

10

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

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

13213801
03/10/2020 03:29 PM \$40.00
Book - 10908 Pg - 1305-1314A
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
CROME & DUNLEUVY
324 N ROBINSON AVE STE 100
OKLAHOMA CITY OK 73102
BY: STP, DEPUTY - WI P.

11

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is made as of December 16, 2019, by and among TPP 217 TAYLORSVILLE, LLC, a Delaware limited liability company (the "Landlord"), NEXBANK SSB (the "Lender"), and FITNESS ALLIANCE UT, LLC, a Utah limited liability company (the "Tenant").

WITNESSETH:

WHEREAS, Lender is the holder of a Note in the original principal amount of \$69,000,000.00, secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated September 27, 2018 recorded in Book 10717 at Page 7116 in the real estate records of Salt Lake County, Utah (the "Mortgage"), executed by the Borrower, 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 Shopping Center Lease dated as of November 18, 2019 (the "Lease"), evidenced by Memorandum of Lease of even date, recorded on January 23, 2020 in Book 10888 at Page 669-675 in the real estate records of Salt Lake County, Utah, Borrower, as landlord, presently leases to Tenant, as tenant, a portion of that property described on Exhibit A, as more particularly shown on Exhibit A-1 (referred to as the "Premises");

WHEREAS, Lender and Tenant desire to confirm their understanding with respect to the Lease and the Mortgage;

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 AND NON-DISTURBANCE**. Subject to the provisions of this Agreement, Tenant hereby agrees that the Lease and the rights of Tenant in and to the Premises are subject and subordinate to the Mortgage, and to all amendments, supplements, modifications, renewals, and extension thereof, but Lender consents to the terms and provisions of the Lease and agrees that (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease (including during any extensions or renewals thereof) will not be terminated, diminished, or interfered with by Lender in the exercise of any of Lender's rights under the Mortgage, and (b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing on the Mortgage unless such joinder is necessary to foreclose on the Mortgage, and then only for such purpose and not for the purpose of terminating Tenant's interest and estate under the Lease.

2. **ATTORNMEN**T. If any interest of Borrower in the Premises is transferred by reason of foreclosure or other proceeding brought by Lender under the Mortgage, including a deed in lieu of foreclosure, Tenant will be bound to the successor to Borrower's interest (the "Owner") under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and any extensions, or renewals thereof, and Tenant does hereby attorn to Owner as Tenant's landlord. The attornment will be effective and self-operative immediately without the execution of any further instruments on the part of either Tenant or Owner. From and after such attornment, Owner will be bound to Tenant under all of the terms, covenants, and conditions of the Lease as direct indenture of Lease with the same force and effect as if originally entered into between Tenant and Owner, but Tenant will be under no obligation to pay rent to Owner except in accordance with the provisions of Section 4 below.

3. **LENDER'S RIGHT TO CURE LEASE DEFAULTS**. Tenant will give Lender a copy of any notice of default issued by Tenant to Borrower under the Lease at the address of Lender as set forth above and will give Lender such time as is provided to Borrower under the Lease to cure such default or rectify such occurrence. Tenant will not, be entitled to cancel the Lease, or except in an emergency, abate or offset against the rent, or exercise any other right or remedy, until Lender has been given notice of default and an opportunity to cure the same as provided herein. The failure of Tenant to give any such notice to Lender will not be deemed a default hereunder or under the Lease, but no such notice will be deemed to have been given or effective as to Lender unless and until such notice is given to Lender in accordance with this Section.

4. **PAYMENTS TO OWNER OR LENDER**. Upon written notification to Tenant from Owner of attornment pursuant to Section 2 above or a notice from Lender demanding that rent and other payments be made to such party after a default by Borrower under the Mortgage, Borrower hereby authorizes and directs Tenant, notwithstanding any contrary instruction, direction, or assertion of Borrower, as landlord under the Lease, and Tenant hereby agrees, to pay to Owner or Lender, as the case may be, all payments due under the terms of the Lease commencing with the calendar month following receipt of such demand from Owner or Lender. As an inducement for Tenant's agreement to pay as aforesaid, Owner or Lender, as the case may be, must indemnify, defend, protect and hold Tenant harmless from any liability Tenant may suffer as a result of compliance with such party's written instructions to make such payment. Borrower, as landlord under the Lease, also hereby releases and discharges Tenant from any liability under the Lease with respect to any such payments paid to Owner or Lender after Tenant's receipt of any such notice and agrees that Tenant may rely on any such notice without duty to inquire, dispute, or challenge any such notice.

