

Warren County, Iowa
Recorded: 8/24/2016 at 8:10:00.0 AM
BK: 2016 PG: 7193
Polly J. Glascock RECORDER
Number: 2016-7193
Fee Amount: \$47.00
Revenue Tax:

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:

SUNSET DRIVE PROPERTIES, L.L.C., an Iowa limited liability company

Tenant:

GREGG YOUNG CHEVROLET OF NORWALK, INC., an Iowa corporation

Mortgagee:

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

Property Address: 2501 Sunset Dr., Norwalk, Iowa 50211

Legal Description: See attached Schedule A

61997047

THIS SUBORDINATION OF LEASE (this "Agreement") is made this 10th day of August, 2016, by and among SUNSET DRIVE PROPERTIES, L.L.C., an Iowa limited liability company ("Landlord"), GREGG YOUNG CHEVROLET OF NORWALK, INC., an Iowa corporation ("Tenant"), and ALLY BANK (Ally Capital in Hawaii, Mississippi, Montana and New Jersey) ("Bank").

RECITALS:

A. Tenant has entered that certain unrecorded Lease dated as of 8-10-16, 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 2501 Sunset Dr., Norwalk, Iowa 50211 (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 Landlord in an amount of \$8,213,000.00 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 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: | Gregg Young Chevrolet of Norwalk, Inc. 2501 Sunset Dr. Norwalk, IA 50211 Attention: Gregory B. Young |
| To Landlord: | Sunset Drive Properties, L.L.C. 2501 Sunset Dr. Norwalk, IA 50211 Attention: Gregory B. Young |

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
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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]

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)

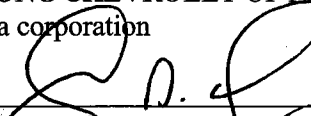
By: 

Name: K. Horodnik

Title: Assistant Secretary

TENANT:

GREGG YOUNG CHEVROLET OF NORWALK, INC., an Iowa corporation

By: 

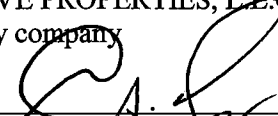
Name: Gregory B. Young

Its: President

AGREED AND CONSENTED TO:

LANDLORD:

SUNSET DRIVE PROPERTIES, L.L.C., an Iowa limited liability company

By: 

Name: Gregory B. Young

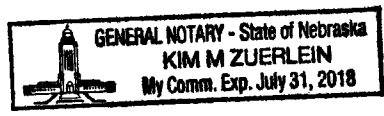
Its: Managing Member

NOTARY ACKNOWLEDGMENTS

STATE OF ~~IOWA~~ ^{Nebraska})
COUNTY OF Douglas) SS.

I, Kim M Zuerlein, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gregory B. Young, as President of Gregg Young Chevrolet of Norwalk, Inc., an Iowa corporation, 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 corporation.

GIVEN under my hand and Notarial Seal this 10 day of August, 2016.



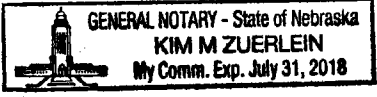
Kim M Zuerlein
Notary Public

My Commission Expires:
7-31-2018

NEBRASKA
STATE OF IOWA)
COUNTY OF Douglas) SS.

I, Kim M Zuerlein, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gregory B. Young, as President of Sunset Drive Properties, L.L.C., 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 her free and voluntary act on behalf of said corporation.

GIVEN under my hand and Notarial Seal this 10 day of August, 2016.



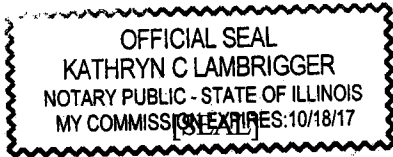
Kim M Zuerlein
Notary Public

My Commission Expires:
7-31-2018

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 A. 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 11 day of August, 2016.



Kathryn C Lambrigger
Notary Public

My commission expires:

10/18/17

EXHIBIT A

Legal Description

Lot 4, The Legacy Commercial Plat 1, an Official Plat, now included in and forming a part of Norwalk, Warren County, Iowa.