

# UNOFFICIAL COPY

**RECORDATION REQUESTED BY:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Scott D. H. Redman



Doc#: 0718403121 Fee: \$34.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/03/2007 03:29 PM Pg: 1 of 6

**WHEN RECORDED MAIL TO:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Scott D. H. Redman

**This Instrument prepared by:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Scott D. H. Redman

**COLLATERAL ASSIGNMENT OF SALE CONTRACTS**

THIS COLLATERAL ASSIGNMENT OF SALE CONTRACTS is dated as of <sup>June 29</sup> ~~May~~, 2007 ("Assignment" or "Agreement") and is made by PRAIRIE POINTE CENTER DEVELOPMENT, LLC, an Illinois limited liability company ("Borrower") in favor of FIFTH THIRD BANK (CHICAGO) ("Lender").

**RECITALS:**

A. Borrower has requested that Lender provide a commercial construction loan (the "Loan") providing financing for the completion of construction of (7) pad-ready commercial land parcels on the parcel of real estate described on Exhibit A attached hereto (the "Land"), including all related site improvements, all as hereinafter described in this Agreement (the "Project").

B. The Loans are evidenced by a Promissory Note of even date herewith made by Borrower payable to Lender (the "Notes").

C. Borrower and Lender have entered into a certain Construction Loan Agreement of even date herewith (the "Loan Agreement").

D. Lender requires as a condition precedent to its making the Loan as evidenced by the Note that Borrower enter into this Assignment, and Borrower wishes to grant to Lender a security interest, mortgage, lien, encumbrance and charge upon the collateral more particularly hereinafter described. All capitalized terms used in this Assignment that are not specifically defined herein shall have the meaning specified in the Loan Agreement.

# UNOFFICIAL COPY

ACCORDINGLY, in consideration of the making of the loan and as an inducement to Lender to do so, and for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, Borrower and Lender agree as follows:

1. **Creation of Security Interest.** Borrower does hereby sell, assign, pledge, transfer and grant a security interest to Lender in and to any and all of Borrower's right, title and interest in and to all reservation agreements and sale contracts, now existing or hereinafter entered into, pursuant to which Borrower agrees to sell all or any portion of the Project (whether or not improved with a dwelling unit) and the improvements to be hereafter constructed thereon, and all amendments and supplements thereto, which Borrower has, may have, or may subsequently directly or indirectly enter into, and all proceeds of such agreements and contracts, including any right, title and interest of Borrower in and to down payments and earnest money deposits made under such contracts, whether held by a broker, escrowee, agent or Borrower, and any escrows established for the closing of the transactions contemplated by such contracts (all of the foregoing being collectively referred to herein as the "Collateral").

2. **Borrower's Liabilities.** This Assignment is made and given as collateral security for the prompt payment when due of any and all obligations of Borrower to Lender, including without limitation, the indebtedness and liabilities evidenced by the Notes and the Mortgage, all of which have been made by Borrower with or for the benefit of Lender, whether such indebtedness or obligations are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several, due or to become due, howsoever created, evidenced or arising and howsoever acquired Lender, and any and all renewals, extensions or refinancings thereof (all of the foregoing are hereinafter collectively referred to as the "Liabilities"). Upon full payment by Borrower of all Liabilities, this Assignment and the lien or charge created hereby or resulting herefrom shall automatically cease to exist.

3. **Representations and Covenants of Borrower.**

(a) Borrower shall not sell, transfer, assign, pledge, encumber or mortgage all or any portion of the Collateral or any interest therein without the prior written consent of Lender, or permit anything to be done that may impair the value of any of the Collateral or the security intended to be afforded by this Assignment.

(b) Borrower shall sign and execute alone or with Lender any financing statement or other document or procure any documents and pay any connected reasonable, expenses and fees, including court costs and reasonable attorneys' fees, necessary to protect the security interest under this Assignment against the rights, interests or claims of third parties.

(c) Borrower shall reimburse Lender for all reasonable, expenses and fees, including court costs and reasonable attorneys' fees, incurred for any action taken by Lender to remedy an Event of Default (as such term is hereinafter defined) of Borrower under this Assignment, together with interest on all said amounts at the highest Default Rates (as such terms are defined in the Notes) then in effect under the Notes from and after the date so incurred by Lender.

(d) Borrower will punctually and promptly perform the covenants, agreements and conditions required to be performed under this Assignment, the Notes, the Mortgage, any other document or instrument executed and delivered to Lender by Borrower evidencing or securing the Notes, and all of the documents, instruments and agreements constituting the Collateral.

(e) Borrower represents and warrants that it is the sole owners of all right, title and interest of the owner under all of the documents, instruments and agreements constituting the Collateral, except to the extent that purchasers under the sales contracts retain rights to down payments and earnest money deposits made thereunder, and agree that so long as any of the Liabilities remain unpaid, Borrower shall remain liable, for all reasonable, fees and expenses which may be or become due and payable under the Collateral and for all responsibilities of the ownership of the Project.

# UNOFFICIAL COPY

(f) Borrower agrees to take reasonable efforts to enforce performance by the other party to each agreement or contract constituting the Collateral of each and every material obligation, covenant, condition and agreement to be performed by such other party.

(g) Borrower has not performed any act which might prevent Borrower from performing its respective obligations hereunder or which might prevent Lender from enforcing its rights pursuant to the terms and provisions hereof.

(h) Until the Liabilities have been paid in full, to the extent not previously delivered by Borrower to Lender in connection with a draw request under the Loan Agreement, Borrower agrees to deliver to Lender true, complete and correct copies of each agreement or contract constituting the Collateral immediately following execution thereof.

