



Doc#: 0715202011 Fee: \$38.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/01/2007 07:49 AM Pg: 1 of 8

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Schultz 2 of 3

ASSIGNMENT OF LEASES AND RENTS

KNOW ALL MEN BY THESE PRESENTS, THAT:

K AND H REAL ESTATE DEVELOPMENT, INC., an Illinois corporation ("Mortgagor") has executed a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of an even date herewith ("Mortgage"), to and for the benefit of TCF NATIONAL BANK, a national banking association ("Mortgagee"), conveying the real estate described in Exhibit "A" attached hereto and made a part hereof ("Property"), and which Mortgage was executed and delivered in accordance with the terms of the Construction Loan Agreement of an even date herewith by and between Mortgagor and Mortgagee ("Loan Agreement") in order to secure (i) an indebtedness to Mortgagee evidenced by a Note of an even date herewith ("Note") executed by Mortgagor in the principal sum of NINE MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$9,525,000.00) and (ii) the obligations of Mortgagor under the Loan Agreement and the Loan Documents (as defined in the Loan Agreement) and the Mortgagee is the legal owner and holder of the Loan Documents and the Note; and

Mortgagor is desirous of further securing the indebtedness now due and to become due to the Mortgagee secured by the Mortgage.

NOW, THEREFORE, Mortgagor, for and in consideration of these presents, and the mutual agreements herein contained, and as further and additional security to the Mortgagee, and in consideration of the sum of TEN DOLLARS (\$10.00) to Mortgagor in hand paid, the receipt of which is hereby acknowledged, does hereby:

1. **LEASES ASSIGNED.** Sell, assign and transfer unto the Mortgagee all the leases and rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Property including any improvements thereon, or any part thereof, which may be made or agreed to by Mortgagor under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all the said leases and agreements, and all the avails thereof, to the Mortgagee.

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2. **AUTHORITY OF MORTGAGEE.** Mortgagor does hereby authorize irrevocably the Mortgagee (with or without taking possession of the aforesaid Property), to rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Property, with the same rights and powers and subject to the same immunities, exoneration of liability, and rights of recourse and indemnity as the Mortgagee would have upon taking possession of the Property pursuant to the provisions hereinafter set forth.

3. **MORTGAGOR'S REPRESENTATIONS.** Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Property has been or will be waived, released, reduced or discounted or otherwise discharged or compromised by Mortgagor except in the ordinary and usual course of Mortgagor's business. Mortgagor waives any right of set-off against any person in possession of any portion of the Property. Mortgagor agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Property, provided any such assignment to a purchaser or grantee shall be subject and subordinate to rights herein granted to Mortgagee.

4. **WAIVER OF MORTGAGEE LIABILITIES.** Nothing herein contained shall be construed as constituting the Mortgagee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagor.

5. **ADDITIONAL LEASES.** Mortgagor further agrees to assign and transfer to the Mortgagee all future leases upon all or any part of the Property and to execute and deliver, immediately upon the request of the Mortgagee, all such further assurances and assignments in the Property as the Mortgagee shall from time to time require; provided, however, that Mortgagor may, in the ordinary and usual course of Mortgagor's business, prior to such time as the Mortgagee may exercise the rights and powers conferred upon it herein, cancel, surrender or modify leases of less than all, or substantially all, of the Property.

6. **ENFORCEABILITY.** Although it is the intention of the parties that this Assignment of Leases and Rents shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagee shall not exercise any of the rights and powers conferred upon it herein until and unless a "Default" shall occur. The occurrence of an Event of Default under Article IX of the Loan Agreement shall constitute a "Default" for purposes of this Assignment of Leases and Rents. Nothing herein contained shall be deemed to affect or impair any rights which the Mortgagee may have under the Note and Mortgage or any other instrument herein mentioned.

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7. **RIGHTS ON FORECLOSURE.** In any case in which, under the provisions of the Mortgage, the Mortgagee has a right to institute foreclosure proceedings, whether before or after institution of legal proceedings to foreclose a lien thereof, or before or after sale thereunder, upon demand of the Mortgagee, subject to the rights of tenants in possession of the Property, the Mortgagee shall be entitled to take actual possession of the Property or any part thereof personally, or by its agents or attorneys, and Mortgagee in its discretion may, with process of law, enter upon and take and maintain possession of any or any part of the Property, together with all documents, books, records, papers and accounts of Mortgagor, or then owner of the Property relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom and may, as attorney-in-fact of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of security of the avails, rents, issues and profits of the Property, including actions for the recovery of rent, and actions of unlawful detainer, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any time and all times hereafter, without notice to Mortgagor (other than such notices as are otherwise required herein), and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to the Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property that may seem judicious, in its discretion, insure and reinsure the same for all risks, incidental to Mortgagee's possession, operation and management thereof and to receive all such avails, rents, issues and profits.

8. **UNDERTAKINGS BY GRANTOR.** The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases or rental agreements relating to the Property, and Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any leases or under or by reason of the assignment thereof and of or from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases other than resulting from Mortgagee's gross negligence or willful misconduct. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee for the amount thereof, including costs, expenses and reasonable attorneys' fees, immediately upon demand.

