

BK: 8943 PG: 376  
Recorded: 4/18/2014 at 11:10:19.690 AM  
Fee Amount: \$52.00  
Revenue Tax:  
Joan McCalmant RECORDER  
Linn County, Iowa  
Unique Doc ID: 2261276

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Prepared/Return to Richard A. Davidson, 220 Main Street, Davenport, IA 52801, (563) 333-6624  
Send Tax Bill To: Town Center Cedar Properties, LLC, 3105 Dubuque Street NE, Iowa City, IA 52240

**NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$1,600,000 IN LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.**

## **MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT**

THIS MORTGAGE ("Mortgage") encumbers both real and personal property, contains an after-acquired property clause and secures present and future loans and advances.

THIS Mortgage is made as of April 16, 2014 between **TOWN CENTER CEDAR PROPERTIES, LLC**, an Iowa limited liability company, whose address is 3105 Dubuque Street NE, Iowa City, IA 52240 ("Mortgagor") and **BARKER FINANCIAL, LLC**, an Iowa limited liability company ("Mortgagee") whose address is 114 ½ E. College Street, Iowa City, IA 52240.

1. **Obligations.** This Mortgage secures the following (hereinafter collectively referred to as the "Obligations"):

a. The payment of the loan made by Mortgagee to Frantz Ventures, LLC ("Frantz"), evidenced by a promissory note dated April 16, 2014 in the principal amount of \$1,600,000 with a due date of May 1, 2015, any renewals, extensions, modifications or refinancing thereof and any promissory notes issued in substitution therefor (the "Loan") and

b. All other notes, contracts, liabilities, obligations or other evidence of indebtedness of Frantz or Mortgagor; either jointly or severally; now existing or hereafter arising; whether direct or indirect, contingent or absolute and whether as maker, guarantor or surety; whether or not referencing this Mortgage and whether or not secured by other collateral; for any purpose whatsoever, whether related or unrelated to the purpose of this Mortgage; and all future advances and obligations as to any of the foregoing, together with interest thereon and amounts advanced and expenses incurred by Mortgagee. All future advances and future obligations are secured hereunder as if made on the date of this Mortgage.

c. All additional sums advanced and expenses incurred by the Mortgagee for insuring, preserving or protecting the Mortgaged Property and any other sums advanced and expenses incurred by Mortgagee under this terms of this Mortgage.

**NOTHING CONTAINED HEREIN SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.**

**2. Grant of Mortgage and Security Interest.** Mortgagor hereby sells, conveys and mortgages unto Mortgagee, and grant a security interest to Mortgagee in the following described property:

**a. Land and Buildings.** All of Mortgagor's right, title and interest in and to the following described real estate situated in LINN COUNTY, IOWA (the "Land");

Units 1-15 of Building A and Units 1-15 of Building B of Demining Condominiums, located on Lot 3 of Nordstrom Kirkwood Addition as is recorded in Book 1855, page 22, in the office of the Linn County Recorder; inclusive of Parcel A of Plat of Survey #752 as is recorded in Book 4064, page 75, in the office of the Linn County Recorder and Lot 4 of Nordstrom Kirkwood Addition as is recorded in Book 1855, page 22, in the office of the Linn County Recorder; except Parcel A of Plat of Survey #752 as is recorded in Book 4064, Page 75, in the office of the Linn County Recorder, according to the Declaration of Condominium recorded in Book 5514, page 638-687, in the Linn County Recorder's Office together with the limited common elements thereof.

TOGETHER WITH: all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditaments, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Land;

**b. Fixtures and Personal Property.**

All fixtures (the "Fixtures") and personal property located, in, under or about the Land and the Improvements used or usable in connection with the Land or the Improvements, and which are owned by Mortgagor or in which Mortgagor has an interest, including, without limitation, all equipment, inventory, general intangibles, contract rights, including, without limitation, furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software), any other tangible or intangible property, and any surveys, plans, specifications, architectural, engineering and construction documents, and all repairs, replacements, substitutions, additions, parts, accessories, attachments, successions, increase and proceeds of any the foregoing; and

**(1) LEASES, RENTS AND DEPOSITS**

All rights of Mortgagor with respect to tenants or occupants now or hereafter occupying any part of the Land or the Improvements, including all Leases, Rents and Deposits (as hereinafter defined), and all rents, income, royalties, revenues and payments, including all prepayments and security deposits, payments in termination, payments for the rental or sale or use of rooms, goods sold or leased, laundry revenue, whether or not yet earned, and all proceeds of any of the foregoing. "Leases" means all present and future Leases, sub-Leases, licenses, concessions or grants, or any other possessory interest now or hereafter enforced, whether written or oral, affecting the Land or Improvements or any part thereof (including proprietary leases or occupancy agreements if Mortgagor is a cooperative housing corporation, and all modifications, extensions and renewals thereof. "Deposits" means all tenant security deposits which have not been forfeited by any tenant under any Lease. "Rents" means all rents (from residential or non-residential space), revenue or other income of the Land or the Improvements, including any subsidy payments received from any sources (including, but not limited to, payments under any housing assistance program, parking fees or charges, laundry and vending machine income, fees and charges, and all fees, income and charges from any other sale of goods or services provided at the Land or the Improvements, whether now due, past-due or to become due, and all deposits forfeited by tenants).

