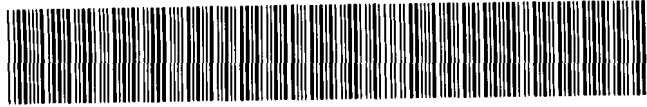


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 Register of Deeds, Douglas County, NE  
 12/13/2016 11:24:06.69



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**DOCUMENT COVER SHEET**

**Title of Document:** DEED OF TRUST

**Date of Document:** December 7, 2016

**Grantor:** VILLAGE POINTE RE LLC, a Nebraska limited liability company ("Grantor")

**Grantor's Mailing Address:** 4645 South 84<sup>th</sup> Street, Omaha, Nebraska 68127

**Grantee:** ALLY BANK ("Bank")

**Grantee's Mailing Address:** 15303 S. 94<sup>th</sup> Avenue, Orland Park, Illinois 60462

**Trustee:** First American Title Insurance Company ("Trustee")

**Trustee's Mailing Address:** 13924 Gold Circle, Omaha, Nebraska 68144

**Legal Description of Property:** See Exhibit A. TSI 62505409

Upon recording, please ~~return~~ this document to:  
 Martin J. Lee  
 Greenberg Traurig LLP  
 77 West Wacker Drive, Suite 3100  
 Chicago, Illinois 60601

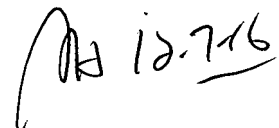
This document serves as a Fixture Filing under the Nebraska Uniform Commercial Code.

**RETURN:** Title Source, Inc.  
Suite 204, 250 W. Huron  
Cleveland, OH 44113

dc #00763903  
 Na 12-7-16

## DEED OF TRUST

- A. This Deed of Trust is made by and among:
1. **VILLAGE POINTE RE LLC**, a Nebraska limited liability company, located at 4645 South 84<sup>th</sup> Street, Omaha, Nebraska 68127 (“Grantor”);
  2. **ALLY BANK** (Ally Capital in Hawaii, Mississippi, Montana and New Jersey), located at 15303 S. 94<sup>th</sup> Avenue, Orland Park, Illinois 60462 (“Bank”); and
  3. **FIRST AMERICAN TITLE INSURANCE COMPANY**, located at 13924 Gold Circle, Omaha, Nebraska 68144 (“Trustee”).
- B. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor grants, conveys, bargains, sells, and warrants to Trustee, WITH POWER OF SALE:
1. All of Grantor’s fee simple right, title, and interest in the property described in attached Exhibit 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 (“Rents”);
  4. 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).
  5. Proceeds of the foregoing.
- C. This Deed of Trust secures payment and performance of any and all present and future debts, advances, obligations, and duties that Grantor and Borrower (as hereinafter defined) owe to Bank however arising under, and/or relating to, any and all loan and financing accommodations extended by Bank to Grantor or Borrower (as hereinafter defined), and includes future advances made by Bank to protect the security of this Deed of Trust, including, but not limited to, advances to pay real property taxes, special assessments, prior liens, hazard insurance premiums and costs of repair, maintenance and improvements (collectively, the “Obligations”).
1. The Obligations include, without limitation, (i) the real estate loan in the amount of \$2,075,000.00 plus interest and all of Bank’s costs and expenses incurred in connection with this loan (collectively “Loan”) evidenced by the Commercial Real Estate Loan and Security Agreement and Promissory Note, dated as of the date hereof (“Loan Agreement”) by and between The Synergy Group Inc., a Nebraska corporation (the “Borrower”), and Bank, hereby incorporated by reference into this Deed of Trust, 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 Bank.

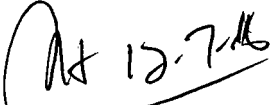
Handwritten signature and date: 12.7.16

2. The Loan bears interest in accordance with the Loan Agreement and is due and payable in 83 monthly installments beginning February 1, 2017.
3. An additional full and final payment of the Loan is due and payable on January 1, 2024.
4. Grantor and Bank expressly intend that this Deed of Trust secure any and all protective, optional or obligatory future advances that Bank may make to Grantor or Borrower from time to time, and that the Grantor or Borrower may agree to pay, but any and all optional future advances are discretionary and are subject to such terms and conditions as Bank may require in its sole, absolute discretion.