9. **APPLICATION OF RECEIPTS.** The Mortgagee, in the exercise of the rights and powers conferred upon it by this Assignment of Leases and Rents, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as the Mortgagee may determine:

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- (a) To the payment of the operating expenses of the Property, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agent or agents, if management be delegated to an agent or agents, and it shall also include lease commissions and other compensation and expenses for seeking and procuring tenants and entering into leases), establish claim for damages, if any, and premiums on insurance hereinabove authorized;
- (b) To the payment of taxes and special assessments now due or which may hereafter become due on the Property;
- (c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions or betterments and improvements of the Property, including the cost from time to time of placing the Property in such condition as will, in the judgment of the Mortgagee, make it readily rentable;
- (d) To the payment of the Note or other indebtedness secured by the Mortgage or any deficiency which may result from any foreclosure sale.

Mortgagor does further specifically authorize and instruct each and every present and future lessee or tenant of the whole or any part of the Property to pay all unpaid rental agreed upon in any tenancy to the Mortgagee upon receipt of demand from Mortgagee to so pay the same.

10. **CUMULATIVE REMEDY.** It is understood and agreed that the provisions set forth in this Assignment of Leases and Rents shall be deemed to be a special remedy given to the Mortgagee, and shall not be deemed exclusive of any of the remedies granted in the above described Mortgage, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

11. GENERAL PROVISIONS.

- (a) Whenever the word "Mortgagor" is mentioned herein, it is hereby understood that the same includes and shall be binding upon successors and assigns of Mortgagor, and any party or parties holding title to the Property by, through or under Mortgagor. All of the rights, powers, privileges and immunities herein granted and assigned to Mortgagee shall also inure to its successors and assigns, including all holders, from time to time, of the Note.
- (b) It is expressly understood that no judgment or decree which may be entered on the Note or any other debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by the Mortgage, in whatever

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form the said indebtedness may be and until the indebtedness secured by the Mortgage shall have been paid in full and all bills incurred by virtue of the authority contained herein have been fully paid out of the rents, issues and profits of the Property, or by the Mortgagor, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless indebtedness secured by the Mortgage is fully satisfied before the expiration of any period of redemption.

- (c) This instrument shall be assignable by Mortgagee, and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective executors, administrators, legal representatives, successors and assigns of each of the parties hereto.
- (d) The failure of Mortgagee, or any of its agents or attorneys, successors or assigns, to avail itself or themselves of any of the terms, provisions, and conditions of this Assignment of Leases and Rents for any period of time, shall not be construed or deemed to be a waiver of any of its, his or their rights under the terms hereof, but Mortgagee, or its agents or attorneys, successors or assigns shall have full right, power and authority to enforce this Assignment of Leases and Rents, or any of the terms, provisions, or conditions hereof, and exercise the powers hereunder, at any time or times that shall be deemed fit.
- (e) The payment of the Note, any other indebtedness, and release of the Mortgage securing the Note and any other indebtedness shall ipso facto operate as a release of this instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, this Assignment of Leases and Rents has been executed in favor of Mortgagee as of the 17th day of May, 2007.

MORTGAGOR:

**K AND H REAL ESTATE DEVELOPMENT,
INC.**, an Illinois corporation

By: S. Homata

Print Name: Steve Homata

Its: PPS

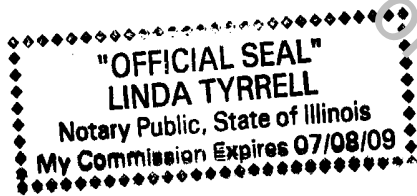
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, LINDA TYRRELL, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Steve Tomatas, _____, the President of K AND H REAL ESTATE DEVELOPMENT, INC., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PRESIDENT, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation in his capacity as PRESIDENT, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17th day of May, 2007.



Linda Tyrrell
NOTARY PUBLIC

My commission expires: 7/8/09

This instrument was prepared by and after recording return to:

Andrew M. Sachs, Esq.
ROBBINS, SALOMON & PATT, LTD.
25 East Washington Street
Suite 1000
Chicago, Illinois 60602
(312) 782-9000

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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

LOT 1 IN THE SHOPPES AT PRIME VILLAGE SUBDIVISION RECORDED MAY 14, 2007 AS DOCUMENT NUMBER 0713415145, BEING A RESUBDIVISION OF LOTS 1, 2, 3, 6, 7 AND 8 (EXCEPT THE EAST 225 FEET OF LOT 8) TOGETHER WITH THE NORTH 200 FEET OF LOT 11, IN FIRST ADDITION TO PLUM GROVE HIGH CREST, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 2, 1955, AS DOCUMENT 1631852, IN COOK COUNTY, ILLINOIS

P.I.N.:	02-35-305-007-0000	02-35-305-024-0000
	02-35-305-008-0000	02-35-305-030-0000
	02-35-305-016-0000	02-35-305-033-0000
	02-35-305-019-0000	02-35-305-034-0000
	02-35-305-020-0000	02-35-305-038-0000
	02-35-305-023-0000	

*Vacant land located on the Northwest corner
of Algonquin and Meacham Roads in
Schaumburg, Illinois*