

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2019 035195

2019 JUN 12 AM 9:30

MICHAEL B. BROWN
RECORDER

When Recorded Return To:
David Frank
c/o DealPoint Merrill, LLC
22815 Ventura Boulevard, #310
Woodland Hills, CA 91364

And

Mitch Goltz
c/o GW Property Group, LLC
2211 North Elston Avenue, #304
Chicago, IL 60614

(Space above reserved for the Register of Deeds' recording information)

Title of Document: PYLON SIGN USE AND MAINTENANCE AGREEMENT
Date of Document: March 11, 2019
Grantor(s): GW HAMMOND IN, LLC
Grantee(s): DPM HAMMOND SHOPPING CENTER, LLC
Grantee's Address: 22815 Ventura Boulevard, #310, Woodland Hills, CA 91364
Legal Description: See Exhibits A and B attached hereto

Error! Unknown document property name.

AMOUNT \$ 25
CASH _____ CHARGE _____
CHECK # 761528
OVERAGE _____
COPY _____
NON-CONF _____
DEPUTY cm

MB.

PYLON SIGN EASEMENT, USE AND MAINTENANCE AGREEMENT

This PYLON SIGN USE AND MAINTENANCE AGREEMENT (“**Agreement**”), is made effective as of March , 2019, by and between GW Hammond IN, LLC, an Illinois limited liability company (“**Grantor**”), and DPM Hammond Shopping Center, LLC, a Delaware limited liability company, having a mailing address of 22815 Ventura Boulevard, #310, Woodland Hills, CA 91364 (“**Grantee**”).

WHEREAS, Grantor is the owner of that certain real property located in the City of Hammond, Lake County, State of Indiana, legally described on **Exhibit A** attached hereto (“**GW Property**”), which includes a multi-tenant commercial building, that constitutes part of the Gateway Promenade Shopping Center generally located in the southeast quadrant of Interstate Plaza and Indianapolis Boulevard in Hammond, Indiana (“**Shopping Center**”);

WHEREAS, Grantee is the owner of that certain real property adjacent to the Grantor Property, legally described on **Exhibit B** attached hereto (“**DPM Property**”), which includes a multi-tenant commercial building that constitutes part of the Shopping Center;

WHEREAS, both Grantor and Grantee are parties, through assignments of title, to that certain Declaration of Covenants, Reciprocal Easements and Operating Agreement, dated as of March 6, 2009, and recorded with the Recorder of Lake County, Indiana on May 11, 2009 as Document No. 2009 031086 (“**REA**”), Grantee is the successor in interest to the Developer referred to in the REA and has taken over all rights and obligations of Developer thereunder;

WHEREAS, there is a multi-tenant pylon sign (“**Sign**”) located on the GW Property, a recent photograph of which is attached hereto as **Exhibit C**, which currently includes sign bands for certain tenants located on the GW Property and certain tenants located on the DPM Property; and

WHEREAS, Grantor and Grantee wish to memorialize the rights and obligations of Grantor and Grantee with respect to the Sign, as set forth below.

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

1. **Common Areas.** The term “Common Area” as set forth in the REA as Section 1.5 shall be, and hereby is, amended to include the Sign (but not the real property underneath it which remains the property of Grantor, its successors and/or assigns) as part of the Common Area of the Shopping Center.

2. **Easements for Common Area.** Section 2.3 of the REA shall be, and hereby is, amended as follows: “**Shopping Center Signage.** Grantor hereby grants to the Grantee, and Grantee hereby accepts from the Grantor, the rights and obligations for Common Areas in the Shopping Center with regard to the Shopping Center Sign located on GW Property, reserving to Grantor the owner of the real property under the Sign, and surrounding its foundations. In addition to any rights or obligations with regard to the Common Areas and Sign, Grantee shall be responsible for all repair, replacement, maintenance and all other work thereon. Grantee shall

remain obligated to all matters set forth in the REA, including but not limited to, the provisions of Section 4.2." Section 4.2 (A) (iii) of the REA shall never be construed to modify the sign panel allocations as set forth in Section 3, below, and size of such sign panels.

