

UNOFFICIAL COPY



1718649129

Doc# 1718649129 Fee \$56.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/05/2017 11:36 AM PG: 1 OF 10

FIDELITY NATIONAL TITLE

SC17011275

DRAFTED BY AND WHEN RECORDED
RETURN TO:

Nicholas P. Scavone, Jr.
Bodman PLC
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
(313) 259-7777

LEASE SUBORDINATION AGREEMENT

This Lease Subordination Agreement ("Agreement") is made as of June 30, 2017, by and among **INFINITI OF HOFFMAN ESTATES, INC.**, an Illinois corporation ("Tenant"), with an address at 1075 West Golf Road, Hoffman Estates, Illinois 60194, **GANNON & GOLF, LTD.**, an Illinois corporation ("Landlord"), with an address at 1475 S. Barrington Road, Barrington, Illinois 60010, and **COMERICA BANK**, a Texas banking association, in its capacity as agent for itself and the Lenders, as defined below (hereinafter referred to as "Agent"), with an address at 39200 West Six Mile Road, Livonia, Michigan 48152, Attention: Commercial Loan Documentation, Mail Code 7578.

UNOFFICIAL COPY

RECITALS

A. Tenant entered into a certain Facility Lease Agreement dated May 1, 2017 (the "Lease") between Tenant, as lessee, and Landlord (or Landlord's predecessor in interest), as lessor, pertaining to certain premises (the "Leased Premises") commonly known as 1075 West Golf Road, Hoffman Estates, Illinois, and being all or part of the property legally described on attached Exhibit A attached hereto ("Property").

B. Agent and Landlord have entered into Amended and Restated Credit and Security Agreement dated of even date herewith (as it may be amended from time to time, the "Credit Agreement"). To secure the obligations of the "Borrowers" as defined in the Credit Agreement under the Credit Agreement, Landlord has agreed to grant to the Agent, for the benefit of the "Lenders" as defined in the Credit Agreement ("Lenders") a mortgage encumbering, among other collateral, the Leased Premises, including without limit, the entire interest of Landlord in the Lease.

C. Landlord has signed and delivered, or is about to sign and deliver, to Agent a certain mortgage encumbering, among other collateral, the Leased Premises, including without limit the entire interest of Landlord in the Lease. This mortgage and any other mortgage(s) in favor of Agent now or later in force against the Lease or the Leased Premises, as any of them may be renewed, modified, amended, consolidated, extended, substituted or replaced from time to time, are individually and collectively called the "Mortgage".

D. Agent has required, as a condition to entering into or continuing certain financial arrangements with Landlord, that Tenant and Landlord enter into this Agreement and each is willing to do so.

E. Tenant is affiliated with and/or otherwise financially interested in the affairs of Landlord and, in order to induce Agent and the Lenders to extend credit or other financial accommodations secured by the Mortgage, Tenant deems it advisable, desirable and in its best interests to enter into this Agreement.

In consideration of the mutual premises in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the following representations and agreements are made:

1. The above Recitals are deemed part of this Agreement.
2. Neither Agent nor any Lender assume any duty, liability, or obligation whatsoever under the Lease either by virtue of the Mortgage or by any subsequent receipt or collection of rents under it.
3. The Lease, and all amendments, modifications, renewals and extensions of it, and all rights and interests of Tenant under the Lease (including without limit all options, liens or charges created by the Lease, if any) and all rights and interests of Tenant in the Leased Premises shall be and are hereby made subject and subordinate to the lien(s) and the terms of the Mortgage, and to all advances made or to be made upon the security of the Mortgage, and to all renewals, modifications, amendments, consolidations, replacements, substitutions and extensions of the Mortgage. Without limiting the foregoing, the provisions of the Mortgage shall govern the priority, entitlement to and disposition of insurance proceeds and condemnation and eminent domain awards with respect to the Leased Premises or other Property. If there is any inconsistency between the terms and conditions of any Mortgage and the Lease, the terms and conditions of the Mortgage shall control.
4. The relative priorities of the parties in the Leased Premises as set forth in this Agreement shall control irrespective of the time, order or method of attachment or perfection of the liens or interests granted by Landlord or acquired by the parties in the Leased Premises. This Agreement shall constitute a continuing agreement of the parties even though at times Landlord may not be indebted to Agent or any Lender. From time to time Agent and Lenders may, without notice to Tenant, receive payments from Landlord and lend money (on a term loan, revolving loan or other basis), extend credit from time to time and make any other financial accommodation to Landlord in reliance on this Agreement. Without notice to Tenant and without in any way impairing or affecting this Agreement, Agent and Lenders, from time to time, as it may deem proper, may (a) enter into agreements with Landlord as to its financial accommodations or with any respective guarantor, third party pledgor or other party who may have pledged property or be responsible for payment of any of Landlord's obligations to Agent and Lenders,

