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9/29/2021 3:28:00 PM \$40.00  
Book - 11246 Pg - 8717-8726  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 10 P.

**RECORDATION REQUESTED BY:**

Umpqua Bank  
1111 Third Avenue  
Suite 2900  
Seattle, Washington 98101  
Attn: Linda Gudjonson

**WHEN RECORDED MAIL TO:**

Umpqua Bank  
1111 Third Avenue  
Suite 2900  
Seattle, Washington 98101  
Attn: Linda Gudjonson

APNs: 28-08-101-070-0000; 28-08-101-063-0000

*142136-NTF*

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT  
AGREEMENT WITH ESTOPPEL CERTIFICATE**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT WITH ESTOPPEL CERTIFICATE dated as of May 13, 2021 ("Agreement"), is made and executed among FPA SANDY MALL ASSOCIATES, LLC, a Delaware limited liability company ("Landlord"), whose address is 2082 Michelson Dr. Suite 302, Irvine, California 92612; CM3 SANDY, LLC, a Utah limited liability company, d/b/a Planet Fitness ("Tenant"), whose address is 50 Nashua Road, Suite 203, Londonderry, New Hampshire 03053, Attn: Matthew A. Glance; and UMPQUA BANK ("Lender"), whose address is Oregon Commercial Real Estate, One S.W. Columbia Street, Suite 1170, Portland, Oregon 97258, Attn: Mr. Tom Remmers.

**RECITALS**

A. Tenant entered into that certain Sandy Village Shopping Center Lease with Landlord, dated January 29, 2020, as last amended by that certain First Amendment to Lease, dated February 14, 2020 (as amended, the "Lease").

B. The Lease covers real property located in Salt Lake County, State of Utah, generally known as 9400 S 700 E, Unit 18B in the Sandy Village Shopping Center, and consisting of approximately 23,397 rentable square feet of the real property described on Exhibit A attached to this Agreement (the "Real Property").

C. Lender has extended or is considering extending a term loan to Landlord to be used by Landlord to refinance its existing financing for the Real Property (the "Superior Indebtedness").

D. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing dated \_\_\_\_\_, 2021, from Landlord to Lender (the "Lender's Lien") and recorded concurrently herewith in Salt Lake County, State of Utah.

E. As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Lease and all of Tenant's rights in the Real Property and has required Landlord to assign its interest in the Real Property and the Lease to Landlord.

NOW, THEREFORE, in exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Lender, Landlord, and Tenant hereby agree as follows:

1. **Estoppel Certificate.** Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

(a) The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.

(b) All requirements for the commencement and validity of the Lease have been satisfied.

(c) Neither Tenant nor Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.

(d) There are currently no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed.

(e) None of the rent, which Tenant is required to pay under the Lease, has been prepaid, or will in the future be prepaid, more than one month in advance.

(f) The Lease shall not after the date of this Agreement be modified, terminated, or amended, without the prior written consent of Lender for any termination and each such amendment or modification. Any attempted modification, termination, or amendment without the prior written consent of Lender shall be void.

(g) Tenant has not assigned, mortgaged, encumbered or otherwise transferred (except for subleases) any or all of its interest under the Lease and, during the term of the Loan, agrees to not assign, mortgage, encumber, or otherwise transfer (except for subleases) any or all of its interest under the Lease without the prior written consent of Lender.

2. **Subordination.** Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications (including increases in the amount of indebtedness secured by Lender's Lien), consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts now or hereafter secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

3. **Non-Disturbance.** So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not disturb Tenant's possession of the Real Property, nor name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien, unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

4. **Attornment.** If Lender shall succeed to the interest of Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender and accept Lender as its landlord, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part 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 sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

5. **No Liability for Lender.** Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

(a) Liable for any act or omission of or any claims against any prior landlord, including Landlord; or

(b) Subject to any offsets or defenses that Tenant might have against any prior landlord, including Landlord, except to the extent the facts giving rise to such offsets or defenses continue after Lender becomes the owner of the Real Property; or

(c) Bound by any rent or additional rent that Tenant might have paid for more than the current month to any prior landlord, including Landlord; or

(d) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without Lender's consent; or

(e) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or

(f) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant; or

(g) Liable for any breach of representation or warranty of any prior landlord, including Landlord.

6. **Notice of Default.** Tenant agrees to give prompt written notice to Lender of any default by the Landlord under the Lease that would entitle Tenant to cancel the Lease or abate the rent payable thereunder, and agrees that notwithstanding any provision of the Lease, no notice of cancellation thereof shall be effective unless Lender has received the notice aforesaid and has failed within 30 days of the date of receipt thereof to cure, or if the default cannot be cured within 30 days, has failed to commence and to pursue diligently the cure of the Landlord's default that gave rise to such right of cancellation or abatement. Tenant further agrees to give such notices to any successor-in-interest of Lender, provided that such successor-in-interest shall have given written notice to Tenant of its acquisition of Lender's interest in the Deed of Trust and designated the address to which such notices are to be sent.

7. **Assignment of Rents.** Tenant acknowledges that the Deed of Trust includes an assignment of leases and rents assigning the Lease and the rentals under the Lease as additional security for the Loan, and Tenant hereby expressly consents to and recognizes said assignment of leases and rents and agrees to pay the rent to Lender or its nominee whenever Lender claims or requests the rent under the terms of the assignment of leases and rents included in the Deed of Trust. Landlord hereby authorizes Tenant to pay such rent directly to Lender.