Leases, Deposits and Rents are hereby deemed to be included within the definition of Personal Property set forth above.

**(2) GENERAL INTANGIBLES**

All general intangibles of Mortgagor which relate to any of the Land, the Buildings, the Fixtures, the Personal Property, the Leases or the Rents, including proceeds of insurance and condemnation or conveyance of the Land and the Improvements, accounts, trade names, contract rights, accounts and bank accounts; and

### (3) OTHER PROPERTY

All plans and specifications, soil tests, environmental reports, engineering reports, architect's, engineer's and construction contracts, licenses, permits, certificates and documents relating to the Land, the Buildings, the Fixtures and Personal Property.

### (4) AFTER ACQUIRED PROPERTY AND PROCEEDS

All property similar to the property herein described and conveyed which may be subsequently acquired by Mortgagor and used in connection with the Land, the Improvements, the Fixtures, the Personal Property and other property; and all cash and non-cash proceeds and products of all of the foregoing property.

TO HAVE AND TO HOLD the Land, Buildings, Personal Property, Leases, Deposits, Rents, and all other property described above (collectively called the "Mortgaged Property"), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns, free from all rights and benefits under and by virtue of any Homestead Exemption of the state where the Mortgaged Property is located.

**3. Representations and Warranties of Mortgagor.** Mortgagor represents, warrants and covenants to Mortgagee that (i) Mortgagor holds clear title to the Mortgaged Property and title in fee simple in the Land; (ii) Mortgagor has the right, power and authority to execute this Mortgage and to mortgage, and grant a security interest in the Mortgaged Property; (iii) the Mortgaged Property is free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent and except as otherwise stated in subparagraph 2a hereof; (iv) Mortgagor will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; and (v) all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land.

**4. Payment and Performance of the Obligations.** Mortgagor will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagor under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

**5. Escrow Funds.** Unless waived by Mortgagee in writing, Mortgagor shall deposit, in addition to the payments required by the Obligations, monthly, until the Obligations are paid:

a. a sum equal to all Taxes (as hereinafter defined) next due on the Mortgaged Property, all as estimated by Mortgagee, divided by the whole number of months to elapse before the month prior to the date when such Taxes will become due and payable; and

b. a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance as hereinafter required, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed.

c. all such payments (collectively "Escrow Funds") shall be held with no obligation to segregate such payments by the Mortgagee, in trust, without any obligation arising for the payment of any interest thereon. The aggregate of the monthly Escrow Funds together with payments payable on the Obligations shall be paid in a single payment each month, to be applied to the following items in the order stated: (i) Taxes and insurance premiums; (ii) late charges on the Obligations; (iii) interest on the Obligations; (iv) amortization of the principal balance of the Obligations. If the total Escrow Funds on hand shall not be sufficient to pay all of the Taxes and insurance premiums, together with all penalties and interest thereon, when the same shall become due, then the Mortgagor shall pay to the Mortgagee, on demand, any amount necessary to make up the deficiency. If the total of such Escrow Funds exceeds the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items.

d. In the Event of Default (as hereinafter defined) in any of the provisions contained in this Mortgage, or in the Obligations, the Mortgagee may, at its option, without being required to do so, apply any Escrow Funds on hand to the Obligations in such order and manner as the Mortgagee may elect. When the obligations have been fully paid, then any remaining escrow funds shall be paid to the Mortgagor. All Escrow Funds are hereby pledged as additional security for the Obligations and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.

e. Notwithstanding anything contained herein to the contrary, neither the depository nor the Mortgagee shall be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Escrow Funds unless the Mortgagor, while no event of Default exists hereunder and within a reasonable time prior to the due date, shall have requested the Mortgagee in writing to make application of such Escrow Funds on hand to the payment of the particular Taxes or insurance premiums. Upon presentation of receipted bills, Mortgagee shall reimburse the Mortgagor for such payments made by the Mortgagor.

6. **Taxes.** Mortgagor shall pay each installment of all taxes and special assessments of every kind ("Taxes"), now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand, and shall deliver to Mortgagee proof of such payment within fifteen (15) days after the date in which such tax or assessment becomes delinquent.

