

IN THE IOWA DISTRICT COURT
IN AND FOR BREMER COUNTY

CUSB Bank,

Plaintiff,

Equity No. _____

vs.

1859 Ventures, LLC,
Nicholas Graham, a/k/a Nick Graham,
Rite Environmental, Inc., Twin Cedars Bank,
Beaver Creek Heating & Cooling, LLC,
Country Builders Inc., Barker Financial, LLC,
The Sherwin-Williams Company,
Spahn & Rose Lumber Co., Accu-Saw, LLC,
Kinzler Construction Services, Inc.,
Nagle Signs Inc., Grosse Steel Co, Inc.,
Allied Glass, LLC, Arctic Refrigeration L.C.,
Forgy Electric, LLC, and Wilson Restaurant Supply, Inc.,

Defendants.

VERIFIED PETITION OF PLAINTIFF CUSB BANK

Plaintiff CUSB Bank (“CUSB”), as and for its petition against the above-named Defendants, states and alleges as follows:

THE PARTIES

1.

CUSB is an Iowa banking corporation and has an office germane to this proceeding located in Cresco, Iowa.

2.

Defendant 1859 Ventures, LLC (“**1859 Ventures**”) is, on information and belief, an Iowa limited liability company, with property located in Bremer County, Iowa, and 1859 Ventures is the fee owner of certain mortgaged properties, as described below.

3.

Defendant Nicholas Graham, a/k/a Nick Graham (“**Graham**”) is an individual who resides, on information and belief, in Grundy County, Iowa, and is an officer of 1859 Ventures.

4.

Rite Environmental, Inc. (“**Rite Environmental**”), is on information and belief, an Iowa corporation with a registered office address of 110 Dunham Place, Waterloo, Iowa 50703, and holds a mechanic’s lien in the amount of \$12,162.48, posted on August 23, 2022, as filing number 034740-0, which lien is junior to and subordinate to CUSB’s Mortgages on the Mortgaged Property (as those terms are defined hereafter).

5.

Twin Cedars Bank, is on information and belief, an Iowa banking corporation, with a main office address of 402 Merrill Street, Bussey, Iowa 50044, and holds a \$750,000.00 mortgage dated September 15, 2022, and recorded with the Bremer County Recorder on September 22, 2022, as Document No. 20223554, which lien is junior to and subordinate to CUSB’s Mortgages on the Mortgaged Property.

6.

Beaver Creek Heating & Cooling, LLC (“**Beaver Creek**”), is on information and belief, an Iowa limited liability company with a registered office address of 406 N. Madison St., Wellsburg, Iowa 50680, and holds a mechanic’s lien in the amount of \$105,898.46 posted on October 17, 2022, as filing number 035924-0, which lien is junior to and subordinate to CUSB’s Mortgages on the Mortgaged Property.

7.

Country Builders Inc. (“**Country Builders**”), is on information and belief, an Iowa corporation with a registered office address of 2671 Clay Avenue, Janesville, Iowa 50647, and holds a mechanic’s lien in the amount of \$105,876.63, posted on November 1, 2022, as filing number 036224-0, which lien is junior to and subordinate to CUSB’s Mortgages on the Mortgaged Property.

8.

Barker Financial, LLC (“**Barker Financial**”), is on information and belief, an Iowa limited liability company, with a registered office address of 220 N. Main St., Davenport, Iowa 52801, and holds a \$750,000.00 mortgage dated November 1, 2022, and recorded with the Bremer County Recorder on November 4, 2022, as Document No. 20224061, which lien is junior to and subordinate to CUSB’s Mortgages on the Mortgaged Property.

9.

The Sherwin Williams Company (“**Sherwin Williams**”), is on information and belief, a foreign corporation registered in the State of Iowa, with a registered office address of 2505 5th Ave., Suite 729, Des Moines, Iowa 50309 and holds a mechanic’s lien in the amount of \$100,301.77, posted on November 29, 2022, as filing number 036656-0, which lien is junior to and subordinate to CUSB’s Mortgages on the Mortgaged Property.

10.