This Deed of Trust secures future advances or future obligations. The total amount of the obligations which may be secured by this Deed of Trust shall not exceed, at any time, Two Million Seventy Five Thousand and 00/100 Dollars (\$2,075,000.00) plus the costs of protecting and preserving the Property and the lien of this Deed of Trust paid by Bank pursuant to this Deed of Trust. Nothing contained in this Subsection C.4. shall be deemed to obligate Bank to make any future advances to Grantor or Borrower.

It shall be deemed a default hereunder if, pursuant to §76-1002(3)(b)(i) of the Nebraska Trust Deeds Act, Grantor files a notice of record limiting the amount of future advances secured by this Deed of Trust.

- D. Trustee accepts this Deed of Trust upon recording in the public records of the county in which the Property is located as provided by law.
1. Trustee will hold all funds in connection with this Deed of Trust in trust for the benefit of Bank for the purpose(s) for which the funds were received.
  2. Bank may unilaterally replace Trustee at any time and for any reason by:
    - a. Notifying Trustee of such replacement;
    - b. Executing a document appointing a successor trustee and recording it in the appropriate recording office of the state where the Property is located in accordance with applicable law;
  3. Trustee may resign by giving ninety (90) days written notice of resignation to Bank in a form suitable in substance for public recording and in accordance with applicable law;
  4. Any successor trustee will be vested with all the rights, duties, and powers of the original named Trustee as if the successor had been the originally named Trustee without any further act or conveyance and Trustee will:
    - a. Upon Bank's request, execute and deliver any and all documents in recordable form transferring Trustee's rights, duties, and powers to the successor trustee;
    - b. Duly assign, transfer, and deliver any property and/or funds held by Trustee for the benefit of Bank to the successor trustee to hold for the benefit of Bank.

 12-7-16

E. Assignment of Leases and Rents.

1. As additional security for the payment of the Obligations and for the performance of the covenants and agreements herein contained, subject to and in accordance with Neb. Rev. Stat. §52-1701, et. Seq., as amended (the "ALR Statute"), Grantor hereby assigns to Bank the following ("Assignment"):
  - a. All of Grantor's right, title, and interest in and to all present and future Leases and Rents and proceeds thereof;
  - b. All of Grantor's rights, but not duties, under and related to the Leases, including, without limitation, the immediate and continuing right to:
    - i. Claim, receive, collect, and pay all Rents payable or receivable under the Leases;
    - ii. Apply such Rents to payment of the Obligations;
    - iii. Do all other things that Grantor is or may become entitled to do under, or in connection with, the Leases.
2. This Assignment is given as collateral security only. To the extent there is any conflict between this Assignment and the ALR Statute, the ALR Statute shall control.
3. During the continuance of an Event of Default, Grantor shall, upon demand therefor made by Bank, deliver and surrender possession of the Property to Bank who shall thereafter collect the rents and income therefrom, rent or lease the Property or portion thereof upon such terms and for such time as it may deem best, terminate any tenancy and maintain proceedings to recover rents or possession of the Property from any tenant or trespasser, and apply the net proceeds of such rent and income to the following purposes: (a) preservation of the Property; (b) payment of taxes; (c) payment of insurance premiums; or (d) payment of installments of interest and principal due under the terms of the Loan Documents.
4. The Assignment does not bind Bank to performance of any covenant, condition, duty, or obligation under any Lease provision, or otherwise impose any monetary or non-monetary obligation on Bank, all of which remain Grantor's responsibility at all times, including without limitation, the following:
  - a. The control, care, management, or repair of the Lease property;
  - b. Any waste committed on the Lease property by Grantor, tenants, or any third party.
  - c. Any dangerous or defective condition of the Lease property, including without limitation, any condition related to any Environmental Substance or negligence in the management, upkeep, repair, or control of the Lease property resulting in loss, injury, or death to any tenant, licensee, employee, or stranger.
5. This assignment of Rents and Leases does not make Bank a "mortgagee in possession" in the absence of it taking actual possession of the property subject to the Leases.