UNOFFICIAL COPY

extending the time of payment or renewing or otherwise altering the terms of all or any of the obligations, or affecting any security (including without limit the Leased Premises), guaranty, or pledge underlying any or all such obligations, and/or (b) exchange, sell, surrender, release, subordinate or otherwise deal with any such security (including without limit the Leased Premises), guaranty, or pledge, or may release any party directly or indirectly liable for any obligations of Landlord to Agent or Lenders. Landlord and Tenant each waive all rights to require the Agent or Lenders to marshal the Leased Premises or any other collateral the Agent or Lenders may at any time have as security for indebtedness secured by any Mortgage and waive all right to require the Agent to first proceed against Landlord, any guarantor or any other person before proceeding against the Leased Premises.

5. Tenant shall not contest the validity, priority or perfection of the Agent's security interest or lien on any collateral in which the Tenant may also have an interest, including the Leased Premises. The priorities of the Agent and the Tenant in the Leased Premises shall be in accordance with this Agreement, regardless of whether the Agent's security interest or lien on the Leased Premises is valid or perfected. The Agent may take action to foreclose or otherwise realize upon, or protect its interest in, the Leased Premises, in accordance with its agreements with the Landlord, at any time, without the consent of Tenant, and Tenant agrees not to interfere in a manner which would defeat the purpose of this Agreement in connection therewith. If (a) Agent has agreed to release its security interests in or liens on any of the Property in connection with the realization of any of its rights with respect to such Property, including, but not limited to, (i) a sale and conveyance by Landlord of any of the Property, (ii) refinance of any of the indebtedness secured by the Mortgage, (iii) sale and conveyance of any of the Property by a court appointed receiver; or (b) Agent or its designee has agreed to acquire any of the Property by acceptance of a deed-in-lieu of foreclosure, then within 10 days of demand by Agent, its designee, such other purchaser, or the court appointed receiver, Tenant shall execute and deliver to the requesting party releases, discharges and terminations of the Lease and all of Tenant's interest in the Leased Premises, in form and substance satisfactory to the requesting party ("Discharges"). Agent is hereby authorized as Tenant's attorney in fact, to execute and deliver Discharges, without waiver of any default by Tenant. The failure to obtain and record Discharges shall not alter the subordination agreed to in this Agreement. Without limiting the foregoing upon foreclosure of the Mortgage and expiration of any applicable redemption period, the Lease and all right, title and interest of Tenant in and to the Leased Premises shall be extinguished.

6. Tenant hereby waives any and all claims, causes, of action, losses, costs or expenses which it may have against Agent or any Lender as a result of Agent's exercise of any rights or remedies under the Mortgage, this Agreement or any related document or Agent's refusal to consent to any action by Tenant which requires Agent's consent under this Agreement.

7. Tenant hereby acknowledges and agrees that it shall not be entitled to, and shall not raise against Agent or any Lender, any counterclaim, claim, offset or defense in any proceeding to enforce any of Agent's remedies under the Mortgage or related documents, including, without limitation, any action seeking to have a receiver appointed to collect the rents generated by the Leased Premises or any mortgage foreclosure action seeking to compel the sale of the Leased Premises to pay all or any part of any of the indebtedness secured by the Mortgage.

8. Tenant shall pay all rent and other amounts due under the Lease to Agent for the benefit of Lenders, upon receipt of written notice from Agent that a default has occurred under any Mortgage, notwithstanding that Agent may not have foreclosed such Mortgage, had a receiver appointed, exercised any assignment of rent under the Mortgage, or succeeded to the interest of Landlord under the Lease. Tenant shall have no duty to ascertain whether a default exists or such demand for rent is otherwise permitted. Landlord waives any rights or claims it may now or later have against Tenant by reason of such payment to Agent.