Spahn & Rose Lumber Co. (“**Spahn & Rose**”), is on information and belief, an Iowa corporation with a registered office address of 1100 Rockdale Road, Dubuque, Iowa 52003 and holds a mechanic’s lien in the amount of \$41,081.52, posted on January 27, 2023, as filing

number 037327-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

11.

Accu-Saw, LLC ("**Accu-Saw**"), is on information and belief, an Iowa limited liability company with a registered office address of 2850 200th St., Winthrop, Iowa 50682, and holds a mechanic's lien in the amount of \$1,512.00, posted on January 27, 2023, as filing number 037328-1, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

12.

Kinzler Construction Services, Inc. ("**Kinzler**"), is on information and belief, an Iowa corporation with a registered office address of 2335 230th St., Ames, Iowa 50014, and holds a mechanic's lien in the amount of \$4,599.96, posted on February 17, 2023, as filing number 037551-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

13.

Nagle Signs, Inc. ("**Nagle**"), is on information and belief, an Iowa corporation with a registered office address of 1020 Wilbur Ave., Waterloo, Iowa 50701 and holds a mechanic's lien in the amount of \$13,377.01, posted on March 10, 2023, as filing number 037794-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

14.

Grosse Steel Co, Inc. ("**Grosse Steel**"), is on information and belief, an Iowa corporation with a registered office address of 2225 Lincoln St., Cedar Falls, Iowa 50613 and holds a

mechanic's lien in the amount of \$10,093.31, posted on April 20, 2023, as filing number 038450-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

15.

Allied Glass, LLC ("**Allied Glass**"), is on information and belief, an Iowa limited liability company with a registered office address of 4200 C Street SW, Cedar Rapids, Iowa 52404, and holds a mechanic's lien in the amount of \$15,508.90, posted on May 4, 2023, as filing number 038734-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

16.

Arctic Refrigeration L.C. ("**Arctic**"), is on information and belief, an Iowa limited liability company with a registered office address of 176 Hillcrest Road, Waterloo, Iowa 50701, and holds a mechanic's lien in the amount of \$15,579.32, posted on June 29, 2023, as filing number 040205-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

17.

Forgy Electric, LLC ("**Forgy**"), is on information and belief, an Iowa limited liability company with a registered office address of 101 13th St., Ackley, Iowa 50601, and holds a mechanic's lien in the amount of \$8,528.05, posted on July 10, 2023, as filing number 040428-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

18.

Wilson Restaurant Supply, Inc. ("**Wilson**"), is on information and belief, an Iowa corporation with a registered office address of 5746 Westminster Dr., Cedar Falls, Iowa 50613, and holds a mechanic's lien in the amount of \$35,911.80, posted on July 25, 2023, as filing

number 040835-0, which lien is junior to and subordinate to CUSB's Mortgages on the Mortgaged Property.

19.

Rite Environmental, Beaver Creek, Country Builders, Sherwin Williams, Spahn & Rose, Accu-Saw, Kinzler, Nagle, Grosse Steel, Allied Glass, Arctic, Forgy, and Wilson may be collectively referred to herein as the "Subordinate Mechanics Lien Holders". The mechanics liens identified herein held by the Subordinate Mechanics Lien Holders may be collectively referred to herein as the "Subordinate Mechanics Liens".

20.

Twin Cedars Bank and Barker Financial may be collectively referred to herein as the "Subordinate Mortgage Lien Holders". The mortgages identified herein held by the Subordinate Mortgage Lien Holders may be collectively referred to herein as the "Subordinate Mortgage Liens".

FACTUAL BACKGROUND

Indebtedness

21.

On or about June 17, 2022, 1859 Ventures and CUSB entered into a Promissory Note, in the original principal amount of \$3,200,000.00 ("Note 2402"), a true and correct executed copy of which is attached hereto and made a part hereof as **Exhibit A**.

22.

On or about June 17, 2022, 1859 Ventures and CUSB entered into a Promissory Note, in the original principal amount of \$1,300,000.00 ("Note 2404"), a true and correct executed copy of which is attached hereto and made a part hereof as **Exhibit B**.

23.

