


37



Doc ID: 027325810007 Type: GEN  
Kind: AGREEMENT MISCELLANEOUS  
Recorded: 05/09/2013 at 11:36:00 AM  
Fee Amt: \$37.00 Page 1 of 7  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2013-00100805

BK **14778** PG **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 A attached hereto

**Document or instrument number if applicable:** Not Applicable

30925 30f4 mb

Des Moines, IA  
3130 Merle Hay Road  
PN 175498

**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 mortgage on the Premises or a portion of the Premises. The mortgage is dated May 6, 2013 (the "**Mortgage**") and is recorded in the office of County Recorder, Polk County, Iowa in Book 14778 Page 520, 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:

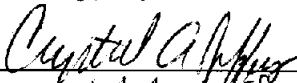


TO INDICATE THEIR AGREEMENT TO THE ABOVE, the parties or their authorized representatives or officers have signed this document.

**MORTGAGEE:**


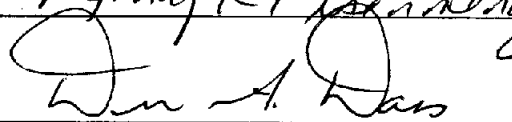
**THRIVENT FEDERAL CREDIT UNION**

By:   
JEREMY SCHMENT, VP

Attest:   
Crystal A. Schment

Date: May 6, 2013

**WITNESS:**


  


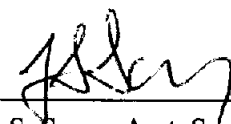

**TENANT:**

**MORGAN TIRE & AUTO, LLC,**  
a Florida limited liability company

By: Bridgestone Retail Operations, LLC

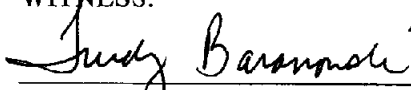
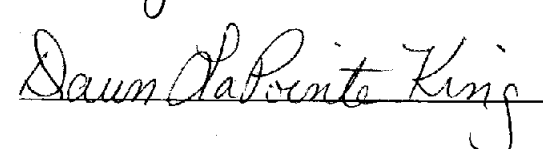
By: 

 Kenton Girard  
Authorized Signatory

Attest:    
James S. Sager, Asst. Secretary

Date: April 26, 2013

**WITNESS:**

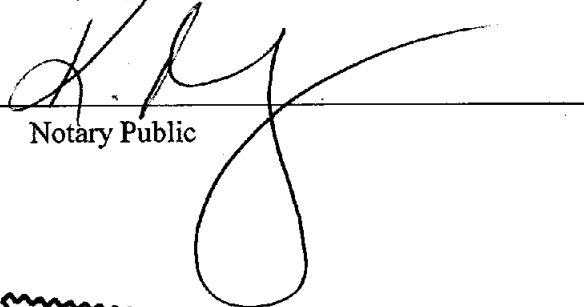
  


**ACKNOWLEDGMENT - MORGAN TIRE & AUTO, LLC**

STATE OF ILLINOIS     )  
                                      ) SS:  
COUNTY OF DUPAGE    )

Before me, Kim Rafferty, a Notary Public in and for the above State and County, on this 26 day of June, 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.  
Law Department - Real Estate Section  
Bridgestone Retail Operations, LLC  
333 East Lake Street  
Bloomington, IL 61008



ACKNOWLEDGMENT - MORTGAGEE

STATE OF Minnesota )  
 ) SS:  
COUNTY OF Hennepin )

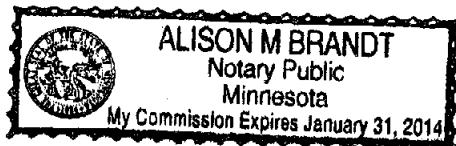
Before me, Alison M. Brandt, a Notary Public in and for the above State and County, on this 16th day of MAY, 2013 personally appeared Jeremy Schmidt, Vice President of Trivent Federal Credit Union known to me to be the same person who signed and acknowledged that (s)he signed the foregoing instrument as such VICE President 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.