3. **Modification of the Sign; Use Rights.** Grantor and Grantee agree that Grantee shall at its sole cost and expense adjust or otherwise modify the Sign, consistent with all applicable municipal and other legal requirements and with the prior written consent of Grantor, to accommodate up to seven (7) tenant sign bands. Grantee shall never have the right to review, approve or make any requirements as to any Grantee tenants, their successors or assigns or sign band. Upon completion of such modification, Grantor and Grantee shall thereafter each have the right to determine which tenant is advertised on which sign band from time to time as follows (with Grantor's and Grantee's initial tenant sign band selections shown in the parentheses below):

- (a) Top Sign Band – Grantee (Ross Dress for Less)
- (b) Second from Top Sign Band – Grantee (dd's Discount)
- (c) Third from Top Sign Band – Grantor (AT&T)
- (d) Fourth from Top Sign Band – Grantee (Planet Fitness)
- (e) Fifth from Top Sign Band – Grantee (Aldi)
- (f) Sixth from Top Sign Band – Grantor (Red Wing)
- (g) Bottom Sign Band – Grantor (Great Clips)

As part of Grantee's modification of the Sign as described above, Grantee shall, at its sole cost and expense, install the seven (7) sign bands for the tenants, and in the order, set forth above. At Grantee's request, Grantor shall cooperate at no cost to Grantor with Grantee's modification of the Sign, including, without limitation, executing any necessary documentation to allow Grantee to secure any necessary municipal or other approvals required for modification of the Sign.

4. **Maintenance of the Sign; Operating Costs.**

- (a) **Sign (Other Than Sign Bands).** Excluding the sign bands, Grantee shall have the right and obligation to maintain, repair, and replace the Sign and all conduit running through and under the Sign, all as set forth in Section 4.2 of the REA. Section 4.2 of the REA provides for Developer's ability to recoup Common Area Maintenance Costs (as defined in the REA). In computing the Common Area Maintenance Costs related to the maintenance and repair of the Sign, three sevenths (3/7ths) of the annual costs shall be allocated to Grantor and four sevenths (4/7ths) of the annual costs shall be allocated to Grantee (such fractions being referred to herein as the "Reimbursement Ratio").
- (b) **Sign Bands.** Grantor (its successors and assigns or tenants as agreed between said tenant and Grantor) and Grantee shall be responsible at its sole cost and expense

for maintenance, repair, and replacement of the sign bands for which they are given authority as set forth in Section 1 above.

(c) Operating Costs. Any costs incurred by either party to operate the Sign (e.g., electricity costs for Sign lighting, permit fees, etc.) shall be partially reimbursed through CAM pursuant to the Reimbursement Ratio.

5. Insurance. Grantee, as part of the Common Areas, agrees that it will maintain replacement cost property/casualty insurance for the Sign at all times. If any maintenance, repair, or replacement of the Sign by Grantor or Grantee pursuant to Section 2 hereof is covered in whole or in part by insurance, Grantor agrees to diligently pursue a claim on such insurance policy to pay for or reimburse any such costs incurred or to be incurred for such maintenance, repair, or replacement. Any deductible shall be shared by Grantor and Grantee according to the Reimbursement Ratio.

6. Cross Access Easement. Grantor hereby grants to Grantee an easement across the GW Property and DPM Property, respectively, as necessary for Grantee or its agents, as applicable, to exercise any rights or carry out any obligations under this Agreement, using minimal, reasonable impact on the GW Property, and not blocking or limiting ingress and egress, nor circulation, of the GW Property.

7. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to be an adequate and sufficient notice if given in writing and delivery is made either by (i) personal delivery, in which case the notice shall be deemed received the date of such personal delivery or refusal of receipt, (ii) nationally recognized overnight air courier service, next day delivery, prepaid, in which case the notice shall be deemed to have been received one (1) business day following delivery to such nationally recognized overnight air courier service or refusal of receipt, or (iii) email, provided that delivery thereof is acknowledged by the receiving party, evidenced by the sender's receipt of a receipt evidencing delivery from its email program, or the sender of an email notice otherwise does not receive any indication that such email did not get delivered properly to the applicable recipient, and to the following addresses or email addresses, as applicable:

IF TO GRANTOR:

GW HAMMOND IN, LLC
Attn: Mitch Goltz
2211 North Elston Avenue, Suite 304
Chicago, Illinois 60614
E-mail: mitch@gwproperties.com

IF TO GRANTEE:

DPM HAMMOND SHOPPING CENTER, LLC
Attn: David Frank
22815 Ventura Boulevard, #310
Woodland Hills, CA 91364

E-mail: dfrank@dealpointmerrill.com

Grantor and Grantee may change the notice information set forth above by providing written notice to the other party pursuant to the requirements of this Section 5.

8. **Binding Effect.** This Agreement shall run with the land (both the GW Property and the DPM Property). This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and may be modified or amended only in a writing signed by both of the parties hereto, or their successors or assigns, as the case may be.