On or about July 13, 2022, 1859 Ventures and CUSB entered into a Promissory Note, in the original principal amount of \$800,000.00 (“Note 2450”), a true and correct executed copy of which is attached hereto and made a part hereof as **Exhibit C**.

24.

On or about December 2, 2022, 1859 Ventures and CUSB entered into a Promissory Note, in the original principal amount of \$2,100,000.00 (“Note 2670”), a true and correct executed copy of which is attached hereto and made a part hereof as **Exhibit D**. Note 2670 was a renewal and extension of Note 2450 and Note 2404.

25.

On or about February 14, 2023, 1859 Ventures and CUSB entered into a Promissory Note, in the original principal amount of \$250,000.00 (“Note 2896”), a true and correct executed copy of which is attached hereto and made a part hereof as **Exhibit E**.

26.

On or about March 22, 2023, 1859 Ventures and CUSB entered into a Promissory Note, in the original principal amount of \$100,000.00 (“Note 2986”), a true and correct executed copy of which is attached hereto and made a part hereof as **Exhibit F**.

27.

Note 2402, Note 2404, Note 2450, Note 2670, Note 2896, and Note 2986 may be collectively referred to herein as the “Notes”.

Guaranties

28.

On June 17, 2022, and December 2, 2022, Graham executed and delivered to the Bank guaranties (the “**Guaranties**”), unconditionally guaranteeing the full and prompt payment when due of all debts, liabilities, and obligations incurred to the Bank by 1859 Ventures and all attorneys’ fees, collect costs, and enforcement expenses incurred to enforce the Guaranties, . True and correct copies of the Guaranties are attached hereto and made a part hereof as **Exhibit G**.

Parcel EE Mortgage

29.

As security for the Notes, 1859 Ventures executed and delivered to CUSB an open-end real estate mortgage dated June 17, 2022 (the “Parcel EE Mortgage”), which was recorded as Instrument No. 20222240 on June 21, 2022 in the Bremer County, Iowa Recorder’s Office. The Parcel EE Mortgage constitutes a valid lien on the real estate legally described therein. A true and correct executed copy of the Parcel EE Mortgage is attached hereto and made a part hereof as **Exhibit H**. A true and correct copy of the applicable legal description for the real estate encumbered by Parcel EE Mortgage is attached hereto and made a part hereof as **Exhibit I** (the “Parcel EE Mortgaged Property”).

Parcel H Mortgage

30.

As security for the Notes, 1859 Ventures executed and delivered to CUSB an open-end real estate mortgage dated June 17, 2022 (the “Parcel H Mortgage”), which was recorded as Instrument No. 20222241 on June 21, 2022 in the Bremer County, Iowa Recorder’s Office, The

Parcel H Mortgage constitutes a valid lien on the real estate legally described therein. A true and correct executed copy of the Parcel H Mortgage is attached hereto and made a part hereof as **Exhibit J**. A true and correct copy of the applicable legal description for the real estate encumbered by Parcel H Mortgage is attached hereto and made a part hereof as **Exhibit K** (“**Parcel H Mortgaged Property**”).

31.

The Parcel EE Mortgage and Parcel H Mortgage may be collectively referred to herein as the “**Mortgages**”. The Parcel EE Mortgaged Property and Parcel H Mortgaged Property may be collectively referred to herein as the “Mortgaged Property”.

32.

1859 Ventures is the owner and holder of the Parcel EE Mortgaged Property and Parcel H Mortgaged Property.

Defaults

33.

1859 Ventures defaulted on the Notes by failing to make the payments when due to CUSB as required under the Notes.

34.

CUSB sent a Notice of Default and Notice of Right to Cure (“Notice of Default and Right to Cure”) to 1859 Ventures on May 19, 2023. A true and correct executed copy of the Notice of Default and Right to Cure is attached hereto and made a part hereof as **Exhibit L**.

35.

CUSB sent a Notice of Acceleration and Notice of Default (“Notice of Acceleration and Default”) to 1859 Ventures on July 13, 2023. A true and correct executed copy of the Notice of Acceleration and Default is attached hereto and made a part hereof as **Exhibit M**.

