

2016-17241

**RECORDER MARK BRANDENBURG
POTTAWATTAMIE COUNTY, IA
FILE TIME: 12/14/2016 9:04:43 AM
REC: 45.00AUD: T TAX:
RMA: 1.00ECM: 1.00**

MORTGAGE

Preparer Information:

Martin J. Lee, Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, Illinois 60601;
Phone: (312) 456-1077

Return Document To:

Martin J. Lee, Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, Illinois 60601

Grantor:

Council Bluffs RE LLC, an Iowa limited liability company

Mortgagee:

ALLY BANK (Ally Capital in Hawaii, Mississippi, Montana and New Jersey)

Property Address: 3400 South Expressway Street, Council Bluffs, Iowa 51501, and as more specifically stated in Schedule A

Parcel #(s): 744412326001 (Part Parcel 1), 744412326002 (Part Parcel 1) and 744412180002 (Parcel 2)

Legal Description: See attached Schedule A

M 12.7.16

MORTGAGE

NOTICE: This Mortgage secures credit in the aggregate amount of \$3,464,644.59. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages, and liens. This Mortgage contains an after-acquired property clause.

A. This Mortgage is made by and between:

1. **COUNCIL BLUFFS RE LLC.**, an Iowa limited liability company, located at 3400 South Expressway Street, Council Bluffs, Iowa 51501 ("Grantor"); and
2. **ALLY BANK** (Ally Capital in Hawaii, Mississippi, Montana and New Jersey), located at 15303 S. 94th Avenue, Orland Park, Illinois 60462 ("Ally").

B. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor MORTGAGES, hypothecates, pledges, grants, conveys, bargains, sells, transfers, and WARRANTS to Ally the following (collectively, the "Mortgaged Property"):

1. All of Borrower's fee simple right, title, and interest in the property located in Pottawattamie County, Iowa described in attached Schedule A, including, without limitation, any and all appurtenances thereto, and any and all buildings, structures, fixtures, and improvements thereon, whether now or later existing (collectively "Property");
2. Any and all existing and future leases, subleases, and other agreements affecting the use, enjoyment, or occupancy of the Property, including all extensions, renewals, and/or replacements thereof (collectively "Leases");
3. All rents, revenues, profits, and other benefits arising under Leases or relating to the Leases and/or Property including, but not limited to, all cash or securities deposited under any such leases to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due thereunder ("Rents");
4. All or any part of the oil and gas located in, on or under oil and gas properties, and all or any of the rents and profits from oil and gas properties, and the income from the sales of oil and gas produced or to be produced from oil and gas properties;
5. All of Grantor's rights under or relating to the Leases, including, without limitation, the rights to:
 - a. Claim, receive, collect, and pay all Rents payable or receivable under the Leases;
 - b. Apply such Rents to Obligations (as hereinafter defined).
6. Proceeds of the foregoing.

C. This Mortgage secures payment and performance of any and all present and future debts, advances, obligations, and duties that Grantor or Borrower (as hereinafter defined) owe to Ally however arising

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under, and/or relating to, any and all loan and financing accommodations extended by Ally to Grantor or Borrower ("Obligations").

1. The Obligations include, without limitation, (i) the real estate loan in the amount of \$3,464,644.59, plus interest (including any default interest and prepayment premium) and all of Ally's costs and expenses incurred in connection with this loan and all other payments and performance obligations of The Synergy Group Inc., a Nebraska corporation (the "Borrower"), to Ally (the "Loan"), evidenced by that certain Commercial Real Estate Loan and Security Agreement and Promissory Note, dated as of the date hereof ("Loan Agreement") hereby incorporated by reference into this Mortgage. Grantor is a guarantor and will benefit from the Loan Agreement, as more fully set forth Guaranty (as hereinafter defined) executed by Grantor, and is granting this Mortgage in consideration of such benefit; and (ii) Grantor's payment, performance and discharge of each and every obligation, covenant and agreement contained herein, or of Grantor contained in that certain Cross Collateral, Cross Default, and Guaranty Agreement dated as of the date hereof (as amended, restated, modified or extended from time to time) by Grantor (and other parties) in favor of Ally.
2. The Loan bears interest and is due and payable as set forth in the Loan Agreement.
3. An additional full and final payment of the Loan is due and payable on January 1, 2024.
4. Grantor and Ally expressly intend that this Mortgage secure any and all optional or obligatory future advances that Ally may make to Grantor or Borrower from time to time, but any and all optional future advances are discretionary and are subject to such terms and conditions as Ally may require in its sole, absolute discretion.

