBER COUNTY RECORDER
07-Apr-20 01:27 PM FEE \$40.00 DEP TN
REC FOR: THOMAS TITLE & ESCROW
ELECTRONICALLY RECORDED

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

FITNESS ALLIANCE, LLC
1 East Washington Street, Suite 500
Phoenix, Arizona 85004
Attention: Brad Neste

1250 NTL

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance, and Attornment Agreement (this "**Agreement**") is made as of February 28, 2020, by and among BG ROY FITNESS, LLC, an Arizona limited liability company (the "**Landlord**"), ACADEMY BANK, N.A., a national banking association (the "**Lender**"), and FITNESS ALLIANCE, LLC, an Arizona limited liability company (the "**Tenant**").

WITNESSETH:

WHEREAS, Lender is the holder of a Note in the original principal amount of \$5,598,905, secured by a Deed of Trust, Assignment of Rents, Security Agreement, and Financing Statement, dated February 28, 2020 (the "**Deed of Trust**"), executed by the Landlord, as trustor, for the benefit of the Lender covering the property legally described in Exhibit A attached hereto and made a part hereof;

WHEREAS, pursuant to that certain Lease dated as of January 23, 2020, (the "**Lease**"), evidenced by Memorandum of Lease of even date therewith, recorded on February 28, 2020, as Instrument No. 3037952, in the real property records of Weber County, Utah, presently leases to Tenant, as tenant, that property described on Exhibit A (referred to as the "**Leased Premises**");

WHEREAS, Lender and Tenant desire to confirm their understanding with respect to the Lease and the Deed of Trust;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the parties agree as follows:

1. Subordination. The Lease and any existing extensions, renewals, replacements, or modifications thereof, and all of the right, title, and interest of Tenant in and to the Leased Premises, including, but not limited to, any option or right of first refusal to purchase the Leased Premises or any acquisition of title to the Leased Premises or any portion thereof by Tenant during the term of the Deed of Trust, are and shall be subject and subordinate to the Deed of Trust and the other collateral and security documents securing the Loan and to all of the terms and conditions

contained therein, and to any renewals, amendments, modifications, increases in secured indebtedness, replacements, consolidations, and extensions thereof.

2. Non-Disturbance. In the event Lender or any other party acquires title or right of possession of the Leased Premises under the Deed of Trust through foreclosure, deed in lieu of foreclosure, or otherwise, the Lease shall remain in full force and effect and Tenant shall have the right to continue occupancy of the Leased Premises in accordance with the terms and provisions of the Lease. In such event, Lender or any other party shall be in all respects bound by the Lease as Landlord and shall observe all of Tenant's rights thereunder. Subject to Section 6 below, if there shall be a conflict between the terms of the Lease and the terms of the Deed of Trust, the terms of the Lease shall prevail.

3. Attornment. So long as Lender shall be bound by the terms and conditions of the Lease, Tenant shall attorn to Lender when Lender holds title to the Leased Premises, whether such title is obtained pursuant to Lender's rights under the Deed of Trust, or otherwise, and Tenant will have the right to continue occupancy of the Leased Premises under the same terms and conditions of the Lease.

4. Foreclosure Proceedings. Lender shall not include Tenant in any foreclosure proceeding involving the Lease Premises.

5. Notice of Release. Lender shall promptly advise Tenant upon the release, cancellation, or termination of the Deed of Trust.

6. Lender's Liability. Tenant agrees with Lender that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be (a) liable for any action, omission, negligence, or default of any prior landlord (including Landlord) under the Lease, or (b) subject to any offsets, abatement, reduction of rent, or defenses that Tenant might have against any prior landlord for the period prior to Lender's succession in interest, or (c) bound by any rent or additional rent that Tenant might have paid for more than the current month to any prior landlord, or (d) liable for the return of or application of any security deposit that Tenant may have paid to any prior landlord, unless such deposit has been actually paid to Lender or is in an escrow fund available to and deposited with Lender, or (e) bound by any amendment or modification of the Lease or any waiver of any terms of the Lease made after execution of this Agreement (unless such amendment memorializes an exercise of a right by Tenant as set forth in the Lease) that has the effect of reducing rent to Landlord or altering the term of the Lease prior to its current expiration without Lender's prior written consent (which may not be unreasonably withheld), or (f) bound by any provision in the Lease that obligates Landlord to erect or complete any building or to perform or fund any construction work or to make or fund any improvements to the Leased Premises, or (g) bound by any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, except as expressly set forth in the Lease.