36.

As a result of the Notice of Acceleration and Default, as of July 12, 2023, CUSB was owed a total of \$5,618,784.76 under the Notes , exclusive of attorneys’ fees, costs and expenses as provided for in the Mortgages.

37.

As of September 11, 2023, the total indebtedness due and owing to CUSB under the Notes secured by the Mortgages was \$5,659,774.31 (the “Indebtedness”), exclusive of accruing interest and late fees after September 11, 2023, and attorneys’ fees, costs, and expenses validly made in connection with this matter.

COUNT I
JUDICIAL FORECLOSURE OF MORTGAGES

38.

CUSB restates the allegations set forth above, inclusive, as though fully set forth herein.

39.

1859 Ventures has defaulted and remains in default on its repayment obligations due and owing to CUSB under the Notes and Mortgages.

40.

The Parcel EE Mortgage secures the repayment of up to \$4,270,000.00 of principal indebtedness, in addition to interest, loan charges, attorneys’ fees, and other charges and fees

validly made pursuant to the Parcel EE Mortgage, and any advances made to protect CUSB's security and to perform any of the covenants contained in the Parcel EE Mortgage.

41.

The Parcel H Mortgage secures the repayment of up to \$2,820,000.00 of principal indebtedness, in addition to interest, loan charges, attorneys' fees, and other charges and fees validly made pursuant to the Parcel H Mortgage, and any advances made to protect CUSB's security and to perform any of the covenants contained in the Parcel H Mortgage.

42.

The Mortgages provide that CUSB is also entitled to recover its reasonable attorneys' fees, costs, and expenses incurred in enforcing its rights and remedies under the Mortgages.

43.

The Mortgages provide that if default occurs in the payment of the Notes or any part of the interest thereon, the Mortgages may be foreclosed upon; and CUSB, by the commencement of this action elects to foreclose on the Mortgages.

44.

As a consequence of 1859 Ventures' default on its obligations to CUSB under the Mortgages, CUSB is now entitled to a judgment and the issuance of a Decree of Foreclosure determining the amount due and owing under the Mortgages to CUSB, determining the lien of CUSB to be senior and superior to all rights, titles, interests or liens encumbering the Mortgaged Property, including the Subordinate Mechanics Liens held by the Subordinate Mechanics Lien Holders and the Subordinate Mortgage Liens held by the Subordinate Mortgage Lien Holders, and adjudging and directing the sale of Parcel EE Mortgaged Property and Parcel H Mortgaged Property, respectively, as provided by Iowa Statute.

COUNT II
ASSIGNMENT OF RENTS

45.

CUSB restates the allegations set forth above, inclusive, as though fully set forth herein.

46.

Pursuant to the terms of the Mortgages, 1859 Ventures assigned to CUSB as additional security all of 1859 Ventures' respective rights and interests to any rents, issues and profits arising and received from the Parcel EE Mortgaged Property and Parcel H Mortgaged Property , respectively (collectively, the "Rents").

47.

Consequently, CUSB is entitled to the Rents from Parcel EE Mortgaged Property and Parcel H Mortgaged Property, respectively.

COUNT III
APPOINTMENT OF RECEIVER

48.

CUSB restates the allegations set forth above, inclusive, as though fully set forth herein.

49.

Pursuant to Iowa Code § 680 *et seq*, CUSB requests that the Court appoint a receiver to take possession of the real estate identified herein. The grounds for this motion are set forth below.

50.

The Mortgages provide that the remedies on default include, but are not limited to, CUSB may take possession of the Parcel EE Mortgaged Property and the Parcel H Mortgaged Property itself or through a court appointed receiver without regard to the solvency or insolvency of the

1859 Ventures, the value of Parcel EE Mortgaged Property and the Parcel H Mortgaged Property, the adequacy of the lender's security, or the existence of any deficiency judgment, and may operate the Parcel EE Mortgaged Property and the Parcel H Mortgaged Property, and collect the rents and apply them to the costs of operating the Parcel EE Mortgaged Property and the Parcel H Mortgaged Property, and/or to the unpaid debt.