D. Upon default under any Obligation:

1. To the extent permitted by law, Ally may completely or partially foreclose upon and sell the Property in accordance with the applicable private, nonjudicial foreclosure procedures prescribed by state law; or
2. At its option, Ally may institute court proceedings for complete or partial foreclosure upon sale of the Property in accordance with state law. Upon any foreclosure sale, Ally may bid for and purchase the Property and shall be entitled to apply all or any part of the Obligations secured hereby as a credit to the purchase price.

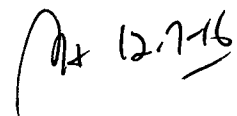
E. This Mortgage remains in effect until Ally releases it.

1. Upon full and final payment and performance of all of the Obligations, Ally will release this Mortgage.
2. Upon release, this Mortgage will be void.

F. This Mortgage is governed by the laws of the state where the Property is located.


G. State Specific Provisions

1. Grantor hereby agrees that, in the event of judicial foreclosure of this Mortgage, Ally may, at its sole option, elect: (i) pursuant to Iowa Code § 628.26, as now enacted or hereafter modified, amended or replaced, to reduce the period of redemption after sale and foreclosure to six months;

A handwritten signature in black ink, followed by the date "12.7-16" written in a similar style.

or (ii) pursuant to Iowa Code § 628.27, as now enacted or hereafter modified, amended or replaced, to reduce the period of redemption after sale and foreclosure to 60 days; or (iii) pursuant to Iowa Code § 628.28, as now enacted or hereafter modified, amended or replaced, or any other Iowa Code Section, to reduce the period of redemption after sale and foreclosure to such time as may then be applicable and provided by law; or (iv) pursuant to Iowa Code § 654.20, as now enacted or hereafter modified, amended or replaced, to foreclose without redemption. Nothing in this Section shall be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

2. Grantor represents and warrants that:
 - a. None of the Mortgaged Property, now or hereafter, constitutes (i) real property which is a single-family or two-family dwelling occupied or to be occupied by Borrower; (ii) agricultural products or property used for an agricultural purpose as defined in Iowa Code § 535.15; (iii) agricultural lands defined in Iowa Code § 91.1 or 175.2(2); or (iv) property used for agricultural purposes defined in Iowa Code § 570A.1(2).
 - b. The Obligations do not constitute a consumer credit transaction as defined in Iowa Code § 537.1301.11; and the transactions contemplated by this Mortgage are for a business purpose as defined in Iowa Code § 535.2(2)(a)(5).
 - c. The liens and security interests granted hereby are not the type of lien referred to in Chapter 575 of the Iowa Code, as now enacted or hereafter modified, amended or replaced. Grantor, for itself and all persons claiming by through or under Grantor, agrees that it claims no lien or right to a lien of the type contemplated by Chapter 575 or any other chapter of the Code of Iowa, and further waives all notices and rights pursuant to said law with respect to the liens and security interests hereby granted, and represents that it is the sole party entitled to do so and agrees to hold harmless Ally from any loss, damage, and costs, including attorneys' fees, suffered by Ally arising as a result of any claim of the applicability of said law to the liens and security interests hereby granted.
3. In the event of foreclosure of this Mortgage, the Grantor hereby agrees that the court may, and requests the court to enter and record the judgment contained in the foreclosure decree without requiring that any existing Notes be first filed with the clerk of court for cancellation. The Grantor further agrees, because the obligations secured by this Mortgage are also secured by other security instruments and will be necessary to foreclosure of those security instruments, notwithstanding Iowa Rule of Civil Procedure 1.961, as presently enacted or as hereinafter amended or replaced, the clerk of court may, in the event of foreclosure of this Mortgage, enter and record the judgment contained in the foreclosure decree on the obligations secured by this Mortgage without requiring that any existing Notes be first filed with the clerk of court for cancellation.
4. At any time and from time to time, upon request by Ally, Grantor will make, execute and deliver or cause to be made, executed and delivered, to Ally and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refilled at such time and in such offices and places as shall be deemed desirable by Ally, any and all such other and further instruments and other documents as may, in the opinion of Ally, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligation of Grantor under the Guaranty, this Mortgage or of Borrower under the Loan Agreement, and (b) this Mortgage as a first and prior lien upon and security interest and to all of the Property, whether now owned or hereafter acquired by Grantor.

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IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF IOWA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THE STATE OF IOWA AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

[SIGNATURE PAGES TO FOLLOW]

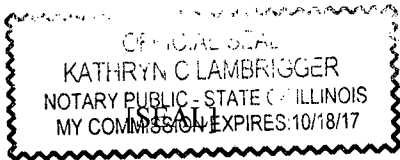
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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Kathryn C Lambigger, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that K Horodnik, personally known to be to be the Assistant Secretary of Ally Bank (Ally Capital in Hawaii, Mississippi, Montana and New Jersey), and personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Asst Sec she/he signed and delivered the said instrument pursuant to authority of said company as her/his free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

WITNESS MY HAND and Notary seal this 8 day of December, 2016.

