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Gary W. Ott  
Recorder, Salt Lake County, UT  
FOUNDERS TITLE  
BY: eCASH, DEPUTY - EF 10 P.

Prepared by and when recorded  
return to:

Gardere Wynne Sewell LLP  
1000 Louisiana St., Suite 2000  
Houston, Texas 77002  
Attention: Randall L. Jones

**SUBORDINATION, NONDISTURBANCE AND  
ATTORNEY AGREEMENT AND ESTOPPEL CERTIFICATE**  
(this "Agreement")

**EFFECTIVE DATE:** January 11<sup>th</sup>, 2017

**LENDER:** **MUTUAL OF OMAHA BANK**  
520 Post Oak Blvd., Suite 700  
Houston, Texas 77027  
Attention: Todd M. Fuller

**LANDLORD:** **FPA SANDY MALL ASSOCIATES, LLC**  
2082 Michelson Dr., 4th Floor  
Irvine, California 92612  
Attention: Gregory A. Fowler

**TENANT:** **THRYVE FITNESS SOLUTIONS, LLC**  
1637 Tatum Street  
Charleston, SC 29412  
Attention: Justin Fouse

**RECITALS:**

**WHEREAS**, it is contemplated that Lender will lend money to Landlord, and as security therefor, Landlord will grant Lender a first deed of trust lien (the "Mortgage") on the real property described on Exhibit A attached hereto and all of the buildings and improvements thereon (collectively, the "Property"); and

**WHEREAS**, Tenant is a party to that certain **SANDY VILLAGE SHOPPING CENTER LEASE** dated March 4, 2016, between Landlord and Tenant (the "Lease"), which Lease covers that portion of the Property described in the Lease (hereinafter called the "Leased Premises"); and

**WHEREAS**, Landlord, Tenant and Lender desire to confirm and agree upon certain of their rights and obligations with respect to the Lease and the Mortgage;

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements herein contained, Landlord, Tenant, Lender hereby agree and covenant as follows:

1. **Subordination.** The Lease shall at all times be subject and subordinate in each and every respect to the Mortgage and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage.

2. **Nondisturbance.** So long as Tenant is not in default (beyond any period given Tenant in the Lease to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, (i) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease shall not be diminished or interfered with by Lender in the exercise of any of its rights under the Mortgage, (ii) Tenant's occupancy of the Leased Premises shall not be disturbed by Lender in the exercise of any of its rights under the Mortgage during the term of the Lease, and (iii) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.

3. **Attornment.** In the event any proceedings are brought for the foreclosure of the Mortgage, or upon a transfer of the Leased Premises or Property by conveyance in lieu of foreclosure, Tenant shall attorn to the purchaser upon any such foreclosure sale or transfer in lieu thereof and shall recognize such purchaser as the landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the reasonable judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment. In the event of any such attornment, Tenant further waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure proceeding, trustee's sale or conveyance in lieu thereof.

4. **Foreclosure and Sale.** If Lender shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Leased Premises or Property upon any foreclosure of the Mortgage, Lender or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period given to Tenant in the Lease to cure such default) in the payment of rent or in the performance of any of the terms, covenants and conditions of the Lease on Tenant's part to be performed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of Landlord. If such succession or acquisition by Lender or such purchaser occurs, Lender or such purchaser shall thereafter be bound to Tenant under all of the terms, covenants, and conditions of the Lease, and Tenant shall, from and after the time Lender or such purchaser shall become bound to Tenant under the Lease, have the same remedies against Lender or such purchaser for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender or such purchaser had not succeeded to the interest of Landlord; provided further, however, that Lender or such purchaser shall not in any event be:

(a) liable for any act or omission of any prior landlord (including Landlord), except that Lender will be liable for (i) acts or omissions of which Lender had written notice prior to succeeding to Landlord's interest under the Lease and an opportunity to cure as provided in Section 5 below and (ii) any default by any prior landlord that is of a continuing nature after Lender succeeds to Landlord's interest under the Lease; or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except that Lender will be subject to offsets or defenses expressly

provided for in the Lease arising after Lender's succession to Landlord's interest under the Lease; or

(c) bound by any rent or additional rent which Tenant might have paid under the Lease for more than the current month to any prior landlord (including Landlord), or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance under the Lease to any prior landlord (including Landlord), unless actually received by Lender or such purchaser; or

(d) bound by or liable for any obligation of the landlord to pay any sums of money to or for the benefit of or on behalf of Tenant for concessions or inducements granted to Tenant by any prior landlord (including Landlord) except as expressly set forth in the Lease; or

(e) bound by any amendment or modification of the Lease made after the Effective Date hereof without its written consent.

