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Doc#: 1901557076 Fee: \$62.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 01/15/2019 10:37 AM Pg: 1 of 8

FIRST AMERICAN TITLE

FILE # 826533 - Metropolitan

LEASE SUBORDINATION AGREEMENT (94 E Sauk Trail)

This Lease Subordination Agreement ("Agreement") is made as of December 3, 2018, by and among M & K Truck Center of South Chicago, LLC, with an address at 8800 Byron Commerce Dr. SW, Byron Center, Michigan 49315 ("Tenant"), 94 E Sauk Trail LLC, with an address at 8800 Byron Commerce Drive, SW, Bryon Center, Michigan 49315 ("Landlord"), and Independent Bank, a Michigan banking corporation, with an address at 77 Monroe Center NW, Suite 1200, Grand Rapids, Michigan 49503 ("Lender").

RECITALS

A. Tenant entered into a lease dated December 3, 2018 (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 94 E Sauk Trail, South Chicago Heights, Illinois 60411, and being all or part of the property legally described on attached Exhibit A (the "Property").

B. Landlord has signed and delivered, or is about to sign and deliver, to Lender a mortgage encumbering, among other collateral, the Leased Premises, including Landlord's interest in the Lease. This mortgage and any other mortgage(s) in favor of Lender 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".

C. Lender 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.

D. Tenant is affiliated with and/or otherwise financially interested in the affairs of Landlord and, in order to induce the Lender 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 covenants and agreements in this Agreement, the parties agree as follows:

1. Lender assumes no 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.

2. 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 rights, options, liens or charges created by the Lease, if any, and the rights of any subtenants) and all rights and interests of Tenant and any subtenants in the Leased Premises and Property 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

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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.

3. 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 Lender, and from time to time Lender 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, Lender, 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 Lender, extending the time of payment or renewing or otherwise altering the terms of all or any of the obligations, or affecting any security, guaranty, or pledge underlying 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 Lender. Landlord and Tenant waive all rights to require the Lender to marshal the Leased Premises or any other collateral the Lender may at any time have as security for indebtedness secured by any Mortgage and waive all right to require the Lender to first proceed against Landlord, any guarantor or any other person before proceeding against the Leased Premises.

4. Tenant shall not contest the validity, priority or perfection of the Lender'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 Lender and the Tenant in the Leased Premises shall be in accordance with this Agreement, regardless of whether the Lender's security interest or lien on the Leased Premises is valid or perfected. The Lender 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) Lender 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, by (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) Lender 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 Lender, 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 and Property, in form and substance satisfactory to the requesting party ("Discharges"). Lender 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 and Property shall be extinguished.

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

6. Tenant hereby acknowledges and agrees that it shall not be entitled to, and shall not raise against Lender, any counterclaim, claim, offset or defense in any proceeding to enforce any of Lender'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.

7. Tenant shall pay all rent and other amounts due under the Lease to Lender upon receipt of written notice from Lender that a default has occurred under any Mortgage, notwithstanding that Lender may not

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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.

8. Tenant will notify Lender 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) surrender or consent to the surrender of the Leased Premises, because of a Landlord default or breach, without giving Lender sixty (60) days following written notice of default or breach within which to cure the default or breach. Lender is under no obligation to cure any default or breach. The sixty (60) day cure period granted to Lender will be extended by any period of time during which Lender is diligently pursuing the cure of a default or breach which cannot reasonably be expected to be cured within sixty (60) days. 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.

9. 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.

10. 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.

11. This Agreement constitutes the entire agreement between Lender and Tenant regarding subordination of the Lease to the Mortgage.

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

13. Tenant agrees, from time to time, within fifteen (15) days after notice from Lender, to execute and deliver to Lender an estoppel certificate containing representations as to the then current rent and security deposit, those matters set forth in Paragraph 8 above, and such other related matters as Lender may reasonably request.

14. 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 of 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.

15. 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.

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

17. This Agreement may be signed in counterparts.

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

19. 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.

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

TENANT:

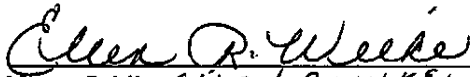
M & K TRUCK CENTER OF SOUTH CHICAGO, LLC, an Illinois limited liability company

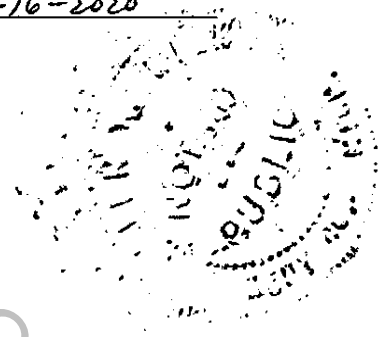
By: 
 Ronald J. Meyering
 Its: Manager

Acknowledgment of Tenant

STATE OF MICHIGAN)
) SS.
 COUNTY OF KENT)

The foregoing instrument was acknowledged before me this 3rd day of December, 2018, by Ronald J. Meyering, the Manager of M & K Truck Center of South Chicago, LLC, an Illinois limited liability company, on behalf of said entity.