5. **BORROWER'S INDEMNITY**. If Tenant becomes a party to any litigation by reason of Lender's enforcement of any rights granted by the Mortgage and Tenant is not in default under the terms and conditions of the Lease so as to permit Borrower (as landlord under the Lease) thereunder to terminate the Lease, Borrower must indemnify, defend and hold Tenant harmless against any loss, damage, liability (or any claims in respect to the aforementioned), costs or expenses (including reasonable attorneys' fees) of whatever nature caused by or resulting from Lender's enforcement of the rights granted Lender under the Mortgage.

6. **SCOPE OF MORTGAGE**. Neither the Mortgage, the Assignment of Leases,

nor any other security granted in connection with the Mortgage will extend to or be construed as subjecting in any manner to the lien thereof, any of "Tenant's Improvements" or "Tenant's Property" (as such terms are defined in the Lease) at any time furnished or installed by or for Tenant or Tenant's subtenants or licensees on the Premises regardless of the manner or mode of attachment thereof.

7. **CONFIRMATION OF MORTGAGE; RELEASE.** If Tenant requests in writing that Lender indicate whether the Mortgage has been released, terminated or satisfied, Lender must respond to such written request within thirty (30) business days of such request. If Lender fails to respond to such request within ten (10) days after a second request for such confirmation, then Lender will be deemed to have waived and forfeited Lender's rights to receive notice and cure defaults under this Agreement. Upon recording in the real property records where the Premises are located of a written full release, satisfaction or reconveyance of the Mortgage authorized by Lender, this Agreement will automatically terminate without the need for further action.

8. **AUTHORITY.** Each party warrants and represents to each other (for itself only) that (a) it has full capacity, right, power and authority to execute, deliver and perform this Agreement, and (b) all required actions and approvals therefor have been duly taken and obtained on behalf of such party.

9. **RECORDATION.** At Tenant's election, this Agreement, or a memorandum, notice or short form of this Agreement, may be recorded in the applicable real estate records and the parties will cooperate with Tenant in effecting such recordation.

10. **AMENDMENT.** This Agreement may not be modified orally or in any manner other than by a written instrument signed by the parties hereto or their successors in interest.

11. **SUCCESSORS AND ASSIGNS.** This Agreement and each and every covenant, agreement and other provision hereof is binding upon and inures to the benefit of the parties hereto and their heirs, administrators, representatives, successors and assigns.

12. **CHOICE OF LAW.** This Agreement is made and executed under and in all respects is to be governed by and construed in accordance with the laws of the State where the Premises are located.

13. **CAPTIONS AND HEADINGS.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular includes the plural, the plural includes the singular and the masculine, feminine and neuter are freely interchangeable.

14. **NOTICES.** Any notice which any party hereto may desire or may be required to give to any other party must be in writing to the addresses as set forth above, or to such other place any party hereto may designate by written notice, and such notice will be deemed to have been given as of the date such notice is (i) delivered to the party intended, (ii) delivered to the current address of the party intended, or (iii) rejected at the current address of the party intended, provided such notice was prepaid.

15. **EFFECTIVENESS**. This Agreement is effective when the last party to execute this Agreement does so, but if such party does not execute and deliver a fully executed counterpart to the other signing parties within twenty (20) days after the first signing party's execution date, then this Agreement will be void and will not be effective against any party.

[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.

BORROWER:

TPP 217 TAYLORSVILLE, LLC, a Delaware limited liability company

By: *John Mearns*

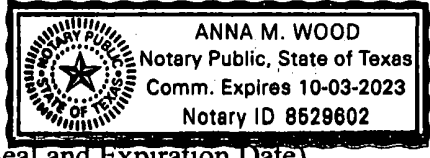
Print Name: John Mearns
Title: Vice President

Date: 11/19/2019

STATE OF Texas

COUNTY OF Dallas

The foregoing instrument was acknowledged before me this 19th day of November, 2019, by John Mearns, the vice President of TPP 217 Taylorsville, LLC, a Delaware limited liability company.

