

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2019 035333

2019 JUN 12 AM 10:28

MICHAEL B. BROWN
RECORDER

PREPARED BY:

Nelson Mullins Riley & Scarborough, LLP
201 17th Street, Suite 1700
Atlanta, Georgia 30363
Attention: Rusty A. Fleming, Esq.

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

Nelson Mullins Riley & Scarborough, LLP
201 17th Street, Suite 1700
Atlanta, Georgia 30363
Attention: Rusty A. Fleming, Esq.

(Space Above For Recorder's Use)

I affirm under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Rusty A. Fleming, Esq.*

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**SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
ESTOPPEL, ATTORNMENT AND NON DISTURBANCE AGREEMENT**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made as of May 14, 2019, by and between DPM HAMMOND SHOPPING CENTER, LLC, a Delaware limited liability company, the owner of the real property hereinafter described ("**Mortgagor**"), PLANET HAMMOND, LLC, an Indiana limited liability company ("**Tenant**"), and BENEFIT STREET PARTNERS REALTY OPERATING PARTNERSHIP, L.P., a Delaware limited partnership (collectively with its successors or assigns, "**Lender**").

RECITALS

- A. Pursuant to the terms and provisions of that certain Lease Agreement dated October 17th 2014 ("**Lease**"), Acorn 6A Indianapolis Boulevard Real Estate, LLC, an Indiana limited liability company and Mortgagor's predecessor in interest, granted to Tenant a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "**Property**").
- B. Mortgagor has executed, or proposes to execute, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement of even date herewith (together with all modifications, extensions, renewals and amendments thereto, "**Security Instrument**") securing, among other things, that certain Promissory Note of even date herewith (together with all modifications, extensions, renewals and amendments thereto, "**Note**") in the principal sum of \$8,500,000 payable to the order of Lender ("**Loan**"). The Security Instrument is to be recorded concurrently herewith.
- C. As a condition to Lender making the Loan secured by the Security Instrument, Lender requires that Tenant subordinate its interest under the Lease and any other rights in and to the Property (including any options or rights of first refusal) to the lien of the Security Instrument as provided herein.
- D. Lender, Mortgagor and Tenant have agreed to the subordination, attornment and other agreements herein.

NOW THEREFORE, for valuable consideration, Lender, Mortgagor and Tenant hereby agree as follows:

1. **SUBORDINATION.**

- 1.1 **Prior Lien.** Subject to the terms and conditions of this Agreement, the Security Instrument securing the Note in favor of Lender, and any modifications, renewals

or extensions thereof (including, without limitation, any modifications, renewals or extensions with respect to any additional advances made subject to the Security Instrument), shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease and all rights of Tenant in and to the Property,; and

- 1.2 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement between Lender and Tenant with regard to the subordination of the Lease to the lien of the Security Instrument and shall supersede and cancel, but only insofar as would affect the priority between the Security Instrument and the Lease, any prior agreements as to such subordination.
- 1.3 **Use of Proceeds.** Tenant acknowledges that in making disbursements pursuant to the Note, the Security Instrument or any loan agreements with respect to the Property, Lender is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part; and
2. **ASSIGNMENT.** Tenant acknowledges and consents to the assignment of the Lease by Mortgagor in favor of Lender.
3. **ESTOPPEL.** Tenant acknowledges and confirms that:
 - 3.1 **Entire Agreement.** The Lease constitutes the entire agreement between Mortgagor and Tenant with respect to the Property and Tenant claims no rights with respect to the Property other than as set forth in the Lease;
 - 3.2 **Rent.** The monthly fixed, minimum or basic rent under the Lease is \$23,276.96 and has been paid through the month of April, 2019. Tenant's current share of common expenses is 22.18%. All Rent (as defined in the Lease) due and payable under the Lease by Tenant as of the date hereof has been paid in full;
 - 3.3 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows (if none, state "None"): \$23,276.96 of security deposits; \$31,331.83 of pre-paid rent representing rent through April, 2019 including CAM, Insurance and Taxes;
 - 3.4 **No Default.** To the best of Tenant's knowledge and without any inquiry, as of the date hereof: (i) both Tenant and Mortgagor have performed all of their respective obligations under the Lease and there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
 - 3.5 **Lease Effective.** The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding and there have been no amendments, modifications or additions to the Lease, written or oral;