7. Notices under the Lease. So long as the Deed of Trust remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner hereinbelow provided, a concurrent copy of all notices permitted or required to be given to Landlord by Tenant under and pursuant to the terms and provisions of the Lease. At any time before the rights of

Landlord shall have been forfeited or adversely affected because of any default of Landlord, or within the time permitted Landlord for curing any default under the Lease as therein provided, Lender may, but shall have no obligation to, pay any taxes and assessments, make any repairs and improvements, make any deposits, or do any other act or thing required of Landlord by the terms of the Lease; and all payments so made and all thing so done and performed by Lender shall be as effective to prevent the rights of Landlord from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by Landlord. Notwithstanding the foregoing or any provision in the Lease to the contrary, Lender shall have a minimum of 30 days after its receipt of the notice to remedy the default or claimed default that allows Tenant to pay less than all rent due under the Lease or to terminate the Lease; *provided, however*, that if such default or claimed default cannot be remedied with reasonable diligence by Lender within 30 days, Lender shall have such additional time as is reasonably necessary to remedy the default with reasonable diligence and continuity not to exceed 30 days. Furthermore, if a default can be reasonably remedied only if Lender first obtains possession of the Leased Premises, Lender shall have any additional time as is reasonably necessary under the circumstances to obtain possession of the Leased Premises and to remedy the default with reasonable diligence and continuity thereafter not to exceed 30 days.

8. Right to Enter. For the purpose of facilitating Lender's rights under this Agreement, Lender shall have and is granted by Tenant and Landlord the right to enter upon the Leased Premises, at reasonable times and upon 24 hours prior notice to Tenant and upon the accompaniment of a designated representative of Tenant (no prior notice is necessary if an event of default exists under the Lease or the Loan documents), for the purpose of performing periodic inspections of the Leased Premises required by the Loan documents or causing any cure for which this Agreement provides; *provided, however*, that any such entry must comply with all applicable laws and shall not be unreasonably disruptive to the operation of the Leased Premises.

9. Assignment of Lease. Tenant acknowledges that Landlord may execute and deliver to Lender an assignment of the Lease as security for the Loan and Tenant hereby expressly consents to any such assignment.

10. Estoppel. Landlord and Tenant hereby certify to Lender that the Lease is in full force and effect; that the Lease and any modifications and amendments specified herein or therein are a complete statement of the agreement between Landlord and Tenant with respect to the leasing of the Leased Premises, and the Lease has not been modified or amended except as specified herein; that to the actual knowledge of Landlord and Tenant, no party to the Lease is in default thereunder; that no rent under the Lease has been paid more than 30 days in advance of its due date; and that, to the actual knowledge of each party, Tenant, as of this date, has no charge, lien, or claim of offset under the Lease, or otherwise, against the rents or other charges due or to become due thereunder.

11. Notices. Any and all notices, elections, or demands permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election, or demand and shall be delivered personally, or sent by registered or certified United States mail, postage prepaid, to the other party at the address set forth below, or at such other address within the United States as may have theretofore been designated in writing. The date of personal delivery

or the date of mailing, as the case may be, shall be the date of such notice, election, or demand. For the purposes of this Agreement the address of:

Lender is: Academy Bank, N.A.
1111 Main Street, Suite 202
Kansas City, Missouri 64105

Tenant is: Fitness Alliance, LLC
1 East Washington Street, Suite 500
Phoenix, Arizona 85004

Landlord is: BG Roy Fitness, LLC
2390 E. Camelback Road, Suite 200
Phoenix, Arizona 85016

12. Successors and Assigns. This Agreement shall also bind and benefit the heirs, legal representatives, successors, and assigns of the respective parties hereto and all covenants, conditions, and agreements herein contained shall be construed as running with the land.

13. Governing Law. It is agreed that the laws of the State of Arizona shall govern the construction and interpretation of this Agreement and the rights and obligations set forth herein.

14. Waiver of Jury Trial. LENDER, LANDLORD, AND TENANT EACH HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE ARISING IN CONNECTION WITH THIS AGREEMENT. LENDER, LANDLORD, AND TENANT STATE THAT THEY HAVE CONFERRED SPECIFICALLY WITH RESPECT TO THIS WAIVER AND HAVE AGREED TO THIS WAIVER AFTER CONSULTATION WITH THEIR RESPECTIVE COUNSEL AND WITH FULL UNDERSTANDING OF THE IMPLICATIONS HEREOF.