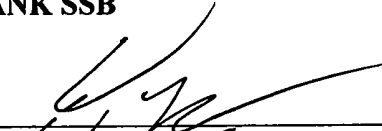


(Seal and Expiration Date)

Anna M Wood
Notary Public

LENDER:

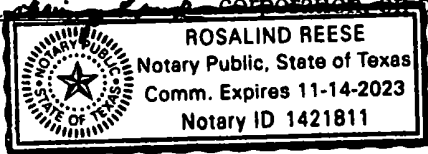
NEXBANK SSB

By: 
Name: Wayne Spencer
Title: SVP

STATE OF Texas

COUNTY OF Dallas

The foregoing instrument was acknowledged before me this 16th day of December, 2019, by Wayne Spencer as Sr. Vice Pres. of NexBank SSB, a ~~state chartered bank~~ corporation, on behalf of the corporation, who is personally known to me.



Rosalind Reese
Notary Public

(Seal and Expiration Date)

[Signature page to SNDA]

TENANT:

FITNESS ALLIANCE UT, LLC, a Utah limited liability company

By: Richard Drenth
Name: Richard Drenth
Title: CEO

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, the _____ of Fitness Alliance UT, LLC, a Utah 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.

Shirley Fardo
Notary Public

(Seal and Expiration Date)

SEE NOTARY ATTACHMENT

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SAN DIEGO
2019

On 26th NOVEMBER before me, Shirin Fardanesh, Notary Public
(Here insert name and title of the officer)

personally appeared RICHARD DRENGBERG

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Shirin Fardanesh
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ◆ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ◆ Indicate title or type of attached document, number of pages and date.
 - ◆ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT "A"

SHOPPING CENTER LEGAL DESCRIPTION

MIDVALLEY NORTH PHASE:

BEGINNING AT A POINT ON THE SOUTH LINE OF 5400 SOUTH STREET, SAID POINT BEING SOUTH 89°53'41" WEST 660.00 FEET AND SOUTH 00°02'55" EAST 39.017 FEET FROM THE NORTH QUARTER CORNER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00°02'55" EAST 620.983 FEET; THENCE NORTH 89°53'41" EAST 406.50 FEET; THENCE SOUTH 00°02'55" EAST 114.00 FEET; THENCE NORTH 89°53'41" EAST 200.50 FEET TO THE WEST LINE OF REDWOOD ROAD; THENCE SOUTH 00°02'55" EAST 553.239 FEET ALONG THE WEST LINE OF REDWOOD ROAD TO THE NORTH LINE OF 5600 SOUTH STREET; THENCE SOUTH 89°55'04" WEST 1123.00 FEET ALONG THE NORTH LINE OF 5600 SOUTH STREET TO THE EAST LINE OF 1900 WEST STREET; THENCE ALONG THE EAST LINE OF 1900 WEST STREET THE NEXT 6 COURSES AND DISTANCES: NORTH 00°02'55" WEST 327.38 FEET; THENCE NORTHEASTERLY 163.04 FEET ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT, (CHORD BEARS NORTH 09°17'35" EAST 162.32 FEET); THENCE NORTHEASTERLY 184.19 FEET ALONG THE ARC OF A 566.00 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 09°18'43" EAST 183.38 FEET); THENCE NORTH 00°00'39" WEST 480.36 FEET; THENCE NORTH 04°04'27" EAST 70.18 FEET; THENCE NORTH 00°00'39" WEST 55.95 FEET TO THE SOUTH LINE OF 5400 SOUTH STREET; THENCE ALONG THE SOUTH LINE OF 5400 SOUTH STREET THE NEXT 3 COURSES AND DISTANCES: NORTHEASTERLY 253.94 FEET ALONG THE ARC OF AN 11,512.16 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 88°31'35" EAST 253.94 FEET); THENCE NORTH 87°53'41" EAST 173.03 FEET; THENCE NORTHEASTERLY 27.649 FEET ALONG THE ARC OF AN 11,406.16 FOOT RADIUS CURVE TO THE RIGHT, (CHORD BEARS NORTH 87°57'51" EAST 27.648 FEET), TO THE POINT OF BEGINNING, AND CONTAINING 998,062 SQUARE FEET, 22.9124 ACRES, MORE OR LESS.

