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SUBORDINATE MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT



Doc#: 1002031108 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/20/2010 03:54 PM Pg: 1 of 5

Above Space for
Recorder's Use Only

THIS MORTGAGE is made this 11 day of January, 2010, by Howard B. Samuels, not individually, but solely as assignee for the benefit of the creditors of Krahl Associates, Inc. d/b/a Krahl Construction, herein referred to as "Krahl", herein referred to as "Mortgagor," in favor of Fifth Third Bank, an Ohio banking corporation, successor by merger to Fifth Third Bank, a Michigan banking corporation, herein referred to as "Mortgagee."

WITNESSETH, THAT WHEREAS Mortgagor is justly indebted to Mortgagee upon that certain promissory note dated as of even date herewith (the "Note"), in the principal sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), payable to the order of and delivered to Mortgagee, in and by which Note Mortgagor promises to pay the said principal sum and interest at the rate and in installments as provided in said Note, with a final payment of the balance due on the 1st day of March, 2010 and all of said principal and interest are made payable at such place as the holders of the note may, from time to time, appoint.

NOW, THEREFORE, to secure the payment of the said principal sum of money and said interest in accordance with the terms, provisions and limitations of this Mortgage, and in consideration of the performance of the covenants and agreements herein contained by Mortgagor to be performed, and also in consideration of the sum of One Dollar in hand paid and other good and valuable consideration, the receipt whereof is hereby acknowledged, Mortgagor does by these presents GRANT, BARGAIN, SELL, MORTGAGE, CONVEY AND WARRANT unto Mortgagee, and Mortgagee's successors and assigns, the following described real estate and all of her estate, right, title and interest therein, situate, lying and being in the COUNTY OF COOK IN THE STATE OF ILLINOIS, to wit: which, with the property herein after described, is referred to herein as the "premises,"

Permanent Real Estate Index Number: 16-31-200-038-0000

Address: 6727 Stanley Avenue, Berwyn, Illinois 60402

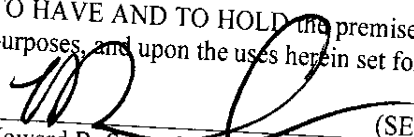
Legal Description: LOTS 25 AND 26 IN BLOCK 2 IN BERWYN, A SUBDIVISION OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the premises by Mortgagor or its successors or assigns shall be considered as constituting part of the real estate.

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This subordinate mortgage, assignment of rents and security agreement consists of five pages. The covenants, conditions and provisions which appear on pages 3, 4 and 5 are incorporated herein by reference and are a part hereof and shall be binding on Mortgagor, her heirs, successors and assigns.

TO HAVE AND TO HOLD the premises unto Mortgagee, and Mortgagee's successors and assigns, forever, for the purposes, and upon the uses herein set forth.




(SEAL)

Howard B. Samuels, not individually, but solely as assignee for the benefit of the creditors of Krahl Associates, Inc. d/b/a Krahl Construction

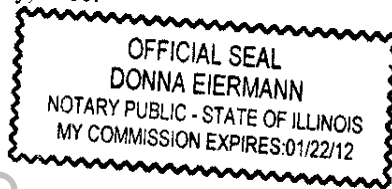
STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Howard B. Samuels, as assignee for the benefit of the creditors of Krahl Associates, Inc. d/b/a Krahl Construction, 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 he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 15 day of January, 2010.



NOTARY PUBLIC



My Commission expires 1/22 2012

This instrument was prepared by: Erick Harris, Foley & Lardner LLP, 321 North Clark Street, Suite 2800, Chicago, Illinois 60654

After recording, mail this instrument to: Erick Harris, Foley & Lardner LLP, 321 North Clark Street, Suite 2800, Chicago, Illinois 60654

The parties hereby acknowledge and agree that obligations under this Agreement of Seller shall not be personal to Howard B. Samuels but shall be solely obligations of Howard B. Samuels as trustee/assignee in the exercise of the power and authority conferred upon and vested in him as such trustee/assignee. It is expressly understood and agreed that nothing contained in this Agreement shall be construed as creating any liability on Howard B. Samuels personally to perform any agreement or covenant, either express or implied, herein contained. All such personal liability, if any, is expressly waived. This Agreement shall be read and interpreted to reflect the fact that Howard B. Samuels is an assignee for the benefit of creditors and did not own the Assets or operate the Operations. Further, the defined terms contained in this Agreement shall be interpreted in the context of such assignment.

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THE COVENANTS, CONDITIONS AND PROVISIONS REFERRED TO ON PAGE 2.

1. Mortgagor shall: (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (2) keep said premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien thereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (4) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (5) comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof; (6) make no material alterations in said premises except as required by law or municipal ordinance.
2. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.
3. In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien hereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.
4. If, by the laws of the United States of America or of any state having jurisdiction in the premises, any tax is due or becomes due in respect of the issuance of the note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agree to indemnify Mortgagee, and Mortgagee's successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the note secured hereby.
5. Mortgagor shall keep all buildings and improvements now or hereafter situated on said premises insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies satisfactory to Mortgagee, under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the standard mortgage clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance about to expire, shall deliver renewal policies not less than ten days prior to the respective dates of expiration.
6. In case of default therein, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or satisfy any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other moneys advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the highest rate now permitted by Illinois law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any default hereunder on the part of Mortgagor.
7. Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.
8. Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms of the Note. At the option of Mortgagee and without notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the note or in this Mortgage to the contrary, become due and payable as may be provided in said Note.
9. When the indebtedness hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges,

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publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches, and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the highest rate now permitted by Illinois law, when paid or incurred by Mortgagee in connection with: (a) any proceeding, including probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclosure whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the premises or the security hereof.

10. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all principal and interest remaining unpaid on the note; third, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the note, with interest thereon as herein provided; fourth, any overplus to Mortgagor, her heirs, legal representatives or assigns, as their rights may appear.

11. Upon or any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint is filed may appoint receiver of said premises. Such appointment may be made either before or after the sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and Mortgagee may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (1) The indebtedness secured hereby or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (2) the deficiency in case of a sale and deficiency.

12. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the note hereby secured.

13. Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

14. Mortgagor shall periodically deposit with Mortgagee such sums as Mortgagee may reasonably require for payment of taxes and assessments on the premises. No such deposit shall bear any interest.

15. If the payment of said indebtedness or any part thereof be extended or varied or if any part of the security be released, any and all persons now or at any time hereafter liable thereof, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

16. Mortgagee shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby.

17. This Mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of Mortgagee named herein and the holder or holders, from time to time, of the note secured hereby.

18. Unless otherwise agreed by Mortgagee, this Mortgage is subject and subordinate to one or more other mortgages in favor of Mortgagee as mortgagee (collectively, the "Senior Mortgage"). Mortgagor shall preserve and protect the priority of this Mortgage as a lien on the premises, subject only to the Senior Mortgage. Mortgagor shall comply with each and every of the terms, covenants, and conditions of the Senior Mortgage, the Note secured thereby, and the other documents and instruments related thereto. If Mortgagor fails to perform Mortgagor's obligations under this Section 18, Mortgagee may take any and all steps necessary or appropriate to perform such obligations in the place of Mortgagor and all sums expended by Mortgagee in so doing shall be treated as part of the obligations secured by this Mortgage, shall be paid by

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Mortgagor upon demand by Mortgagee and shall bear interest at the highest rate borne by any of the obligations secured by this Mortgage.

19. As security for the full, prompt and complete performance by Mortgagee of its obligations under the Note, Mortgagee hereby grants to, and creates in favor of, Mortgagor a continuing security interest in, and lien on, all of the Collateral (as defined below).

20. For purposes of this Mortgage, "Collateral" shall be defined as all fixtures and personal property of any kind whatsoever now owned or hereafter acquired by Mortgagee, whether tangible or intangible. The foregoing property shall include, but is not limited to, all Accounts, Chattel Paper, Deposit Accounts, Documents, Equipment, General Intangibles, Instruments, Inventory, Investment Property, Letter of Credit Rights and Supporting Obligations (as those terms are defined in revised Article 9 of the Illinois Uniform Commercial Code, as amended from time to time), including specifically and without limitation all furniture, furnishings, goods, supplies, office equipment, office machines, office furnishings, fixtures, machines, plans and specifications, contracts and contract rights, licenses (including, without limitation, any business license), causes of action, claims, condemnation proceeds, profits, concessions, fees, leases and lease guaranties, rents, security deposits, utility deposits, trademarks or trade names, including, but not limited to, "Krahl Construction", internet websites, internet domain names, telephone numbers, utility contracts, maintenance contracts and agreements, management contracts, service contracts, chattel paper, negotiable instruments, instruments, letters of credit, policies and proceeds of insurance, cash bank accounts, refunds for taxes or premiums of any insurance and those vehicles identified on Exhibit A attached hereto, sprinkler and irrigation systems, facilities and equipment, valves, rotors, systems, and related facilities located on the Premises, together with all present and future attachments, accessions, replacements, additions, products and proceeds thereof.

21. Until the termination of this Mortgage, Mortgagee shall perform any and all steps and take all reasonable actions requested by Mortgagor from time to time to perfect, maintain, protect, and enforce Mortgagor's lien in the Collateral.

22. Mortgagee is authorized by Mortgagor (i) to file one or more financing statements disclosing Mortgagee's lien under this Mortgage without Mortgagor's signature appearing thereon, and (ii) to give notice to any creditor or landlord of Mortgagor or to any other person who Mortgagee may determine is necessary or desirable under applicable law to give notice to perfect or preserve Mortgagee's interests in the Collateral. Mortgagor shall pay the costs of, or incidental to, any recording or filing of any financing statements and other notices in all public offices where filing is deemed by Mortgagee to be necessary or desirable to perfect, protect or enforce the liens granted to Mortgagee under this Mortgage. Mortgagor agrees that a carbon, photographic, photostatic or other reproduction of this Mortgage or of a financing statement is sufficient as a financing statement. Mortgagee's lien in proceeds or the notification of its interest in proceeds in any financing statement or other filing will not be deemed to authorize any sale or other disposition by Mortgagor except as permitted by this Mortgage.