

2016-17242
RECORDER MARK BRANDENBURG
POTTAWATTAMIE COUNTY, IA
FILE TIME: 12/14/2016 9:04:44 AM
REC: 50.00AUD: 5.00T TAX:
RMA: 1.00ECM: 1.00

SUBORDINATION OF LEASE

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

Landlord:

Council Bluffs RE LLC, an Iowa limited liability company

Tenant:

Motors Iowa 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

CHI 67597899v4

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NCS- 820408 -MPLS (cf 11)

MA 12-7-16

THIS SUBORDINATION OF LEASE (this "Agreement") is made this 7th day of December, 2016, by and among COUNCIL BLUFFS RE LLC., an Iowa limited liability company ("Landlord"), Motors Iowa LLC, an Iowa limited liability company ("Tenant"), and ALLY BANK (Ally Capital in Hawaii, Mississippi, Montana and New Jersey) ("Bank").

RECITALS:

A. Tenant has entered that certain unrecorded Lease Agreement dated as of February 29, 2016, as amended from time to time (the "Lease"), with Landlord, as lessor, covering the premises described in the Lease, including but not limited to, all or a portion of the premises located at 3400 South Expressway Street, Council Bluffs, Iowa (the "Property"), as more particularly described in Exhibit A attached hereto and made a part hereof by this reference.

B. Bank has agreed to make a loan to The Synergy Group Inc., a Nebraska corporation in an amount of \$3,464,644.59 secured by a Mortgage dated the date hereof by Landlord in favor of Bank, to record concurrently herewith, encumbering the Property (together with any amendments, renewals, increases, modifications, substitutions or consolidations, collectively, the "Security Instrument").

C. Tenant and Bank desire to confirm their understanding with respect to the Lease and the Security Instrument, and to have Landlord confirm its agreement therewith.

NOW, THEREFORE, in consideration of the premises, the covenants, conditions, provisions, and agreements set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Bank, Tenant and Landlord mutually acknowledge, represent, and agree as follows:

(1) The Lease and any extensions, modifications or renewals thereof, including but not limited to any option to purchase or right of first refusal to purchase the Property or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the Security Instrument and the lien created thereby. In the event of any inconsistency between the Lease and the Security Instrument, the Security Instrument controls.

(2) Tenant agrees that:

(a) Upon notice to it by Bank, it will pay all rents thereafter becoming due under the Lease to Bank;

(b) It will not assert, as against any rents becoming due following notice by Bank to Tenant, any set-off, counterclaim or other claim or charge which Tenant may have against Landlord;

(c) It will observe and perform all of its obligations under the Lease following notice by Bank to Tenant, notwithstanding any prior default on the part of Landlord, provided that

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Bank shall remedy such default, or cause same to be remedied, within sixty (60) days after actual notice to Bank thereof (unless such default, if curable, requires work to be performed, acts to be done or conditions to be remedied which by their nature cannot be performed, done or remedied, as the case may be, within such 60-day period and Bank shall commence to cure such default within such 60-day period and shall thereafter diligently and continuously process the same to completion); and

(d) Unless Bank assumes in writing the obligations of Landlord under the Lease, Bank shall in no event be deemed liable as lessor under the Lease or subject to any obligations of Landlord thereunder.

(3) Tenant agrees that, without the prior written consent of Bank in each case, Tenant shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, or tender a surrender of the Lease, (b) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (c) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

(4) To the extent that the Lease shall entitle Tenant to notice of the existence of any Security Instrument and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Bank.

(5) EACH OF TENANT AND LANDLORD HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(6) The provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The words, "Bank," "Landlord" and "Tenant" shall include their respective heirs, legatees, executors, administrators, beneficiaries, successors and assigns.

(7) Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Bank: Ally Bank
6985 Union Park Center, Suite 435
Midvale, UT 84047
Attention: Gregory E. Behrmann

To Tenant: Motors Iowa LLC
4645 South 84th Street
Omaha, Nebraska 60462
Attention: Steven M. Hinchcliff

To Landlord: Council Bluffs RE LLC
4645 South 84th Street
Omaha, Nebraska 60462
Attention: Steven M. Hinchcliff

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or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

(8) This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa, except to the extent that the applicability of any of such laws may now or hereafter be preempted by federal law, in which case such federal law shall so govern and be controlling.

(9) This Agreement contains the entire agreement among the parties concerning the subject matter hereof and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

(10) This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

[SIGNATURES PAGES FOLLOW]

A handwritten signature in black ink, appearing to be 'M. D. A. K.', with a horizontal line underneath the name.

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

BANK:

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

By: 

Name: K. Horodnik

Title: Assistant Secretary

TENANT:

MOTORS IOWA LLC, an Iowa limited liability company

By: 

Name: Steven M. Hinchcliff

Its: Sole Manager and President

AGREED AND CONSENTED TO:

LANDLORD:

COUNCIL BLUFFS RE LLC,
an Iowa limited liability company

By: 

Name: Steven M. Hinchcliff

Its: Sole Manager and President

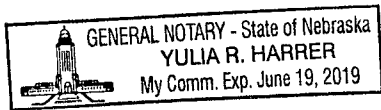
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NOTARY ACKNOWLEDGMENTS

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, Yulia R. Harrer, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Steven M. Hinchcliff, the Sole Manager and President of Council Bluffs RE LLC, an Iowa limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his free and voluntary act.

GIVEN under my hand and Notarial Seal this 7 day of December, 2016.



Yulia R. Harrer
Notary Public

My Commission Expires:

June 19, 2019

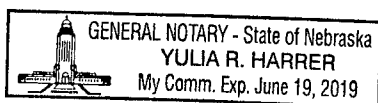
12-7-16

STATE OF NEBRASKA)

) SS.
COUNTY OF DOUGLAS)

I, Yulia R. Harrer, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Steven M. Hinchcliff, as Sole Manager and President of Motors Iowa LLC, an Iowa limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his free and voluntary act on behalf of said entity.

GIVEN under my hand and Notarial Seal this 7 day of December, 2016.



Yulia R. Harrer
Notary Public

My Commission Expires:

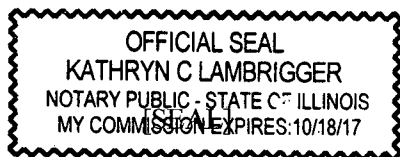
June 19, 2019

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Kathryn C Lambrigger, 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 Lambrigger
Notary Public

My commission expires:

10/18/17

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EXHIBIT 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

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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 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)

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