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01/07/2020 01:25:32 PM

Recording fees paid:

\$52.00

Deb Houghtaling

Pages: 8

COUNTY CLERK/REGISTER OF DEEDS

By: JB

Submitter: TITLECORE NATIONAL, LLC

S-File



SOMA

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (this "Agreement") is made effective as of January 1, 2020, between **MUTUAL OF OMAHA BANK** ("Lender"), **IOWA KENWORTH, INC. D/B/A MHC KENWORTH – OMAHA**, a Kansas corporation ("Tenant"), and **M-H REAL ESTATE, LLC**, a Kansas limited liability company ("Landlord").

RECITALS

A. Tenant and Landlord have entered into that certain Lease effective January 1, 2020 (the "Lease") for the space described in the Lease, which space is located on the real property more particularly described in **Exhibit A** attached hereto (the "Property");

B. Lender is the holder of: (i) a Trust Deed and Assignment of Rents and Security Agreement and Fixture Filing dated July 31, 2019 (the "Mortgage") which encumbers the Property; and (ii) an Assignment of Leases, Rents and Profits dated July 31, 2019 (the "Assignment") which encumbers the Property (collectively the Mortgage, Assignment, and any documents executed and delivered in connection therewith are referred to herein as the "Loan Documents"); and

C. Each party hereto has requested the other party to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as set forth below.

1. Subordination. Tenant agrees that, notwithstanding anything contained in the Lease, and any extensions, renewals, replacements or modifications of the Lease, all of the right, title and interest of Tenant in and to the Property, including, but not limited to, any rights of first refusal or options to purchase granted pursuant to the Lease, are and shall be at all times subject and subordinate to the Loan Documents and to all of the provisions contained therein, all optional or obligatory advances to be made thereunder, and to any renewals, modifications, supplements, replacements, consolidations, increases and extensions of the Loan Documents and the debt evidenced and secured by the Loan Documents.

2. Non-Disturbance. Lender agrees that, in the event of a foreclosure of the Mortgage, or other enforcement of the provisions of the Loan Documents, or the exercise by Lender of Lender's rights pursuant to the Loan Documents, or in the event Lender comes into possession or acquires title to the Property as a result of a foreclosure or threat thereof, a deed in lieu of foreclosure, or as a result of any other means, such action shall not, so long as: (a) the term of the Lease shall have commenced pursuant to the provisions thereof; (b) construction of the Property has been completed and Tenant shall be in possession of the Property demised under the Lease; (c) Tenant is not in default under the Lease beyond any applicable grace period stated in the Lease; and (d) the Lease is in full force and effect and Tenant continues to observe and perform all of Tenant's obligations pursuant to the Lease, terminate the Lease nor disturb Tenant's possession of the Property.

3. Attornment. Tenant agrees that, if the interest of Landlord in the Property shall be transferred to Lender or any other individual or entity by reason of foreclosure or other proceeding or any other manner, then Tenant shall attorn to Lender or any purchaser, grantee, or other successor, at any time, to Landlord's interest (collectively the Lender and such other purchaser, grantee or other successor are sometimes hereinafter the "Successor Landlord"), and Tenant further agrees to be bound under all of the provisions, covenants and conditions of the Lease for the remaining term and any extensions or

renewals thereof which may be effected in accordance with the Lease with the same force and effect as if the Successor Landlord were the Landlord under the Lease provided Tenant agrees that in no event shall Successor Landlord be: (a) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant; (b) liable for any accrued obligation of Landlord or for any act or omission of Landlord or breach of the Lease by Landlord, whether prior to or after the transfer of the Landlord's interest; (c) required to make any repairs to the Property required as a result of fire or other casualty or by reason of condemnation unless Successor Landlord shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs; (d) required to make any capital improvements to the Property which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the Property; (e) required to make any repairs, replacements, maintenance or improvements to any property outside of the Property or not otherwise owned or controlled by Successor Landlord; (f) subject to any offsets or counterclaims or similar claims which shall have accrued to Tenant whether prior to or after the transfer of Landlord's interest; (g) liable for damages and other relief attributable to any latent or patent defects in construction with respect to the Property; (h) bound by any payment of rent or additional sums due pursuant to the Lease which may have been paid to Landlord for more than the current month; (i) liable for any security deposit not actually delivered to Successor Landlord; or (j) bound by any amendment, supplement or modification of any nature of the Lease or by any waiver or forbearance on the part of the Landlord made or given without Lender's prior written consent. Successor Landlord's liability under the Lease shall be limited to the extent of the interest of the Successor Landlord in the Property and in no event shall Successor Landlord be personally liable under the Lease. Tenant hereby agrees that the attornment set forth in this Section shall be self-operative without the execution of any further instruments, shall be effective immediately upon Successor Landlord's succeeding to the Landlord's interest in the Lease and Tenant agrees to provide written confirmation of the foregoing upon request of the Successor Landlord.

