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вк 14778 № 559-565

NON DISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT (MORTGAGE)

Recorder's Cover Sheet

Preparer Information:

Gordon L. Jensen

8525 Edinbrook Crossing, Suite 201

Brooklyn Park, MN 55443

(763) 424-8811

Taxpayer Information:

Boston Commons, LLC

14039 Sherman Way, Suite 206

Van Nuys, California 91405

RETURN TO:

Return Address:

Commercial Partners Title

200 South Sixth Street, Suite 1300

Minneapolis, MN 55402

Tenant: Morgan Tire & Auto, LLC

Mortgagee: Thrivent Federal Credit Union

Legal Description: See Exhibit # attached hereto

Document or instrument number if applicable: Not Applicable

NON-DISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT (MORTGAGE)

THIS AGREEMENT is made and entered into as of this 26th day of April, 2013, by and between THRIVENT FEDERAL CREDIT UNION, a federal credit union, ("Mortgagee"), having an office at 625 Fourth Avenue South, Minneapolis, Minnesota 55415, and MORGAN TIRE & AUTO, LLC, a Florida limited liability company ("Tenant") [, f/k/s Morgan Tire & Auto, Inc.], having an office at 333 East Lake Street, Bloomingdale, Illinois 60108, Attn: Law Department/Real Estate Section.

PRELIMINARY STATEMENTS

A. Tenant has executed a Lease dated December 26, 1989 (the "Lease") with Boston Commons, LLC, a Delaware limited liability company ("Landlord") or successor-in-interest for certain premises legally described in Exhibit A attached hereto and made a part hereof (the "Premises").

B. Mortgagee holds a m	ortgage on the Premise	es or a portion of the Pr	remises. The mortg	age is dated
Maix 6.	2013 (the	"Mortgage") and is	s recorded in the	office of
Class Co County recar Document Number	ter, PUIKC	ounty Tuck in 1	Book <u>[477</u>], Page	<i>52</i> 0, as
Document Number		. //		

C. Tenant and Mortgagee desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Non-Disturbance, Attornment and Subordination Agreement.

TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, Mortgagee and Tenant agree as follows:

- 1. Provided the Lease is in full force and effect and Tenant is not in default under the Lease (beyond any period given Tenant to cure such defaults, if any), then:
 - (a) Tenant's right of possession to the Premises and Tenant's other rights arising out of the Lease shall not be affected or disturbed by Mortgagee in the exercise of any of its rights under the Mortgage or the note which it secures. Further, Tenant shall not be named as a party defendant in any foreclosure of the lien of the Mortgage nor in any other way be deprived of its rights under the Lease.
 - (b) In the event Mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the Mortgage, or by conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. Mortgagee covenants that any sale by it of the Premises as a result of the exercise of any rights and remedies under the Mortgage, or otherwise, shall be made subject to the Lease and the rights of Tenant under the Lease, and Tenant covenants and agrees to attorn to Mortgagee, or such person, as its new Landlord, and the Lease shall continue in full force and effect as a direct Lease between Tenant and Mortgagee, or such other person, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall Mortgagee or such person be:

- (i) liable for any act or omission of Landlord;
- (ii) subject to any offsets or deficiencies which Tenant might be entitled to assert against Landlord;
- (iii) bound by any payment of rent or additional rent made by Tenant to Landlord for more than one month in advance.
- 2. Subject to the terms of this Agreement, the Lease shall be subject and subordinate to the lien of the Mortgage and to all of its terms, conditions and provisions, to all advances made or to be made and to any renewals, extensions, modifications or replacements.
- 3. Except in the case of an emergency, Tenant will use reasonable efforts to give Mortgagee a courtesy copy of any notice of default sent by Tenant to Landlord ("Courtesy Notice"); provided that, Tenant's failure, for any reason or no reason, to give Mortgagee a Courtesy Notice will not preclude or effect in any way Tenant's right to exercise any remedy provided to Tenant for Landlord's default in the Lease. If Mortgagee receives a Courtesy Notice from Tenant, Mortgagee shall have the same period of time provided Landlord under the Lease within which to cure such default. Mortgagee's cure period shall begin to run upon receipt of the Courtesy Notice.
- 4. Any notice, communication, request, reply or advise in this Agreement provided or permitted to be given, made or accepted by either party to the other must be in writing, and unless it is otherwise in this Agreement expressly provided, may be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or in person to the party to be notified. Notice shall be effective only if and when received by the party to be notified for purposes of notice, the addresses of the parties shall be as follows (unless otherwise indicated in writing):