LESS AND EXCEPT THE CHICK-FIL-A PARCEL DESCRIBED BELOW

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 00°02'55" EAST 821.26 FEET ALONG THE SECTION LINE AND PERPENDICULARLY SOUTH 89°57'05" WEST 79.99 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00°07'57" EAST 154.35 FEET;
THENCE SOUTH 89°54'58" WEST 242.19 FEET;
THENCE NORTH 00°07'59" WEST 123.50 FEET;

THENCE NORTH 20°07'37" WEST 19.77 FEET;
THENCE NORTH 00°07'59" WEST 13.45 FEET;
THENCE SOUTH 89°48'55" EAST 248.96 FEET TO THE POINT OF BEGINNING.

CONTAINS 37,675 SQUARE FEET OR 0.865 ACRES.

ALSO LESS AND EXCEPTING THEREFROM THAT PORTION DESCRIBED IN WARRANTY DEED TO THE UTAH DEPARTMENT OF TRANSPORTATION, RECORDED MARCH 8, 2019, AS ENTRY NO. 12946431, IN BOOK 10758 AT PAGE 8504 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF PROPERTY, SITUATE IN THE NE1/4 NW1/4 OF SECTION 15, T.2S., R.1W., S.L.B&M., FOR THE CONSTRUCTION OF IMPROVEMENTS INCIDENT TO THE SR-173, BANGERTER HWY TO 1500 WEST PROJECT, KNOWN AS PROJECT NUMBER F-0173(37)5.:

BEGINNING AT A POINT ON THE NORTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT, WHICH POINT IS ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID SR-173 (5400 SOUTH STREET), WHICH POINT IS ALSO 972.30 FEET S.89°53'41"W. ALONG THE SECTION LINE AND 49.34 FEET S.00°02'55"E. AND 127.69 FEET S.88°46'03"W. FROM THE NORTH QUARTER CORNER OF SAID SECTION 15, WHICH POINT IS ALSO 53.00 FEET RADIALLY DISTANT SOUTHERLY FROM THE CONTROL LINE OF SAID PROJECT, AT ENGINEER STATION 108+92.00; THENCE S.45°29'14"W. 20.28 FEET TO THE WESTERLY BOUNDARY LINE OF SAID ENTIRE TRACT AND EASTERLY RIGHT OF WAY LINE OF 1900 WEST STREET, WHICH POINT IS ALSO 67.00 FEET RADIALLY DISTANT SOUTHERLY FROM THE CONTROL LINE OF SAID PROJECT, AT ENGINEER STATION 108+77.39; THENCE ALONG SAID BOUNDARY AND RIGHT OF WAY LINE N.00°00'39"W. 14.00 FEET TO THE NORTHWEST CORNER OF SAID ENTIRE TRACT AND THE SOUTHERLY RIGHT OF WAY LINE OF SAID SR-173 (5400 SOUTH STREET); THENCE ALONG THE NORTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT AND SAID RIGHT OF WAY LINE WESTERLY 14.47 FEET ALONG THE ARC OF A 11,512.16-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 00°04'19", THE CHORD OF WHICH BEARS N.89°07'21"E. 14.47 FEET, MORE OR LESS, TO THE POINT OF BEGINNING AS SHOWN ON THE OFFICIAL MAP OF SAID PROJECT ON FILE AT THE OFFICE OF THE UTAH DEPARTMENT OF TRANSPORTATION.

(NOTE: ROTATE ABOVE BEARINGS 00°15'36" CLOCKWISE TO EQUAL PROJECT BEARINGS.)

Tax ID Numbers: 21-15-126-048, 21-15-126-049, 21-15-126-050, 21-15-126-056, 21-15-126-057, 21-15-126-058, 21-15-126-059 (now part of 21-15-126-071 and 21-15-126-072), 21-15-126-060, 21-15-126-061 (now part of 21-15-126-071 and 21-15-126-072), 21-15-126-062 and 21-15-126-063

EXHIBIT A-1

Site Plan