5. **Acknowledgment and Agreement by Tenant.** Tenant acknowledges and agrees that:

(a) Lender, in making any disbursements to Landlord, is under no obligation or duty to oversee or direct the application of the proceeds of such disbursements, and such proceeds may be used by Landlord for purposes other than improvement of the Property.

(b) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to cease paying rent or terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right:

(i) until it has given written notice of such act or omission to Lender; and

(ii) if Landlord shall have failed to cure such default within the time provided for in the Lease, then the Lender shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be deemed granted to Lender (but not to exceed an additional sixty [60] days) if within such initial thirty (30) days in which Lender attempts to cure, Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued within the stated time periods.

(c) Tenant has notice that the Lease and the rent and all other sums due thereunder are to be or have been assigned to Lender as security for the loan secured by the Mortgage. In the event that Lender notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice. Landlord hereby authorizes Tenant to pay to Lender directly all rents, additional rents and other sums then or thereafter due under the Lease pursuant to this subsection (c). In addition, Landlord hereby indemnifies and holds Tenant harmless from and against any and all claims, causes of actions, demands, liabilities and losses of any kind or nature, including but not limited, to attorney's fees and expenses, sustained by Tenant as a result of any and all claims by third parties claiming through Landlord all or any portion of the rent, additional rents, and other sums due under the Lease which are paid by Tenant directly to Lender in accordance with the terms and conditions hereof.

(d) It shall send a copy of any notice or statement claiming a default by Landlord under the Lease to Lender at the same time such notice or statement is sent to Landlord.

(e) This Agreement satisfies any condition or requirements in the Lease relating to the granting of a non-disturbance agreement.

6. **Acknowledgment and Agreement by Landlord.** Landlord, as landlord under the Lease and mortgagor or grantor under the Mortgage, acknowledges and agrees for itself and its successors and assigns, that:

(a) This Agreement does not: (i) constitute a waiver by Lender of any of its rights under the Mortgage; or (ii) in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage;

(b) The provisions of the Mortgage remain in full force and effect and must be complied with by Landlord; and

(c) In the event Lender gives notice to Tenant of a default under the Mortgage, Tenant may pay all rent and all other sums due under the Lease to Lender as provided in this Agreement.

7. **Estoppels.** Tenant certifies to Lender that, as of the Effective Date:

(a) A true, correct and complete copy of the Lease is attached hereto as Exhibit B.

(b) It is the tenant, and Landlord is the landlord, under the Lease, the Lease has not been amended or modified in any respect except as set forth in the definition thereof, and the Lease constitutes the full and complete understanding and agreement between Landlord and Tenant concerning the letting of the Leased Premises.

(c) Tenant is in occupancy of the Leased Premises, has neither assigned its rights under the Lease nor sublet all or any portion of the Leased Premises, and the Leased Premises are in satisfactory condition and are acceptable to Tenant in all respects.

(d) The term of the Lease shall terminate on February 28, 2026, subject to one (1), five year renewal term as set forth in the Lease.

(e) As of the date hereof, the monthly Base Rent under the Lease is \$16,572.88, Tenant is current in the payment of all rentals to Landlord required to be paid under the Lease, and rentals under the Lease have not been paid more than one (1) month in advance.

(f) The Lease is in full force and effect and, to Tenant's knowledge, neither Tenant nor Landlord are in default under the terms thereof as of the date hereof.

(g) Tenant does not hold any claim against Landlord in the nature of setoff or credit against future accruing rent under the Lease.

(h) Tenant possesses no right, title, interest or estate in and to the Leased Premises or the Property or any part thereof except as tenant under the Lease and Tenant has no right to purchase all or any portion of the Property by option, contract, agreement or otherwise.