4. Tenant Acknowledgments. Tenant acknowledges and agrees that: (a) the Lease has been assigned to Lender under the Mortgage and Assignment; (b) upon and after Lender's written request and written notice that an event of default has occurred under any of the Loan Documents, Tenant will (and Landlord authorizes Tenant to) pay all rent and other amounts due and owing to Landlord under the Lease directly to Lender, in compliance with Section 9 below; (c) Lender has no obligation to Tenant regarding Landlord's application of the proceeds of the Loan; (d) Tenant shall at the request of Lender certify promptly in writing to Lender and any proposed assignee of the Loan whether or not any default on the part of Landlord then exists under the Lease and such other matters as Lender may reasonably request; (e) notwithstanding Section 1 above, Lender may in its sole discretion at any time record (or otherwise provide in accordance with applicable law) notice that it elects the Mortgage to become subordinate to the Lease, which recorded or other notice need only be executed by Lender; and upon such recording (or the giving of such other notice), the Mortgage shall be subordinate to the Lease; and (f) if Lender becomes the Successor Landlord, Lender shall have no liability to Tenant with respect to the Lease after Lender no longer has any ownership interest in the Property, except to the extent such liability arises solely by acts or omissions of Lender during the period of Lender's ownership of the Property. Notwithstanding anything to the contrary contained in this Agreement, Lender and its successors and assigns shall not, by virtue of this Agreement, be or become subject to any liability or obligation under the Lease or any extension or renewal thereof, by virtue of the Mortgage or any receipt or collection of rents under the Lease, unless and until Lender or its successors and assigns shall obtain title to the Property, by foreclosure or otherwise. Further notwithstanding any other provisions contained in this Agreement, Lender does not assume any responsibility or liability for any acts or conduct by any other person, including but not limited to, a purchaser at foreclosure or trustee's sale or grantee under deed in lieu of foreclosure, and the officers, directors, shareholders, agents, servants and employees of Lender shall have no personal liability to Tenant and the liability of Lender, in any event, shall not exceed, and shall be

limited to, Lender's interest in the Property. Lender shall not be bound by any covenant to undertake or complete any construction except as expressly stated herein.

5. Consent of Lender. Tenant shall not, without obtaining the prior written consent of Lender: (a) enter into any agreement which terminates or cancels the Lease or amends, supplements or modifies the Lease; (b) prepay any of the rents, or other sums due under the Lease for more than thirty (30) days in advance of the due dates thereof; (c) voluntarily surrender the Property or terminate the Lease without cause or shorten the term thereof; (d) assign the Lease or sublet the Property or any part thereof; or (e) subordinate or permit subordination of the Lease to any lien other than the lien created by the Loan Documents. Tenant acknowledges and agrees that any such amendment, supplement, modification, termination, prepayment, voluntary surrender, assignment, subletting or subordination, without Lender's prior written consent, shall not be binding upon Lender. Tenant will faithfully perform all obligations of the lessee under the terms of the Lease.

6. Notice of Default. Tenant will simultaneously furnish Lender with a copy of all notices and correspondence given by Tenant to Landlord under the provisions of the Lease. Tenant agrees that no notice of cancellation of the Lease nor any reduction or abatement of base rent or additional rent shall be effective unless Lender has received the notice and has failed to cure (however, Lender shall not be obligated to cure any such default) the default within whichever period of time is longer: (a) sixty (60) days after receipt of such notice; or (b) such period of time following such notice as Landlord has pursuant to the terms of the Lease to cure the default which gives rise to such alleged right of cancellation, reduction or abatement pursuant to the terms and conditions of the Lease.

7. Right of Entry. Tenant shall allow Lender and its representatives to enter the Property and perform inspections, including without limitation, an environmental assessment (including inspection and sampling) as Lender, in the exercise of its reasonable discretion and upon reasonable advance notice to Tenant, deems appropriate to assess the condition of the Property and compliance with the provisions of the Mortgage.

8. Delivery of Notice. Any notice or election to be given hereunder shall be in writing, addressed to the party at the address stated below that party's signature on this Agreement and shall be: (a) delivered in person to the receiving party by the other party, its agent or a professional courier service; (b) sent United States certified or registered mail, postage prepaid, return receipt requested; (c) sent by reputable overnight delivery service providing a receipt; or (d) sent by telecopy to the receiving party at the telecopy phone number stated below the receiving party's signature on this Agreement. Any such notice or election shall be deemed effective upon the earlier of the actual receipt of the notice or election or: (i) if delivered in person, then when such notice or election is delivered to an individual at the receiving party's address who is apparently authorized to accept deliveries; (ii) if sent by United States certified or registered mail or overnight delivery service, then one day after such notice or election is deposited with the United States Postal Service; or (iii) if sent by telecopy, then at the time sent and confirmed by the sender's transmitted copy of such notice or election.

