

Warren County, Iowa
Recorded: 8/25/2016 at 8:34:00.0 AM
BK: 2016 PG: 7249
Polly J. Glascock RECORDER
Number: 2016-7249
Fee Amount: \$42.00
Revenue Tax:

FIRST AMENDMENT TO MORTGAGE

Recorder's Cover Sheet

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

Mortgagor/Borrower:

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

Mortgagee:

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

Property Address: 2501 Sunset Dr., Norwalk, Iowa 50211, and as more specifically stated in Schedule A

Legal Description: See attached Exhibit A

Parcel #(s): 64171010020; 64171010030; 63171010040

Previously filed document: Mortgage recorded August 24, 2016 in Instrument Number BK: 2016 PG: 7249 of the Warren County, Iowa records.

This **FIRST AMENDMENT TO MORTGAGE** ("Amendment") is made and effective as of AUGUST 24, 2016, by and between **SUNSET DRIVE PROPERTIES, L.L.C.**, an Iowa limited liability company, with an address of 2501 Sunset Dr., Norwalk, Iowa 50211 (herein, together with its successors and assigns, "Borrower") and **ALLY BANK (Ally Capital in Hawaii, Mississippi, Montana and New Jersey)**, with an address of 6985 Union Park Center, Suite 435, Midvale, Utah 84047 ("Lender").

RECITALS:

A. Borrower made that certain Mortgage in favor of Lender dated as of August 10, 2016 and recorded with the Office of the County Recorder of Warren County, Iowa on AUGUST 24 2016 as Number BK 2016 03 7142 (the "Original Mortgage") to secure, among other things, that certain real estate loan in the original principal amount of up to \$8,213,000.00 (the "Original Loan") made to Borrower pursuant to that certain Commercial Real Estate Loan and Security Agreement and Promissory Note by and between Borrower and Lender and dated as of August 10, 2016 (the "Loan Agreement"), and pursuant to the Original Mortgage, Borrower mortgaged and conveyed unto Ally, its successors and assigns, a first priority security interest in the real estate commonly known as 2501 Sunset Dr., Norwalk, Iowa 50211, and as more specifically described on Exhibit A attached hereto, and all of its estate, right, title and interest therein situated, lying and being in the County of Warren and State of Iowa (the "Property").

B. Pursuant to the Loan Agreement, on August 10, 2016 Lender advanced a principal amount of \$5,908,000.00 to Borrower.

C. Borrower has purchased additional land adjacent to the Property, as more specifically described on Exhibit B attached hereto (the "Additional Property"), and pursuant to the Loan Agreement Lender has agreed to make additional loan proceeds in the amount of \$2,305,000.00 available to Borrower.

D. Borrower and Lender intend that the Original Mortgage be amended to incorporate the terms and conditions set forth in this Amendment.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements herein contained and for the purposes of setting forth the terms and conditions of this Amendment, the parties, intending to be bound, hereby agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by this reference thereto as if fully set forth herein.

2. Amendments.

(a) The contents Exhibit A of the Original Mortgage is deleted in its entirety and replaced with the following:

"Lots 2, 3 and 4, The Legacy Commercial Plat 1, an official Plat, now included in and forming a part of Norwalk, Warren County, Iowa."

3. Incorporation of the Mortgage. The Original Mortgage, to the extent not inconsistent with the terms and provisions of this Amendment, is incorporated herein by this reference as though the same were set forth in their entirety. Except as specifically set forth herein, this Amendment shall remain in full force and effect and its provisions shall be binding on the parties hereto.

4. Representations, Covenants and Warranties. Borrower hereby represents to, warrants and covenants with Lender that:

(a) The Original Mortgage (as amended by this Amendment) and the Loan Agreement are currently in full force and effect, and the Original Mortgage constitutes a valid and enforceable lien on the Property.

There presently exists no third party having any interest in the Property which is on a parity with or superior to the interest of Lender.

(b) Borrower has complied with the provisions of the Original Mortgage in all material respects, and Borrower is not in default under any provisions thereof and no event has occurred which with the passage of time or the giving of notice or both would constitute an Event of Default by Borrower under the Original Mortgage.

(c) There presently exists no setoff, defense or counterclaim available to Borrower, and Borrower has not received notice of, and has no knowledge of, any setoff, counterclaim or other defense available to any such party.

(d) Borrower has neither agreed to nor has any knowledge of or is in receipt of any notice of any waivers under, amendments or other modifications of, assignments of rights or obligations under, or defaults under the Original Mortgage.

(e) Borrower has the full right and power to execute, deliver and perform this Amendment according to its terms without the necessity of consent of or joinder with another; when executed and delivered, this Amendment shall constitute a valid and binding agreement, enforceable according to its terms and as to all related entities, successors, subsidiaries, affiliates, agents and assigns.

(f) Borrower is a member-managed limited liability company under the laws of the State of Iowa, this Mortgage does not encumber substantially all of the Borrower's assets, the undersigned is the managing member of the company and has authority under the Borrower's Operating Agreement to execute and deliver this instrument encumbering Property.

5. Successors and Assigns. This Amendment and all of the terms and conditions set forth herein shall extend to and be binding upon each of the parties hereto and upon each of said parties' respective executors, administrators, successors and permitted assigns.

6. Severability. In the event that any provision of this Amendment or any operation contemplated hereunder is found by any court of competent jurisdiction to be inconsistent with or contrary to any law, ordinance, or regulation, the latter shall be deemed to control and the Amendment shall be regarded as modified accordingly, and, in any event, the remainder of this Amendment shall continue in full force and effect.

7. Original Mortgage Otherwise Unchanged. Except as specifically set forth herein, all terms and conditions of the Original Mortgage shall remain in full force and effect and nothing herein contained invalidates or shall invalidate any security now held by Lender for the obligations of Borrower under the Original Mortgage and the Loan Agreement or impair or release any covenant, condition, agreement or stipulation contained therein.

8. Counterparts. This Amendment may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which collectively shall constitute one (1) agreement.

9. Conflicts. In the event of any inconsistency or conflict between the Original Mortgage (as amended by this Amendment) and the Loan Agreement, the terms of the Loan Agreement shall control.

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 NOTICE APPLIES TO ALL AGREEMENTS AND OTHER LOAN DOCUMENTS TO WHICH BORROWER IS A PARTY.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Borrower has executed and delivered this First Amendment to Open-End Mortgage as of the day and year first above written.

MORTGAGOR/BORROWER:

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

By: _____
[Handwritten signature of Gregory B. Young]

Name: Gregory B. Young

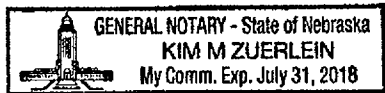
Its: Managing Member

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, the Managing Member 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 she signed and delivered the said instrument as her free and voluntary act.

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



Kim M Zuerlein
Notary Public

My Commission Expires:

7-31-2018

LENDER:

ALLY BANK

By: *K. Horodnik*

Name: *K. Horodnik*

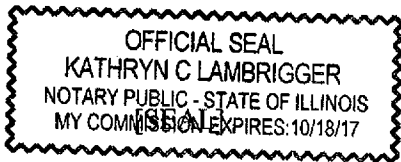
Title: Assistant Secretary

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 *11* day of *August*, 2016.

Kathryn C Lambrigger
Notary Public



My commission expires:
10/18/17

EXHIBIT A

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

EXHIBIT B

Lots 2 and 3, The Legacy Commercial Plat 1, an Official Plat, now included in and forming a part of Norwalk, Warren County, Iowa.