- 3.6 **Improvements.** All Landlord Work and Initial Tenant Improvements (each as defined in the Lease) were completed, and there are no sums due to Tenant from Mortgagor for any improvements made by Tenant. Mortgagor has not agreed to grant Tenant any free rent or rent rebate or to make any contribution to tenant improvements, provided, however that nothing herein is intended to limit or restrict any abatement of rent that Tenant may be entitled to under the Lease, including without limitation under Sections 6.3, 14.2, 15.3, and 19.31 of the Lease. Mortgagor has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease;
- 3.7 **Sublease and Purchase Options.** Tenant has not assigned the Lease and has not subleased the Property or any part thereof. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Property. Tenant does not have any right or option to lease additional space in the Property, provided, however that nothing in this Agreement is intended to modify or limit Tenant's right to assign the Lease or sublease the leased premises; and
- 3.8 **No Broker Liens.** Except as expressly provided in the Lease, neither Tenant nor Mortgagor has incurred any fee or commission with any real estate broker which would give rise to any lien right under state or local law.
4. **NON-DISTURBANCE.** In the event of a foreclosure under the Security Instrument or any conveyance of the Property as part of a transaction in contemplation or in lieu of foreclosure, so long as there shall then exist no uncured Event of Default (as defined in the Lease) breach, default, or event of default on the part of Tenant under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Tenant under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Tenant as tenant under the Lease subject to the terms and provisions of the Lease; provided, however, that, except as set forth in this Agreement, including without limitation, in Sections 6.3 and 6.6 below, Lender shall not be liable for the obligations of Mortgagor under the Lease.
5. **ADDITIONAL AGREEMENTS.** During all such times as Lender is the Mortgagee under the Security Instrument:
- 5.1 **Modification, Termination and Cancellation.** In the event that Lender shall succeed to the interest of Mortgagor under the Lease in any manner, Lender may, by written notice to Tenant given within thirty (30) days of succeeding to the interest of Mortgagor, rescind any modification or amendment to the Lease that reduces the rent or shortens the term, that was entered into by Mortgagor and Tenant without Lender's prior written consent, provided, however that Lender shall in no event be permitted to rescind any such modification or amendment if Mortgagor or Tenant previously notified Lender of such amendment or modification and Lender failed to object thereto by written notice to Mortgagor and Tenant within fifteen (15) days. Tenant shall maintain any right to terminate or cancel the Lease pursuant to its terms and if Tenant exercises such right, it shall give Lender written notice of the same.

- 5.2 **Notice of Default.** Unless Tenant has a good faith belief that the Security Instrument has been released or the indebtedness secured thereby paid off, Tenant will concurrently with notice to Mortgagor provide Lender with a copy of any notice given to Mortgagor of any default by Mortgagor under the Lease, and Tenant agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth in the Lease, if any.
- 5.3 **Advanced Rents.** In the event that Lender shall succeed to the interest of Mortgagor under the Lease in any manner, Lender shall not be deemed to have received any payment or prepayment of rent to Mortgagor more than two (2) months in advance of the time when the same becomes due under the Lease, unless such payment or prepayment was received by Lender, its agent or any receiver for the Property that is appointed by a court.
- 5.4 **Assignment of Rents.** Following receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Mortgagor to collect rents, as provided in the Security Instrument, and directing the payment of rents by Tenant to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Mortgagor is in default under the Loan and/or the Security Instrument. Mortgagor hereby consents to Tenant's compliance with the foregoing and waives any objection thereto.
6. **ATTORNMENT.** In the event that Lender shall succeed to the interest of Mortgagor under the Lease in any manner, or if any purchaser acquires the Property upon any foreclosure of the Security Instrument, then:
- 6.1 **Payment of Rent.** Tenant shall pay to Lender or such purchaser all rental payments required to be made by Tenant subject and pursuant to the terms of the Lease for the duration of the term of the Lease;
- 6.2 **Continuation of Performance.** Tenant shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Tenant shall attorn to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Mortgagor's interest in the Lease and giving written notice thereof to Tenant;
- 6.3 **No Offset.** Except as otherwise provided in this Agreement, Lender shall not be liable for, nor subject to, any offsets or defenses which shall have accrued to Tenant against Mortgagor prior to the date upon which Lender acquires the Property (except that Lender shall be liable for any obligations under the Lease that are continuing in nature (e.g. maintenance obligations) and for which notice has been provided to Lender to the extent expressly required by this Agreement), nor for the return of any sums which Tenant may have paid to Mortgagor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Mortgagor to, or are otherwise received by Lender, its agent or any receiver for the Property that is appointed by

a court, provided, however that any amounts paid pursuant to the Lease with respect to any estimated common area or other operating expenses or real estate taxes that are in excess of the actual amounts for such expenses or taxes and for which Tenant would be entitled to any credit or refund, shall be credited to Tenant or returned from Lender to Tenant in accordance with the terms and conditions of the Lease.