9. Tenant represents to, and agrees with, Agent as follows:

(a) The undersigned is the Tenant under the Lease, has accepted the Leased Premises, is in occupancy of the Leased Premises and is paying the full rent stipulated under the Lease without deduction, counter-claim or set-off.

(b) Tenant will notify Agent in writing of any default or breach by Landlord under the terms of the Lease. Tenant shall not (i) withhold, abate or offset rent, or (ii) consent to withholding, abating or offsetting rent, or (iii) cancel or terminate or consent to the cancellation or termination of the Lease, or (iv)

UNOFFICIAL COPY

surrender or consent to the surrender of the Leased Premises, because of a Landlord default or breach, without giving Agent sixty (60) days following written notice of default or breach within which to cure the default or breach. Agent is under no obligation to cure any default or breach. If any default or breach by Landlord is cured within the time periods described above, Tenant shall have no right to withhold, abate or offset rent or terminate or cancel the Lease or surrender the Leased Premises by virtue of the default or breach, notwithstanding anything to the contrary in the Lease, at law, in equity or otherwise. Nothing in this paragraph is intended or shall be deemed to give Tenant (or to recognize Tenant as having) the right to withhold, abate or offset rent or to cancel or terminate the Lease or to surrender the Leased Premises because of Landlord's default or breach under the Lease, except to the extent expressly permitted in the Lease or by law or in equity, but in any event subject to the provisions of this Agreement.

(c) The Lease is in full force and effect and has not been modified, amended, renewed, extended, supplemented or assigned, and no part of the Lease Premises has been sublet, except as specifically referenced above. Tenant will not enter into any amendment, modification, consensual or negotiated surrender or cancellation, or assignment of the Lease (or any sublease or other form of third party occupancy of the Leased Premises) after the date of this Agreement without Agent's written consent.

(d) There are no defaults under the Lease (and no event has occurred that, with the giving of notice and/or the passage of time, would constitute a default under the Lease) and there are no grounds for cancellation thereof by Landlord or Tenant.

(e) Base rent has been paid to June 30, 2017.

(f) The Lease is for a term of five (5) years and shall renew automatically every five (5) years unless terminated by either Landlord or Tenant by providing sixty (60) days' written notice.

(g) No monetary or other considerations, including but not limited to rental concessions by Landlord, Tenant improvements in excess of building standard, or Landlord's assumption of prior lease obligations of Tenant, have been granted to Tenant by Landlord for entering into the Lease and are outstanding.

(h) The Lease contains no first right of refusal, right of first offer, option to purchase, option to expand, option to contract, option to relocate, or option to terminate early.

(i) Tenant has no interest in, or rights as to, the building or Property of which the Leased Premises are a part, except such interest or rights arising under the Lease.

10. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail, return receipt requested, postage prepaid or nationally recognized overnight courier service that regularly maintains records of items delivered, delivery fee prepaid. The address for delivery of a notice or communication is at the top of the first page of this Agreement, which address may be changed by notice in accordance with this paragraph. Notice shall be effective two business days after being sent by certified mail as provided above or the next business day after being sent by overnight courier service as provided above.

11. This Agreement shall be binding upon the parties and their respective successors and assigns; provided that nothing in this paragraph shall be deemed a consent to any assignment or transfer by Tenant of any interest in the Lease or the Leased Premises except as expressly permitted in the Lease and in this Agreement.

12. This Agreement constitutes the entire agreement between Agent and Tenant regarding the priority of the Lease and the Mortgage.

13. If this Agreement conflicts with the Lease, then this Agreement shall control as between the parties.

UNOFFICIAL COPY

14. Tenant agrees, from time to time, within fifteen (15) days after notice from Agent, to execute and deliver to Agent an estoppel certificate containing representations as to the then current rent and security deposit, those matters set forth in Paragraph 9 above, and such other related matters as Agent may reasonably request.

15. In the event of any legal action or proceeding is commenced to enforce the rights or obligations arising under this Agreement or to recover damages for the breach of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all court costs, legal expenses and reasonable attorneys fees. Attorney fees shall be deemed a reference to reasonable fees, charges, costs and expenses of both in-house and outside counsel and paralegals, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorney fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise.