(i) There are no actions, whether voluntary or otherwise, pending against Tenant under the bankruptcy laws of the United States or any state thereof.

8. **Notice.** All notices to be delivered hereunder to Lender shall be deemed to have been duly given if sent by reputable overnight delivery service such as FedEx or UPS, or if mailed under United States registered or certified mail, with return receipt requested, postage prepaid, in any case to Lender at the address set forth above (or at such other address as shall be given in writing by Lender to Tenant) and shall be deemed given and received one (1) business day after deposit with such overnight delivery service, or five (5) days after any such mailing.

9. **Miscellaneous.**

(a) The Mortgage, the other Security Documents (as defined in the Mortgage) and this Agreement supersede any inconsistent provision of the Lease.

(b) Lender shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.

(c) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

10. **Condition Precedent to Effectiveness.** Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall be binding on the parties hereto only if Lender advances a loan to Landlord that is secured by the Mortgage.

***REMAINDER OF PAGE LEFT INTENTIONALLY BLANK***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

LENDER:

MUTUAL OF OMAHA BANK

By: Todd M. Fuller  
Todd M. Fuller  
Senior Vice President

STATE OF TEXAS

COUNTY OF HARRIS

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This instrument was acknowledged before me on this 9 day of January, 2017, by Todd M. Fuller, Senior Vice President of **MUTUAL OF OMAHA BANK**, a federal savings bank, on behalf of said federal savings bank.

[SEAL]



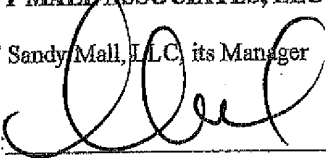
Sonja Mahoney  
Notary Public, State of Texas

SIGNATURES CONTINUED ON THE FOLLOWING PAGE

**LANDLORD:**

**FPA SANDY MALL ASSOCIATES, LLC**

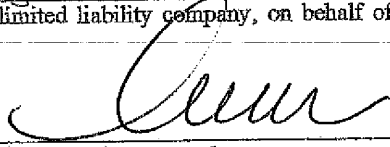
By: GF Sandy Mall, LLC, its Manager

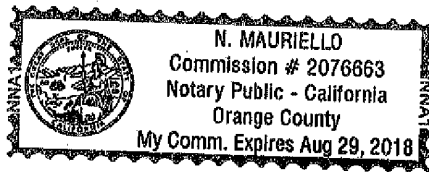
By:   
Name: \_\_\_\_\_  
Title: Michael B. Earl  
Manager

STATE OF CALIFORNIA §  
COUNTY OF ORANGE §  
§

This instrument was acknowledged before me on this 4 day of January, 2017, by Michael B. Earl, Manager of GF Sandy Mall, LLC, Manager of **FPA SANDY MALL ASSOCIATES, LLC**, a Delaware limited liability company, on behalf of said limited liability company.

[SEAL]

  
Notary Public, State of \_\_\_\_\_



TENANT:

THRIVE FITNESS SOLUTIONS, LLC

By: [Signature]  
Name: JUSTIN FOWSE  
Title: OWNER

STATE OF South Carolina  
COUNTY OF Charleston

This instrument was acknowledged before me on this 6 day of January, 2017, by Justin Fowse of **THRIVE FITNESS SOLUTIONS, LLC**, a South Carolina limited liability company, on behalf of said limited liability company.

[SEAL]

**GERALD COHEN**  
Notary Public - State of South Carolina  
My Commission Expires December 12, 2022

[Signature]  
Notary Public, State of South Carolina

SIGNATURES CONTINUED ON THE FOLLOWING PAGE



**EXHIBIT "A"**

Legal Description

1. Lots 1 and 8 of Sandy Mall Subdivision, according to the official plat recorded May 23, 2016 as Entry No. 12284382 in Book 2016P of Plats at Page 113, of the Official Records of Salt Lake County Utah.

TAX ID No. 28-08-101-063 (LOT 1)

TAX ID No. 28-08-101-070 (LOT 8)

**EXHIBIT B**

LEASE

[INTENTIONALLY OMITTED]