4. **Limitation of Lender's Liability.** Notwithstanding anything to the contrary contained in any of the Collateral, the interest of Borrower therein is assigned and transferred to Lender by way of collateral security only, the Lender, by its acceptance hereof, shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Borrower under the Collateral, whether provided for by the terms thereof, arising by operation of law or otherwise. Borrower hereby acknowledges that Borrower shall remain liable for the due performance of Borrower's obligations under the agreements, instruments and documents constituting the Collateral to the same extent as though this Assignment had not been made. It is expressly intended, understood and agreed that the Note, the Mortgage and this Assignment are made and entered into for the sole protection and benefit of Lender, Borrower and their respective successors and assigns (but in the case of assigns of Borrower, only to the extent permitted hereunder), and no other person or persons shall have any right of action hereunder or rights to the proceeds of the Loan at any time; that no third party shall under any circumstances be entitled to any equitable lien on the undisbursed proceeds of the Loan at any time. The relationship between Lender and Borrower is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.

5. **Events of Default.** The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

(a) The occurrence of any Default under the terms of the Loan Agreement or any other Loan Document.

(b) The existence of any material inaccuracy or untruth in any representation, covenant or warranty contained in this Assignment or any other document evidencing or securing the Notes, or of any statement or certification as to facts delivered to Lender, by Borrower, any co-maker or guarantor of the Note, or any applicant for the loan evidenced by the Notes.

(c) Any sale, transfer, lease, assignment, conveyance, pledge, lien or encumbrance made in violation of the provisions of this Assignment.

6. **Remedies.** At any time upon or following the occurrence of any one or more Events of Default hereunder, Lender shall without any further notice or any demand to Borrower (a) be entitled to declare all indebtedness secured hereby and all other documents and instruments evidencing or securing the Notes to be immediately due and payable; (b) exercise any and all rights and remedies provided hereunder or under the other documents and instruments evidencing and securing the Notes, as well as all remedies available at law and in equity; (c) cure any default in such manner and to such extent as Lender may deem reasonably necessary to protect the security hereof, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender, and also the right to perform and discharge each and every obligation, covenant and agreement of Borrower under any of the documents, instruments and agreements constituting the Collateral, and in connection therewith, to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and expenses; and/or (d) either in person or by agent, with or without bringing any action or proceedings, or by a receiver to be appointed by a court at any time hereafter, enforce the performance of the covenants and agreements of the purchasers under any of the documents, instruments, agreements

# UNOFFICIAL COPY

and contracts constituting the Collateral, in the name of Borrower or otherwise, including covenants and agreements relating to the payment of the purchase prices thereunder, provided that Lender shall not be responsible for the performance of any of the covenants and agreements of the sellers or purchasers under said documents, instruments, contracts or agreements, nor for the collection of any amounts due and owing thereunder.

7. **Waiver and Indemnity.** Borrower hereby agrees that no liability shall be asserted or enforced by Borrower against Lender in their exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by Borrower. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all liability, expense, cost or damage which Lender may incur by reason of act or omission of Borrower under any of the documents, instruments, or agreements constituting the Collateral.

8. **Notices.** All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

9. **Governing Law and Jurisdiction. Forum.** This Agreement and the other Loan Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the internal laws of the State of Illinois (including, without limitation, its usury laws and the Uniform Commercial Code as adopted in Illinois). Borrower irrevocably

(a) agrees that any suit, action or other legal proceeding relating to the Loan may be brought only in the Circuit Court of Cook County or in the Northern District of Illinois, at Lender's option;

(b) consents to the jurisdiction of each such court in any such suit, action or proceeding;

(c) waives any objection which Borrower may have to the laying of venue in any such suit, action or proceeding in either such court; and

(d) agrees to join Lender in any petition for removal to either such court.

10. **Miscellaneous.** This Assignment and all rights and liabilities hereunder and in and to any and all Collateral shall inure to the benefit of Lender and its successors and assigns, and shall be binding upon Borrower and its general partners, if any, joint venturers, if any, heirs, legatees, legal representatives, administrators, successors and permitted assigns. All provisions of this Assignment shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Assignment which are held unenforceable, invalid or contrary to law by a court of competent jurisdiction, shall be of no force or effect, and in such event each and all of the remaining provisions of this Assignment shall subsist and remain and be fully effective according to the terms of this Assignment as though such invalid, unenforceable or unlawful provision or provision had not been included in this Assignment. Time is of the essence of this Assignment, the headings of paragraphs in this Assignment are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

# UNOFFICIAL COPY

Borrower has caused this Assignment to be executed as of the date first above written.

**PRAIRIE POINTE CENTER DEVELOPMENT, LLC**  
An Illinois limited liability company

By: **McShane Corporation**  
An Illinois corporation  
Its manager

By: *Melvin D Meyer*  
Name: MELVIN D MEYER  
Title: TREASURER

### GRANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that Melvin D Meyer personally known to me to be the same person whose name is subscribed to the foregoing instrument as such representative of **PRAIRIE POINTE CENTER DEVELOPMENT, LLC**, whose name is subscribed to the foregoing instrument as Borrower, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of Borrower, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27 day of June, 2007.

*Carol L Kichura*  
Notary Public



# UNOFFICIAL COPY

Exhibit A

- Legal Description for Real Property

LOT 5C IN FINAL PLAT OF RESUBDIVISION OF LOTS 5 AND 6 IN SEARS BUSINESS PARK  
AMENDED PLAT OF SUBDIVISION, BEING A RESUBDIVISION OF PART OF SECTIONS 32 AND 33,  
TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO  
THE PLAT THEREOF RECORDED APRIL 20, 2001 AS DOCUMENT NUMBER 0010323867, IN COOK  
COUNTY, ILLINOIS.

PIN: 01-33-304-001; 01-33-305-001

Lot 23 In PRAIRIE Stone  
HOFFMAN Estates, IL 60179

Property of Cook County Clerk's Office