If to Mortgagee:

Thrivent Federal Credit Union 625 Fourth Avenue South

Minneapolis, Minnesota 55415-1665

If to Tenant:

Morgan Tire & Auto, LLC

c/o Bridgestone Retail Operations, LLC

333 East Lake Street

Bloomingdale, Illinois 60108

Attention: Law Department/Real Estate Section

- 5. The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party.
- 6. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.
- 7. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

(End of text. Execution on following page.)

TO INDICATE THEIR AGREEMENT TO THE ABOVE, the parties or their authorized representatives or officers have signed this document.

MORTGAGEE:

THRIVENT FEDERAL CREDIT UNION

By:/	Junter	
Attest:	SEREMY SCHMEDT, L	- /i
Attest:	Crystal A. Dessers	_

WITNESS:

TENANT:

MORGAN TIRE & AUTO, LLC,

a Florida limited liability company

By: Bridgestone Retail Operations, LLC

Kenton Girard **Authorized Signatory** James S. Sager, Asst. Secretary

WITNESS:

ACKNOWLEDGMENT – MORGAN TIRE & AUTO, LLC

STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)
$\mathcal{L}^{\prime} = \mathcal{O}_{\mathcal{L}} \mathcal{O}_{\mathcal{L}} \mathcal{O}_{\mathcal{L}}$
Before me, I I I I I I I I I I I I I I I I I I I
on this day of 40100, 2012, personally appeared KENTON GIRARD
Director, Real Estate Assets and New Store Development and JAMES S. SAGER, Assistant Secretary
of MORGAN TIRE & AUTO, LLC, a Florida limited liability company, and known to me to be the
same persons who signed and acknowledged that they signed the foregoing instrument as such Director
Real Estate Assets & New Store Development and Assistant Secretary of said limited liability company
for and on behalf of the limited liability company, and that they executed the same as their free and
voluntary act and deed and as the free and voluntary act and deed of the limited liability company, for the
uses and purposes set forth in the instrument
IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the
day and year set forth above.
Notary Public
My commission expires:
Prepared by and Return to:
James S. Sager, Esq. OFFICIAL SEAL
Law Department - Real Estate Section KRAFFERTY NOTARY PURPLE OF THE SEAL SECTION
Law Department - Real Estate Section Bridgestone Retail Operations, LLC NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES OF ILLINOIS
Bridgestone Retail Operations, LLC MY COMMISSION EXPIRES:05/07/15 MY COMMISSION EXPIRES:05/07/15

Bloomingdale, IL 60108

ACKNOWLEDGMENT - MORTGAGEE

STATE OF MINNESOTO)
STATE OF MINNESOTO) COUNTY OF HEARDEN) SS:
Before me, AISON M. Brandt, a Notary Public in and for the above State
and County, on this 10th day of MAY, 2013 personally appeared vice President
that (s)he signed the foregoing instrument as such VICE VIELLENT of said corporation/partnership for and on behalf of said corporation, and that (s)he executed the same as his(her) free and voluntary act and deed and as the free and voluntary act and deed of the corporation, for the uses and purposes set forth in the instrument. IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the
day and year set forth above.
Alison M. Brandt
Notary Public
My commission expires:
January 31,2014

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Lots 21 and 153 in CLOVER ACRES, an Official Plat, now included and forming a part of the City of Des Moines, Polk County, Iowa.

AND

Lots 154 and 155 in CLOVER ACRES, an Official Plat, now included and forming a part of the City of Des Moines, Polk County, Iowa, EXCEPT that part deeded to the State of Iowa on February 24, 2010 in Book 13365 at Page 718, being more particularly described as follows:

Beginning at the Southeast Corner of said Lot 155; thence N89°49'10"W along the south line of said Lot 155, a distance of 24.48 feet; thence N59°19'14"E, 14.54 feet; thence N0°09'58"E, 188.61 feet; thence S89°54'50"E along the north line of said Lot 154, a distance of 12.00 feet; thence S0°09'58"W along the east line of said Lots 154 and 155, a distance of 196.09 feet to the point of beginning, containing 2,399 square feet.