Kathryn C Lambigger
Notary Public



My commission expires:

10/18/17



12.7.16

SCHEDULE A

LEGAL DESCRIPTION

Parcel 1:

Those parts of the North 1/2 of the Northeast 1/4 of the Southwest 1/4 of Section 12, Township 74 North, Range 44 West of the 5th P.M., in Council Bluffs, Pottawattamie, Iowa, described as follows:

Commencing at the Northeast corner of the said N1/2 NE 1/4 SW 1/4 of Section 12; thence West 506 feet; thence South 231.9 feet; thence East parallel with the North line 506 feet; thence North 231.9 feet to the place of beginning;

AND

Commencing at a point on the North and South centerline of said Section 12 which is 2177.8 feet North of the South Quarter Section corner; thence North on said centerline 224.3 feet; thence North 89 degrees 30 minutes West 506 feet; thence South 224.3 feet; thence South 89 degrees 30 minutes East 506 feet to the point of beginning.

Parcel 2:

A tract of land located in the SE 1/4 NW 1/4 of Section 12, Township 74 North, Range 44 West of the 5th Principal Meridian, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the center of said Section 12; thence S90 degrees 00 minutes 00 seconds W along the South line of the NW 1/4 of said Section 12 a distance of 7.40 feet to a point on the Westerly right of way line of Iowa State Highway No. 192, said point being on a nontangent curve concave Southwesterly and having a radius of 1845.00 feet; thence Northwesterly along said Westerly right of way line of Iowa State Highway No. 192 and along said nontangent curve an arc length of 71.52 feet and having a chord bearing and distance of N 11 degrees 47 minutes 41 seconds W, 71.52 feet to point on the North right of way line of 34th Avenue; thence S 90 degrees 00 minutes 00 seconds W along said North right of way line of 34th Avenue a distance of 555.92 feet to the point of beginning; thence N 0 degrees 00 minutes 34 seconds W, 449.73 feet to a point on the South line of a 25.00 foot wide railroad right of way; thence S 89 degrees 59 minutes 26 seconds W along said South Railroad right of way line a distance of 387.46 feet; thence S 0 degrees 00 minutes 34 seconds E a distance of 449.67 feet to a point on said North right of way line of 34th Avenue, thence N 90 degrees 00 minutes 00 seconds E along said North right of way line of 34th Avenue a distance of 387.46 feet to the point of beginning.

Note: The South line of the NW 1/4 of said Section 12 is assumed to bear N 90 degrees 00 minutes 00 seconds E for this description.

EXCEPT

A parcel of land located in the SE 1/4 NW 1/4 of Section 12, Township 74 North, Range 44 West of the 5th P.M., Pottawattamie County, Iowa; more particularly described as follows: Commencing at the center of said Section 12, thence N 90 degrees 00 minutes 00 seconds W along the South line of the NW 1/4 of said Section 12 a distance of 7.40 feet to a point on the Westerly R.O.W. line of South Expressway, said point being on a nontangent curve concave Southwesterly and having a radius of 1845.00 feet; thence

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Northwesterly along said Westerly R.O.W. line of South Expressway and along said nontangent curve an arc length of 71.52 feet and having a chord bearing and distance of N 11 degrees 47 minutes 41 seconds W 71.52 feet to a point on the North R.O.W. line of 34th Avenue; thence N 90 degrees 00 minutes 00 seconds W along said North R.O.W. line of 34th Avenue a distance of 555.11 feet; thence N 0 degrees 00 minutes 34 seconds W 139.72 feet to the point of beginning; thence S 89 degrees 59 minutes 00 seconds W 150.00 feet; thence N 0 degrees 00 minutes 34 seconds W 310.00 feet to a point on the South line of a 25 foot wide Railroad R.O.W.; thence N 89 degrees 59 minutes 00 seconds E along said South Railroad R.O.W. a distance of 150.00 feet; thence S 0 degrees 00 minutes 34 seconds E 310.00 feet to the point of beginning, exclusive of any Public R.O.W.

NOTE: The South line of the NW 1/4 of said Section 12-74-44 is assumed to bear N 90 degrees 00 minutes 00 seconds W.

Address: 3400 South Expressway Street, Council Bluffs, Iowa 51501

PIN: 744412326001 (Part Parcel 1), 744412326002 (Part Parcel 1) and 744412180002 (Parcel 2)