- 6.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Mortgagor under the Lease, should become obligated to perform the covenants of Mortgagor thereunder, then, upon any further transfer of Mortgagor's interest by Lender, all of such obligations accruing after the date of such transfer shall terminate as to Lender.
- 6.5 **Limitation on Lender's Liability.** Tenant agrees to look solely to Lender's interest in the Property and the rent, income or proceeds derived therefrom for the recovery of any judgment against Lender, and in no event shall Lender or any of its affiliates, officers, directors, shareholders, partners, agents, representatives or employees ever be personally liable for any such obligation, liability or judgment.
- 6.6 **No Representation, Warranties or Indemnities.** Lender shall not be liable with respect to any representations, warranties or indemnities from Mortgagor, whether pursuant to the Lease or otherwise, including, but not limited to, any representation, warranty or indemnity related to the use of the Property, compliance with zoning, landlord's title, landlord's authority, habitability or fitness for purposes or commercial suitability, or hazardous wastes, hazardous substances, toxic materials or similar phraseology relating to the environmental condition of the Property or any portion thereof, except to the extent such representations, warranties or indemnities are continuing in nature or accrue after Lender succeeds to the interest of Mortgagor.

7. **MISCELLANEOUS.**

- 7.1 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Mortgagor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Mortgagor or others.
- 7.2 **NOTICES.** All notices, demands, or other communications under this Agreement shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of

any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	DPM Hammond Shopping Center, LLC 2140 S. Dupont Hwy Camden, DE 19934 Attn:
Tenant:	Planet Hammond, LLC 8 Larsen Park Drive Medford, NJ 08055-8169 Attention: Rick Raimondo
With a copy to:	Bose McKinney & Evans LLP 111 Monument Circle, Suite 2700 Indianapolis, IN 46204 Attention: Tony Setzer
Lender:	Benefit Street Partners Realty Operating Partnership, L.P. 142 West 57 th Street, Suite 1201 New York, New York 10019 Attention: Micah Goodman, General Counsel
With a copy to:	Nelson Mullins Riley & Scarborough, LLP 201 17th Street, Suite 1700 Atlanta, Georgia 30363 Attention: Rusty A. Fleming, Esq.

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

- 7.3 **Heirs, Successors and Assigns.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Agreement shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto.
- 7.4 **Headings.** All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.
- 7.5 **Counterparts.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such

counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

- 7.6 **Exhibits, Schedules and Riders.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Agreement by such attachment for all purposes.
- 7.7 **Termination of Agreement.** Upon payment in full of the Loan and all obligations related thereto, this Agreement shall terminate. Mortgagor shall provide Lender and Tenant with prompt notice following payment in full of the Loan and all obligations related thereto, and Tenant shall be permitted to rely upon such notice as conclusive evidence of such payment and termination of this Agreement.
- 7.8 **Attorney Fees.** Mortgage shall reimburse Tenant for all fees and costs, including reasonable attorney fees, incurred by Tenant in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

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MORTGAGOR:

**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: [Signature]
Name: STERLING MCGREGOR
Its: MANAGER

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 CA)
County of LOS ANGELES)

On APRIL 26, 2019 before me, T. M. LAABS, a Notary Public, personally appeared STERLING MCGREGOR, 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]
Notary Public

TENANT:

PLANET HAMMOND, LLC, an Indiana limited liability company

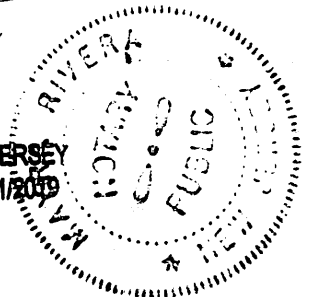
By: _____
 Name: RIKIS RAIMONDO
 Its: President

STATE OF New Jersey)
) ss
 COUNTY OR Berkley)

On January ^{April} 24, 2019, before me personally appeared Rikis A. Raimondo, known to me known to be the _____ of PLANET HAMMOND, LLC, an Indiana limited liability company, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Indiana limited liability company, for the uses the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

MAYRA RIVERA
NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires 9/11/2019



LENDER:

**BENEFIT STREET PARTNERS REALTY
OPERATING PARTNERSHIP, L.P., a
Delaware limited partnership**

By: _____
Name: Micah Goodman
Title: Authorized Signatory

STATE OF NY)
) ss
COUNTY OF NY)

On April 24, 2019, before me personally appeared Micah Goodman, known to me known to be the Authorized Signatory of BENEFIT STREET PARTNERS REALTY OPERATING PARTNERSHIP, L.P., a Delaware limited partnership, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Delaware limited partnership, for the uses the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

VICTORIA A. KUHNE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01KU6328486
Qualified in New York County
Commission Expires August 03, 2019

EXHIBIT A - DESCRIPTION OF PROPERTY

LOT 1 IN GATEWAY PROMENADE FIRST ADDITION TO THE CITY OF HAMMOND, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 30, 2009 AS DOCUMENT 2009-020214, IN LAKE COUNTY, INDIANA.

Common Address: 7925-31 Indianapolis Blvd, Hammond IN 46324

Parcel Identification No.: 45-07-17-426-005.000-023