9. Delivery of Rents. Tenant acknowledges that the Landlord's interest under the Lease has been assigned to Lender and that the Lender in turn granted a license to Landlord to continue to collect the rents and all other sums due pursuant to the Lease and act as landlord under the Lease so long as Landlord is not in default under the Loan Documents. Tenant acknowledges and agrees that such assignment shall not constitute a default under the Lease nor in any way alter or affect Landlord's rights and obligations under the Lease. Tenant shall, upon receipt of notice from Lender stating that a default has occurred under any Loan Document, without the need for further verification or consent from Lender, Landlord or court order, make all further payments due under the Lease to Lender. To the extent that the Lease shall entitle the Tenant to notice of any encumbrance of similar interest granted by Landlord, this Agreement shall constitute such notice to Tenant with respect to any of the Loan Documents and to any

and all renewals, modifications, extensions, substitutions, replacements and/or consolidation of the Loan Documents.

10. Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If there are any conflicts between the Lease and this Agreement, the terms and provisions of this Agreement will control.

11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Nebraska.

12. Waiver of Jury Trial. **LANDLORD, TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

13. Legal Costs. In the event of any litigation to enforce the terms of this Agreement or to recover damages for the breach thereof, the prevailing party or parties will be entitled to recover from the non-prevailing party or parties all attorneys' fees and other costs and expenses incurred in connection therewith.

14. Further Assurances. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on part of either party hereto. However, Tenant agrees to execute and deliver to Lender or Successor Landlord such other instruments as Lender or Successor Landlord shall reasonably request in order to effectuate such agreement.

15. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.

16. Counterparts. This Agreement may be signed in two or more counterparts, each of which will be deemed an original but all of which together shall constitute and be construed as one in the same instrument.

17. Severability. If any provision of this Agreement shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, but each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

18. Remedies Cumulative. All remedies of Lender provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided by law and by the Loan Documents.

19. Section Headings. The section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the month, day and year first written above.

TENANT:

IOWA KENWORTH, INC., D/B/A MHC KENWORTH - OMAHA, a Kansas corporation

By: [Signature]
Timothy R. Murphy, Executive Chairman

Address: 11120 Tomahawk Creek Parkway
Leawood, Kansas 66211

STATE OF KANSAS)
) SS
COUNTY OF JOHNSON)

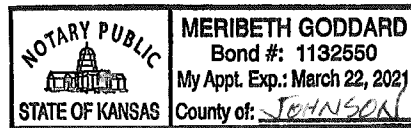
On this 24th day of December, 2019, before me appeared Timothy R. Murphy, to me personally known, who, being by me duly sworn, did say that he is the Executive Chairman of Iowa Kenworth, Inc., d/b/a MHC Kenworth - Omaha organized under the laws of the State of Kansas, and acknowledged the execution of said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

[Signature]
Notary Public

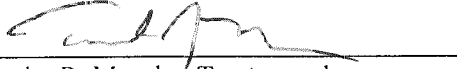
Name: Meribeth Goddard

My Commission Expires: 3-22-21



LANDLORD:

M-H REAL ESTATE, LLC,
a Kansas limited liability company

By: 
Timothy R. Murphy, Trustee under
Trust Agreement dated April 21, 1985, as amended,
Member

Address: 11120 Tomahawk Creek Parkway
Leawood, Kansas 66211

STATE OF KANSAS)
) SS
COUNTY OF JOHNSON)

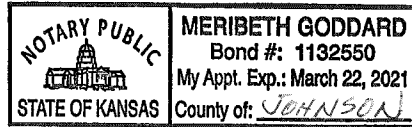
On this 24th day of December, 2019, before me appeared Timothy R. Murphy, to me personally known, who, being by me duly sworn, did say that he is Trustee under Trust Agreement dated April 21, 1995, as amended, a member of M-H Real Estate, LLC, a limited liability company organized under the laws of the State of Kansas, and acknowledged the execution of said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.


Notary Public

Name: Meribeth Goddard

My Commission Expires: 3-22-21



LENDER:

MUTUAL OF OMAHA BANK

By: Brian Hoban
Name: BRIAN HOBAN
Title: KC MARKET PRESIDENT

Address:
Mutual of Omaha Bank
4001 W. 114th Street, Suite 110
Leawood, Kansas 66211

STATE OF KANSAS)
)- SS
COUNTY OF JOHNSON)

On this 31 day of December, 2019, before me appeared BRIAN HOBAN, to me personally known, who, being by me duly sworn, did say that he/she is a KC Market President of **MUTUAL OF OMAHA BANK**, and acknowledged the execution of said instrument to be the free act and deed of said bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Kimberly Sue Windsor
Notary Public
Name: KIMBERLY SUE WINDSOR

My Commission Expires: 11-28-20

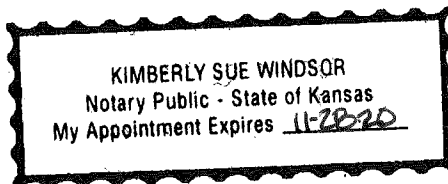


EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot 2, Steel Ridge South, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.