 Notary Public ELLEN R. WILKE
 KENT County, MI
 Acting in KENT County, MI
 My commission expires: 9-16-2020




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LENDER:


INDEPENDENT BANK, a Michigan banking corporation

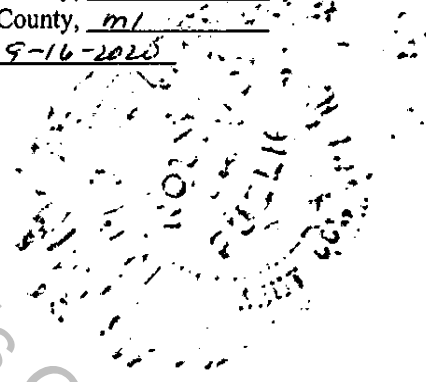
By: 
Steven Gerow
Its: Vice President

Acknowledgment of Lender

STATE OF MICHIGAN)
) S.S.
COUNTY OF KENT)

The foregoing instrument was acknowledged before me this 3rd day of December 2018, by Steven Gerow, the Vice President of Independent Bank, a Michigan banking corporation, on behalf of said banking corporation.


Notary Public ELLEN R. WILKE
KENT County, MI
Acting in KENT County, MI
My commission expires: 9-16-2020




Property of Cook County Clerk's Office

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LANDLORD:

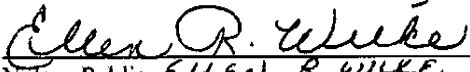
94 E SAUK TRAIL, LLC, a Michigan limited liability company

By: 
Ronald J. Meyering
Its: Manager

Acknowledgment of Landlord

STATE OF MICHIGAN)
) SS.
COUNTY OF KENT)

The foregoing instrument was acknowledged before me this 3rd day of December 2018, Ronald J. Meyering, the Manager of 94 E Sauk Trail, LLC, a Michigan limited liability company, on behalf of said entity.


Notary Public ELLEN R. WILKE
KENT County, MI
Acting in KENT County, MI
My commission expires: 9-16-2020

Prepared by:

Michael G. Campbell
BARNES & THORNBURG LLP
171 Monroe Avenue, NW
Suite 1000
Grand Rapids, Michigan 49503-2694
(616) 742-3930

When recorded return to:

Michael G. Campbell
BARNES & THORNBURG LLP
171 Monroe Avenue, NW
Suite 1000
Grand Rapids, Michigan 49503-2694
(616) 742-3930

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EXHIBIT A

DESCRIPTION OF REAL ESTATE

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

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

The West 200.00 feet of that part of the East Half of the Northwest Quarter of Section 33, Township 35 North, Range 14 East of the Third Principal Meridian, lying Southerly of the center line of the public road known as Sauk Trail (EXCEPT the South 846.00 feet thereof), in Cook County, Illinois.

EXCEPT that part of the land taken for Sauk Trail by Condemnation Case No. 92L50079 described as follows: Beginning at the Northeast corner of Lot 13 in Circuit Court Partition, a subdivision of the Northeast Quarter of Section 32 and the West Half of the Northwest Quarter of Section 33, according to the plat thereof recorded May 5, 1900 as document 2956680; thence on an assumed bearing of South 00 degrees 35 minutes 04 seconds East along the East line thereof, 50.25 feet; thence North 83 degrees 39 minutes 38 seconds East 5.68 feet to a point on a line 50.00 feet South of and parallel with the centerline of Sauk Trail Road; thence North 82 degrees 15 minutes 06 seconds East along said parallel line, 195.89 feet to the East line of the West 200.00 feet of the East Half of the Northwest Quarter of Section 33 aforesaid; thence North 00 degrees 35 minutes 04 seconds West along said East line, 50.39 feet to the centerline of Sauk Trail Road; thence South 82 degrees 15 minutes 06 seconds West along said centerline 201.58 feet to the Point of Beginning, in Cook County, Illinois.

Tax Parcel Number(s): 32-33-102-052-0000 (Vol. 021)