- F. Upon Grantor's or Borrower's failure to pay any Obligation (a "Default"), and upon the Bank's request, to the extent permitted by state law, Trustee will sell the Property, in whole or in part(s) as Bank and Trustee deem appropriate, in accordance with the applicable foreclosure procedures prescribed by state law. Without limitation, at the request of the Bank, the Trustee shall proceed to take possession and to sell the Property, and any and every part thereof (in one or more parcels), in whole or in parcels, at public venue, to the

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highest bidder, for cash, at the location designated in the notice of sale as required by law, first giving notice of default and notice of such sale in the manner prescribed by applicable law; and upon such sale shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof. Any statement or recital of fact in such deed shall be prima facie evidence of the truth of such statement or recital. The Trustee, or its successor, shall receive the proceeds of said sale out of which Trustee shall pay (a) the costs and expenses of exercising the power of sale and of the sale, including lawful compensation to the Trustee for its services as provided by statute, which shall be immediately due upon first publication of sale as aforesaid; (b) to the Bank, its endorsees or assigns, upon the usual vouchers therefor, any money required to be paid by Borrower under this Deed of Trust including, without limitation, money advanced for ground rents, taxes, insurance, repairs, judgments upon statutory lien claims and any other advances hereunder and interest thereon at the Default Rate as defined in the Loan Agreement, if any; (c) the amount unpaid under the Loan Agreement, together with the interest accrued thereon at the Default Rate, if any, and all charges provided for herein; (d) all the other amounts secured by this Deed of Trust and (e) the balance of such proceeds, if any, shall be paid to the Person legally entitled thereto. The purchaser at any foreclosure sale shall not be obliged to look to the application of the proceeds thereof. If the Bank, at its option, shall set aside any declared acceleration of maturity under the Loan Agreement, the terms and provisions therein stated and the covenants, terms and conditions in the Loan Agreement and this Deed of Trust shall revive and continue with the same force and effect as if such acceleration had not occurred.

G. This Deed of Trust remains in effect until the Trustee conveys the Property upon Bank's request, to Grantor, to a purchaser at a foreclosure sale, or to some other individual or entity legally entitled thereto in accordance with applicable law.

1. Upon full and final payment and performance of all of the Obligations, Bank will request that Trustee convey the Property to Grantor, to a purchaser at a foreclosure sale, or the individual or entity entitled thereto, and release the Property from the lien of this Deed of Trust.
2. Upon such reconveyance, this Deed of Trust will be void.

H. State Specific Provisions.

1. In the event of any inconsistencies between the terms and provisions of this Deed of Trust and Section H of the Deed of Trust, the terms and provision of Section H shall govern and control.
2. This Deed of Trust is governed by the laws of the state where the Property is located.
3. The following notice is given by the Bank to Grantor:

Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the costs of insurance you may be able to obtain on your own.

4. Bank gives Grantor the following notice: A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU (BORROWER) AND US (BANK) FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT,

*Ma 12-7-16*

PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

5. Grantor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:
  - a. Grantor hereby expressly waives any and all rights of reinstatement and redemption, on its own behalf and on behalf of each and every person, to the full extent permitted by applicable law; and
  - b. Grantor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Bank but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.
6. Pursuant to §76-1008(3) of the Nebraska Trust Deeds Act, each party hereby requests that each notice of default and notice of sale given under this Deed of Trust shall be mailed to each party to this Deed of Trust at the address set forth above and at the time and in the manner required in such Section.

*[SIGNATURE PAGES TO FOLLOW]*

*MA 12.7-16*



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Land Situated in the City of Omaha in the County of Douglas in the State of NE Lots 1 and 2, West Dodge Station Replat 8, a Subdivision, as Surveyed, Platted and Recorded in Douglas County, Nebraska.

Tax Id Number(s): 0239 0452 25, 0239 0860 25 (Lot 1), 0239 0862 25 (Lot 2)

Client Reference: 885 North HWS Cleveland Blvd., Omaha, Nebraska 68022

*Mx 12-7-16*