51.

Pursuant to the terms of the Mortgages, CUSB directed and demanded that 1859 Ventures endorse over and deliver to CUSB all payments of rents and monies received by 1859 Ventures from the Parcel EE Mortgaged Property and the Parcel H Mortgaged Property. See Exhibits H and J.

52.

1859 Ventures has failed to remit all rents and monies received by 1859 Ventures from the Parcel EE Mortgaged Property and the Parcel H Mortgaged Property.

53.

Without the appointment of a receiver, the rents and profits of the Parcel EE Mortgaged Property and the Parcel H Mortgaged Property are in danger of being lost and will not be applied to the Indebtedness.

WHEREFORE, CUSB prays for an order from this Court adjudging the amount due on the Notes secured by the Mortgages to be \$5,659,774.31, plus interest and late fees after September 11, 2023 and attorneys' fees, costs and expenses validly made pursuant to the Mortgages, together with interest, attorneys' fees, costs and expenses continuing to accrue after September 11, 2023.

CUSB prays for an order from this Court adjudging the amount due on the Guaranties to be \$5,659,774.31, plus interest and late fees after September 11, 2023, and attorneys' fees, costs and expenses validly made pursuant to the Mortgages, together with interest, attorneys' fees, costs and expenses continuing to accrue after September 11, 2023.

CUSB further prays that the Mortgages be established as a first and prior lien against Parcel EE Mortgaged Property and Parcel H Mortgaged Property, and as superior and paramount to the interest, liens, and claims of 1859 Ventures, the Subordinate Mechanics Lien Holders, and the Subordinate Mortgage Lien Holders, and that the Mortgages be foreclosed and all claims, rights, title, and interest of 1859 Ventures, the Subordinate Mechanics Lien Holders, and the Subordinate Mortgage Lien Holders, in this suit and in or to or upon said real estate, may be decreed to be junior and inferior to the rights and liens of CUSB, and that the right, title and interest of 1859 Ventures, the Subordinate Mechanics Lien Holders, and the Subordinate Mortgage Lien Holders, be forever barred and foreclosed.

CUSB further prays that special execution may issue for the sale of the Parcel EE Mortgaged Property and Parcel H Mortgaged Property, respectively, or so much thereof as is necessary to satisfy CUSB's judgment together with interest, costs, and accruing costs, to satisfy the judgment to be entered herein.

CUSB further prays that if possession be not immediately surrendered to the grantee and the Sheriff need to be issued under said execution, a Writ of Possession may be issued directing the Sheriff of this county to let such grantee in possession of the Parcel EE Mortgaged Property and Parcel H Mortgaged Property, respectively. CUSB further prays that in the event CUSB is required to advance any further sums for taxes or insurance upon the above-described mortgaged properties, CUSB be given an additional lien against the real estate for the amount so advanced.

CUSB further prays for the approval upon the request of CUSB of the sale of the Parcel EE Mortgaged Property and Parcel H Mortgaged Property, respectively, during the pendency of this action free and clear of the claims of 1859 Ventures, provided that the Court first finds that (a) all equitable title holders who have not abandoned the Parcel EE Mortgaged Property and Parcel H Mortgaged Property, respectively, have consented to such sale; and (b) the terms of such sale are commercially reasonable.

CUSB further prays for an order from this Court awarding CUSB the rents and profits from the Parcel EE Mortgaged Property and Parcel H Mortgaged Property, respectively.

CUSB further prays for such other and further relief as may be just and equitable in the premises.

Dated this 11th day of September, 2023.



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VERIFICATION

STATE OF IOWA)
) ss.
COUNTY OF MITCHELL)

Doug Krabbe being first duly sworn, deposes and says that he is an Executive Vice President and Senior Lending Officer of CUSB Bank, that he has reviewed the allegations of the foregoing Complaint, and that the same are true of his knowledge, except as to matters stated on information and belief, and as to those matters, he believes them to be true.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated this 11th day of September, 2023, at Mitchell, County, Iowa.



Doug Krabbe
CUSB Bank
111 N. Elm St.
Cresco, IA 52136