Env. Mathy Const. Co.
P.O. Box 189
Dakota, MN
55925

DELAWARE COUNTY IOWA
FILED ✓
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RECORDER'S NOTATION
DELAWARE CO. RECORDER
$16.00

Prepared by Gary K. Norby, Kane, Norby & Reddick, P.C., 2477 JFK Rd., #102, Dubuque, IA 52002 (319) 582-7980

SUBORDINATION AND NON-DISTURBANCE AGREEMENT

This AGREEMENT is made this 4 day of January, 1999, by and between JAMES K. CRAMER and VIVIAN I. CRAMER, husband and wife, of Delaware County, Iowa (hereinafter referred to as "Contract Sellers") and MATHY CONSTRUCTION COMPANY d/b/a RIVER CITY STONE, a Wisconsin corporation (hereinafter referred to as "Lessee").

RECITALS:

A. Lessee has entered into a certain Aggregates Lease Agreement dated January 4, 1999 (hereinafter referred to as the "Lease") with Edward D. Tschiggfrie (hereinafter referred to as "Lessor"), which Lease covers certain real property more particularly described on Exhibit A attached hereto and incorporated herein (hereinafter referred to as the "Leased Property").

B. Contract Sellers are the holders of a certain Installment Real Estate Contract dated February 26, 1993, executed by Lessor, covering the Leased Property, and recorded on the 26th day of February, 1993, in Book 131, page 43 of the Delaware County, Iowa records (hereinafter referred to as the "Installment Real Estate Contract").

C. Lessee desires to be assured of continued occupancy of the Leased Property under the terms of said Lease, subject, however, to the terms of the Installment Real Estate Contract.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Said Lease, including any amendments, renewals and extensions to said Lease, is and shall be subject and subordinate to the Installment Real Estate Contract and the lien imposed by said Installment Real Estate Contract as it affects the Leased Property, and shall also be subject and subordinate to all modifications, amendments and extensions of the Installment Real Estate Contract, if any.

2. In the event of foreclosure or forfeiture of the Installment Real Estate Contract, the Contract Sellers thereunder will not join the Lessee under said Lease in the foreclosure or forfeiture proceedings so long as:

(a) the Lessee is not in default under any of the terms, covenants or conditions of said Lease, or

(b) if default shall exist, so long as Lessee's time to cure such default has not expired.

3. It is the express intent of the parties hereto that a foreclosure or forfeiture of the Installment Real Estate Contract or the exercise of any other remedies provided therein, or provided in any other instrument securing the indebtedness secured by the Installment Real Estate Contract, or the delivery of a deed to the Leased Property in lieu of foreclosure shall not, of itself, result in a termination of the Lease, but any purchaser or other grantee upon foreclosure or forfeiture of the Installment Real Estate Contract or conveyance in lieu of foreclosure or forfeiture shall thereby automatically succeed to the position of the Lessor under the Lease.

4. Provided Lessee complies with this Agreement and is not in default under the terms of the Lease in the payment of rent or royalties or in the performance of any other terms and conditions of the Lease as of the date Contract Sellers commence a foreclosure action, forfeiture proceeding or exercise any other remedy under the Installment Real Estate Contract, or at any time thereafter, no default under the Installment Real Estate Contract, as modified, extended or amended, and no proceeding to foreclose or forfeit the same or exercise of any other remedy under the Installment Real Estate Contract, will disturb Lessee's possession under the Lease, and the Lease will not be affected or cut off thereby. Notwithstanding any such foreclosure, forfeiture or other acquisition of the Leased Property by Contract Sellers, or any other party acquiring the Leased Property upon foreclosure sale, forfeiture proceedings or otherwise, the Lease will be recognized as a direct lease from Contract Sellers, or any other party acquiring the Leased Property upon foreclosure sale, forfeiture proceedings or otherwise, except Contract Sellers or any subsequent owner shall not (a) be liable for any previous act or omission of Lessor under the Lease or (b) be subject to any offset which shall previously have accrued to Lessee against Lessor.

5. Lessee certifies that the term of the Lease has commenced and is presently in full force and effect, that Lessee has accepted possession of the Leased Property, and that Lessee, as of this date, has no lien or claim of offset under the Lease or otherwise against the rents or royalties due or to become due under the Lease.

6. Upon the written request from either Lessee or Contract Sellers to the other given after a foreclosure or forfeiture of the Installment Real Estate Contract or conveyance in lieu of foreclosure or forfeiture which covers the Leased Property, the said parties agree to execute a lease of the Leased Property upon the same terms and conditions as said Lease between the Lessor and the Lessee and which new lease shall cover any unexpired term, including renewals, of said Lease existing prior to such foreclosure, forfeiture or conveyance in lieu of foreclosure or forfeiture, and under which new lease Lessee shall attorn to Contract Sellers or any subsequent owner and reaffirm Lessee's obligations under the Lease and agree to pay all rents and royalties then due or to become due.

7. Lessee hereby agrees that from and after the date of this Agreement, in the event of any act, omission or default by Lessor under the Lease which would give Lessee the right, either immediately or after a lapse of period of time and with or without notice, to terminate the Lease or to claim a partial or totally eviction, Lessee will, prior to the exercise of any such right, give written notice to Contract Sellers of Lessor's act, omission or default. Said written notice to Contract Sellers shall be by certified mail, return receipt requested, addressed to Contract Sellers' address. Within 20 days following receipt of such notice, or if longer, such cure period as is allowed to Lessor under the terms of the Lease, Contract Seller shall have the option to cure and remedy any such act, omission or default on the part of Lessor. If such act, omission or default is so remedied by Contract Sellers within said time period, Lessee shall not terminate the Lease or claim a partial or total eviction, said Lease shall continue, and Lessee shall attorn to Contract Sellers as set forth in paragraph 6 above. Contract Sellers' option to remedy or cure any such act, omission or default of Lessor shall be optional, and this paragraph shall in no way obligate Contract Sellers in any way to remedy or cure any such act, omission or default of Lessor.

9. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Installment Real Estate Contract.

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Dated this 4 day of January, 1999.

James K. Cramer

James K. Cramer, Contract Seller

Vivian I. Cramer, Contract Seller

MATHY CONSTRUCTION COMPANY
d/b/a River City Stone, Lessee

By _____
Steven C. Mathy, Vice President

STATE OF IOWA)
COUNTY OF DELAWARE) ss:

On this 4th day of January, 1999, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared James K. Cramer and Vivian I. Cramer, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Frank Fergesen
Notary Public
in and for State of Iowa
Frank Fergesen

STATE OF WISCONSIN)
COUNTY OF LA CROSSE) ss:

On this ~~4th~~ 26 day of ~~January~~ April, 1999, before me, the undersigned, a Notary Public in and for said state, personally appeared Steven C. Mathy, to me personally known, who being by me duly sworn, did say that he is the Vice President of said corporation executing the within and foregoing instrument; that the instrument was signed on behalf of said corporation by authority of its Board of Directors; and the said Steven C. Mathy acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

CHRISTOPHER A. BUTLER NOTARY PUBLIC

_____
Notary Public
in and for said State

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Exhibit A
[Cramer]

Lots One (1), Two (2), Six (6) and Nine (9) of State's Subdivision of Part of Section Nine (9), Township Eighty Eight (88) North, Range Five (5), West of the Fifth Principal Meridian in Delaware County, Iowa, according to plat recorded in Book 3 Plats, Page 228