16. If any provision contained in this Agreement is invalid, illegal or unenforceable for any reason, such provision shall not affect the validity, legality or enforceability of the remainder of the Agreement.

17. This Agreement may not be modified or amended, except in writing and signed by the parties hereto.

18. This Agreement may be signed in counterparts.

19. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois.

20. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.

[remainder of page intentionally left blank]

UNOFFICIAL COPY

The parties have signed and delivered this Agreement as of the date first written above.

TENANT:

INFINTI OF HOFFMAN ESTATES, INC., an Illinois corporation

By: Mick Austin

Its: Authorized Signatory

AGENT:

COMERICA BANK, a Texas banking association

By: _____

Its: _____

LANDLORD:

GANNON & GOLF, LTD., an Illinois corporation

By: [Signature]

Its: Authorized Signatory

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Acknowledgment of Tenant

STATE OF IL)
) SS.
COUNTY OF Lake)

The foregoing instrument was acknowledged before me this 9th day of June, 2017, by Mickey O. Austin, the Authorized of INFINITI OF HOFFMAN ESTATES, INC., an Illinois corporation, on behalf of said entity.

Socorro Sanchez Ramirez
Notary Public
MacHenry County, Michigan IL
Acting in Lake County, Michigan IL
My commission expires: 10-16-17



Acknowledgment of Agent

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, the _____ of COMERICA BANK, a Texas banking association, on behalf of said entity.

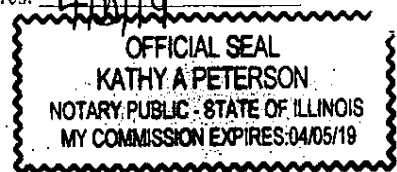
Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

Acknowledgment of Landlord

STATE OF IL)
) SS.
COUNTY OF Lake)

The foregoing instrument was acknowledged before me this 9th day of June, 2017, by Paul Ramirez, the Authorized of GANNON & GOLF, LTD., an Illinois corporation, on behalf of said entity.

Kathy A. Peterson
Notary Public
Lake County, Michigan IL
Acting in Lake County, Michigan IL
My commission expires: 4/6/19



UNOFFICIAL COPY

The parties have signed and delivered this Agreement as of the date first written above.

TENANT:

INFINITI OF HOFFMAN ESTATES, INC., an Illinois corporation

By: _____

Its: _____

AGENT:

COMERICA BANK, a Texas banking association

By: Jamal A. Zak

Its: Jamal A. Zak Vice President

LANDLORD:

GANNON & GOLF, LTD., an Illinois corporation

By: _____

Its: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Acknowledgment of Tenant

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, the _____ of INFINITI OF HOFFMAN ESTATES, INC., an Illinois corporation, on behalf of said entity.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

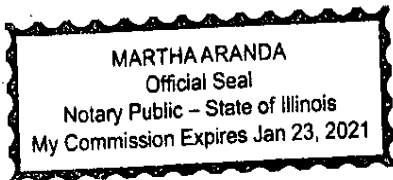
Acknowledgment of Agent

STATE OF Illinois)
) SS.
COUNTY OF DuPage)

The foregoing instrument was acknowledged before me this 12th day of June, 2017, by JERAL A. ZAK, the Vice President of COMERICA BANK, a Texas banking association, on behalf of said entity.

Martha Aranda

Notary Public
DuPage County, Michigan
Acting in DuPage County, Michigan
My commission expires: Jan. 23, 2021



Acknowledgment of Landlord

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, the _____ of GANNON & GOLF, LTD., an Illinois corporation, on behalf of said entity.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

UNOFFICIAL COPY

EXHIBIT A

DESCRIPTION OF REAL ESTATE

Property situated in the County of Cook, State of Illinois, described as follows:

Lot 1 in the Plat of Consolidation of Motor Werks Infiniti recorded December 21, 2007 as document 0735515053, being a consolidation of Lot 1 in Hoffman Hills Commercial Subdivision Unit No. 2, and Part of Lot 1 in Hoffman Hills Commercial Subdivision Unit No. 1, All being a part of the Northwest 1/4 of Section 16, Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly Known As: 1075 West Golf Road, Hoffman Estates, Illinois
Property Index No.: 07-16-100-015

Property of Cook County Clerk's Office