8. **Acknowledgment and Agreement by Landlord.** Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

(a) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.

(b) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

9. **Attorney Fees and Expenses.** The undersigned agrees to pay on demand all of Lender's costs and expenses, including Lender's attorney fees and legal expenses, incurred in connection with enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement. Lender may also use attorneys who are salaried employees of Lender to enforce this Agreement. The undersigned shall pay all costs and expenses of all such enforcement. In the event arbitration, suit, action or other legal proceeding is brought to interpret or enforce this Agreement, the undersigned agrees to pay all additional sums as the arbitrator or court may adjudge reasonable as Lender's costs, disbursements, and attorney fees at hearing, trial, and on any and all appeals. Whether or not an arbitration or court action is filed, all reasonable attorney fees and expenses Lender incurs in protecting its interests and/or enforcing this Agreement shall become part of the Indebtedness evidenced or secured by this Agreement, shall bear interest at the highest applicable rate under the promissory note or credit agreement, and shall be paid to Lender by the other party or parties signing this Agreement on demand. The attorney fees and expenses covered by this paragraph include without limitation all of Lender's attorney fees (including the fees charged by Lender's in-house attorneys, calculated at hourly rates charged by attorneys in private practice with comparable skill and experience), Lender's fees and expenses for bankruptcy proceedings (including efforts to modify, vacate, or obtain relief from any automatic stay), fees and expenses for Lender's post-judgment collection activities, Lender's cost of searching lien records, searching public record databases, on-line computer legal research, title reports, surveyor reports, appraisal reports, collateral inspection reports, title insurance, and bonds issued to protect Lender's collateral, all to the fullest extent allowed by law. Notwithstanding the foregoing, Tenant's obligations under this Section 9 shall arise only in connection with Tenant's default under this Agreement.

10. **Waive Jury.** All parties hereby waive the right to any jury trial in any action, proceeding or counterclaim brought by any party against any other party.

11. **Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Agreement:

11.1 **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

11.2 **Authority.** Any person who signs this Agreement on behalf of Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

11.3 **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

11.4 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

11.5 Notices. Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

11.6 No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

11.7 Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

11.8 Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

11.9 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the state of Utah, without regard to that state's choice of law rules.

**EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF May 13th, 2021.**

LANDLORD:

**FPA SANDY MALL ASSOCIATES, LLC, a  
Delaware limited liability company**

By: GF Sandy Mall, LLC, Manager

By: [Signature]  
Michael B. Earl, Manager

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 ORANGE )

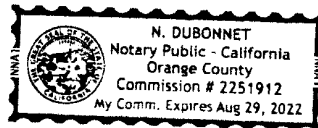
On May 13, 2021, before me, N. Dubonnet, Notary Public  
(insert name and title of the officer)

personally appeared Michael B. Earl, 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.

Signature [Signature] (Seal)



LENDER:

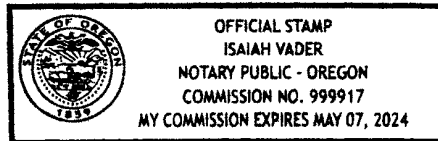
UMPQUA BANK

By: [Signature]  
Name: Tom Remmers  
Title: Vice President

STATE OF OREGON )  
 ) ss  
COUNTY OF Multnomah

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of September, 2021, by Tom Remmers, as Vice President of Umpqua Bank.

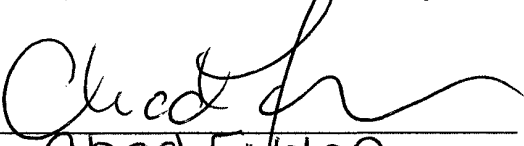
[Signature]  
Notary Public for Oregon  
My commission expires: 05.07.2024





TENANT:

**CM3 SANDY, LLC**, a Utah limited liability company

By   
Name Chad Fitton  
Title Manager

State of Utah

ss.

County of Rockingham

On this 30<sup>th</sup> day of April, in the year 2021, before me Cheryl Yurik, a notary public, personally appeared Chad Fitton, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to in this document, and acknowledged (he/she/they) executed the same.

(Notary Seal) \_\_\_\_\_

Notary Signature 

CHERYL L. YURIK, Notary Public  
State of New Hampshire  
My Commission Expires June 29, 2021

## **EXHIBIT A**

### **Property Description**

#### **PARCEL 1:**

Lots 1 and 8, SANDY MALL SUBDIVISION, according to the official plat, recorded May 23, 2016 as Entry No.

12284382 in Book 2016P of Plats at Page 113, official records.

#### **PARCEL 1A:**

Benefits, easements and parking rights contained in that certain Restrictive Covenants, Easements and Maintenance Agreement recorded March 18, 1998 as Entry No. 6895235 in Book 7913 at Page 635, official records.

#### **PARCEL 1B:**

Benefits, easements and parking rights contained in that certain Declaration of Covenants, Conditions and Restrictions and Grants of Easements for Sandy Mall Subdivision Sandy, Utah, recorded September 29, 2016 as Entry No. 12377304 in Book 10482 at Page 2005, official records.