15. Attorneys' Fees. In the event of any legal or equitable action, including any appeals or bankruptcy proceedings, that may arise hereunder between or among the parties hereto, the prevailing party shall be entitled to recover its costs and its reasonable attorneys' fees and paralegals' fees.

16. Severance. The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining provisions and portions hereof.

17. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. A signed copy of this Agreement delivered by electronic mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

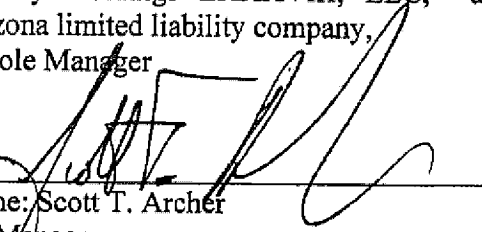
[Signature pages follow.]

IN WITNESS WHEREOF, the parties have hereunto caused this Subordination, Non-Disturbance, and Attornment Agreement to be duly executed as of the day and year first above-written.

LANDLORD:

BG ROY FITNESS, LLC, an Arizona limited liability company

By: Barclay Holdings LXXXVIII, LLC, an Arizona limited liability company, its sole Manager

By: 
Name: Scott T. Archer
Its: Manager

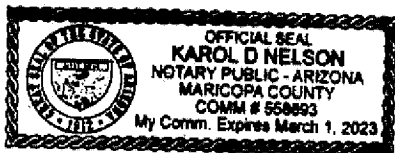
State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 3rd day of April, 2020, by Scott T. Archer, the Manager of Barclay Holdings LXXXVIII, LLC, an Arizona limited liability company, sole manager of BG Roy Fitness, LLC, an Arizona limited liability company, on behalf of the companies.


Notary Public

(Seal and Expiration Date) 3/1/2023



[Signature page to SNDA]

LENDER:

ACADEMY BANK, N.A., a national banking association

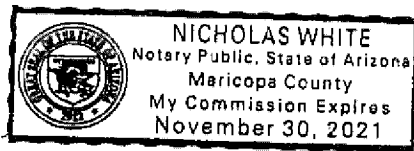
By: [Signature]
Name: Jason Royer
Title: Vice President

STATE OF ARIZONA
COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 7 day of APRIL, 2020, by Jason Royer, as Vice President of Academy Bank, N.A., a national banking association (the "Bank"), on behalf of the Bank. He is personally known to me or has produced a valid driver's license as identification.

[Signature]
Notary Public

(Seal and Expiration Date)



IN WITNESS WHEREOF, the parties have hereunto caused this Subordination, Non-Disturbance and
Attornment Agreement to be duly executed as of the day and year first above-written.

TENANT:

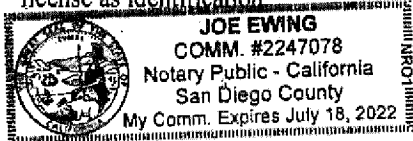
FITNESS ALLIANCE, LLC, an Arizona limited liability
company

By: *Richard Orensberg*
Name: Richard Orensberg
Title: CEO

STATE OF California

COUNTY OF San Diego

The foregoing instrument was acknowledged before me this 27 day of March, 2020, by
Richard Orensberg the CEO of Fitness Alliance, LLC, an Arizona limited
liability company, on behalf of the company. He/She is personally known to me or has produced a valid driver's
license as identification



(Seal and Expiration Date)

Joe Ewing
Notary Public

JUN 18 2022

EXHIBIT A

LEGAL DESCRIPTION

PART OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT 783.3 FEET SOUTH AND 175 FEET NORTH 89°58' WEST OF THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 343.65 FEET; THENCE EAST 125 FEET TO THE WEST LINE OF HIGHWAY; THENCE SOUTH 52.35 FEET; THENCE WEST 463 FEET; THENCE NORTH 66 FEET; THENCE WEST 122 FEET TO THE WEST LINE OF 2000 WEST STREET; THENCE NORTH 198 FEET ALONG STREET; THENCE EAST 5 FEET; THENCE NORTH 0°10' EAST 112.10 FEET; THENCE AROUND THE ARC OF A 20 FOOT RADIUS CURVE TO RIGHT 31.37 FEET; THENCE SOUTH 89°58' EAST 181 FEET; THENCE SOUTH 0°10' WEST 132 FEET; THENCE SOUTH 89°58' EAST 138 FEET; THENCE NORTH 0°10' EAST 132 FEET; THENCE SOUTH 89°58' EAST 116 FEET TO BEGINNING.

09-102-0007