9. **Counterparts; Recording.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. A facsimile or scanned copy of an executed counterpart shall have the same legal effect as an original ink-signed counterpart. The parties agree that this Agreement will be recorded with the Lake County, Indiana Recorder of Deeds (the costs of which shall be shared by the parties according to the Reimbursement Ratio).

10. **Miscellaneous.** This Agreement shall be governed by the laws of the State of Indiana. If any portion of this Agreement shall be invalid or unenforceable to any extent, the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any litigation occurs under this Agreement, then the prevailing party shall be entitled to recover from the non-prevailing party the amount of the prevailing party's reasonable attorneys' fees and other expenses of litigation; and the parties hereby authorize and direct the judge in any such litigation to make an award of such expenses consistent with the foregoing. All recitals and exhibits to this Agreement are incorporated herein by reference. Time is of the essence for all purposes under this Agreement.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement to be effective as of the day and year first above written.

GRANTOR:

GW HAMMOND IN, LLC,
An Illinois limited liability company

By: *Mitch Goltz*

Name: MITCH GOLTZ

Title: MANAGER

ACKNOWLEDGMENT

STATE OF IL)
) ss
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 11th day of March, 2019, by Mitch Goltz, Manager of GW Hammond IN, LLC, an Illinois limited liability company, and that said instrument was signed on behalf of said company, and he acknowledged said instrument to be the free act and deed of said company.

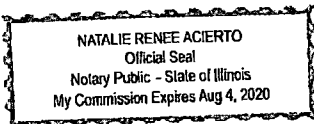
In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Appointment Expires

8/4/20

[SEAL]

Natalie Renee Acierito
Notary Public



GRANTEE:

DPM HAMMOND SHOPPING CENTER, LLC,
a Delaware limited liability company

By: DPM SPE Hammond, LLC,
a Delaware limited liability company

Its: Sole Member

By: DealPoint Merrill, LLC,
a Delaware limited liability company

Its: Manager

By:
Name: STEWING MCGREGOR
Its: MANAGER

Acknowledgement

STATE OF _____)
) ss.
COUNTY OF _____)

On March 11, 2019, before me personally appeared _____, known to me known to be the _____ of DealPoint Merrill, LLC, a Delaware limited liability company, the Manager of DPM SPE Hammond, LLC, a Delaware limited liability company, the Sole Member of DPM Hammond Shopping Center, LLC, a Delaware limited liability company, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Delaware limited liability company, for the uses the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Notary Public, _____ County, _____
Acting in _____ County
My Commission Expires: _____

See CA Attachment
#2133337
 Acknowledgement
 Jurat

AS.

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.

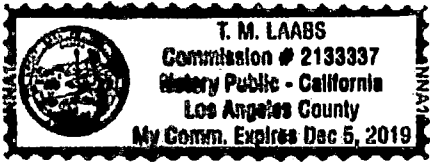
State of California
County of Los Angeles

On April 23, 2019 before me, T. M. LAABS - Notary
(Insert name and title of the officer)

personally appeared STERLING Mc GREGOR
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 T. M. Laabs (Seal)

* NYLON SIGN USE AND MAINTENANCE AGREEMENT

DL

EXHIBIT A

LEGAL DESCRIPTION – GRANTOR PROPERTY

Lot 2, Gateway Promenade First Addition to the City of Hammond, a subdivision in Lake County, Indiana.

EXHIBIT B

LEGAL DESCRIPTION – GRANTEE PROPERTY

Lot 1, Gateway Promenade First Addition to the City of Hammond, a subdivision in Lake County, Indiana.

EXHIBIT C

PHOTOGRAPH OF SIGN

Pylon Sign - Hammond Gateway Promenade
 Proposed New Illuminated S/F cabinets added to pylon structure
 Scale: 1/4" = 1'

proposed conditions

NOT PER CORPORATE STANDARDS

<p>elro signs</p> <p>200 West Walnut Street, Ontario, CA 91764 (951) 274-0000 - Fax: (951) 274-1000</p> <p>ONTARIO, CALIFORNIA 91764</p>	<p>REVISED</p>	<p>Client: Hammond Gateway Promenade, Phase 4-1B</p> <p>Address: 1918 152nd Street, Richmond, CA 94804</p> <p>Assign No: 25251 State No: _____</p> <p>Scale: AS NOTED Sheet 1 of 1</p> <p>Drawn By: PB Date: 01/22/08</p> <p>Approved By: _____ Date: _____</p>
	<p>elro signs</p> <p>200 West Walnut Street, Ontario, CA 91764 (951) 274-0000 - Fax: (951) 274-1000</p>	<p>REVISED</p>

Handwritten signature