7. **Liens.** Mortgagor shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

#### 8. **Compliance with Laws.**

a. Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof, including, but not limited to all state and federal environmental laws or statutes, where now existing or hereafter enacted.

b. Mortgagor covenants and warrants that there are and will be no environmental, health or safety hazards that pertain to any of the Mortgaged Property or the business or operations conducted thereon. No use, treatment, storage, or disposal of hazardous wastes or hazardous substances has or will occur on, in, or underneath the Mortgaged Property. The terms "hazardous wastes" and "hazardous substances" are as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.* The Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* and §311(6)(2)(A) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1321(b)(2)(A), and the regulations adopted and publications promulgated pursuant to said laws).

c. Mortgagor assumes all obligations of compliance with all environmental requirements imposed by federal, state and local authorities that affect the Mortgaged Property or any business or other activity conducted thereon or therewith. Any fees, costs, and expenses imposed upon or incurred by Mortgagee at any time and from time to time on account of any breach of any of the covenants, representations, or warranties contained in this paragraph shall be immediately due and payable by Mortgagor to Mortgagee upon demand for reimbursement for same and shall (together with interest thereon accruing from the date such fees, costs, and expenses are so imposed upon or incurred by Mortgagee) become part of the obligations. Mortgagor hereby covenants and agrees to protect, defend, indemnify, and hold harmless Mortgagee from any and all such costs and expenses.

9. **Permitted Contests.** Mortgagor shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 6 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 7 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 8 hereof, so long as Mortgagor shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of Mortgagor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrances or charge

so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph.

10. **Care of Property.** Mortgagor shall take good care of the Mortgaged Property; shall keep the Buildings and Personal Property now or later placed upon the Mortgaged Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Mortgage. Mortgagor shall not make any material alteration to the Mortgaged Property without the prior written consent of Mortgagee.

11. **Insurance.**

a. **Risks to be insured.** Mortgagor, at its sole cost and expense, shall maintain insurance as follows:

i. Mortgagor will maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards as Mortgagee may from time to time require, such insurance to have a "Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of the Obligations. At Mortgagor's option, such policy may have a coinsurance clause of not less than 90% of replacement cost provided the policy contains an appropriate form of cost escalation endorsement. Mortgagor will at its sole cost and expense, from time to time, and at any time at the request of Mortgagee, provide Mortgagee with evidence satisfactory to Mortgagee of the replacement cost of Mortgaged Property;

ii. Mortgagor will maintain comprehensive general public liability insurance and property damage liability insurance in amounts satisfactory to Mortgagee to protect Mortgagor from claims (including all costs and expenses of defending the same) for personal injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of use thereof) occurring in, on or about or in any way connected with the Mortgaged Property;

iii. Mortgagor will maintain during the making of any alterations or improvements to the Mortgaged Property, insurance covering owner's or employer's liability not covered by insurance referred to above and Worker's Compensation insurance covering all persons engaged in making such alterations or improvements;

iv. At all times, Mortgagor will maintain such other insurance as Mortgagee may reasonably require.

b. **Policy Provisions.** All insurance policies and renewals thereof maintained by Mortgagor pursuant to this Mortgage shall be written by an insurance carrier satisfactory to Mortgagee, contain a mortgagee clause in favor of and in form acceptable to Mortgagee, contain an agreement of the insurer that it will not amend, modify or cancel the policy except after thirty (30) days prior written notice to Mortgagee, and be reasonably satisfactory to Mortgagee in all other respects.

c. **Delivery of Policy or Certificate.** Mortgagor will deliver to Mortgagee original policies satisfactory to Mortgagee evidencing the insurance which is required under this Mortgage, and Mortgagor shall promptly furnish to Mortgagee all renewal notices and, upon request of Mortgagee, evidence of payment thereof. At least ten (10) days prior to the expiration date of a required policy. Mortgagor shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee.

d. **Assignment of Policy.** If the Mortgaged Property is sold at a foreclosure sale or if Mortgagee shall acquire title to the Mortgaged Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies required hereunder, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

e. **Notice of Damage or Destruction; Adjusting Loss.** If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagor will, within five (5) calendar days after the

occurrence of such damage or destruction, give written notice thereof to the insurance carrier and to Mortgagee and will not adjust any damage or loss which is estimated by Mortgagor in good faith to exceed \$10,000 unless Mortgagee shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four (4) months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four (4) month period or at any time thereafter, Mortgagee may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagor does hereby irrevocably authorize, empower and appoint Mortgagee as attorney-in-fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagor.

**f. Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagee, which shall, at its option, apply the same (after first deducting therefrom Mortgagee's expenses incurred in collecting the same including but not limited to reasonable attorney's fees) to the reduction of the Obligations or to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property that is damaged or destroyed in such manner as Mortgagee shall determine and secondly to the reduction of the Obligations. Any application of insurance proceeds to principal of the Obligations shall not extend or postpone the due date of the installments payable under the Obligations or change the amount of such installments.

**g. Reimbursement of Mortgagee's Expenses.** Mortgagor shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorneys' fees, and all such expenses shall be additional amounts secured by this Mortgage.

**12. Inspection.** Mortgagee, and its agents, shall have the right, at all reasonable times, to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property or any part thereof. Mortgagee shall, however, have no duty to make such inspection. Any inspection of the Mortgaged Property by Mortgagee shall be entirely for its benefit and Mortgagor shall in no way rely or claim reliance thereon.

**13. Protection of Mortgagee's Security.** Subject to the rights of Mortgagor under paragraph 9 hereof, if Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then Mortgagee, at Mortgagee's option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses, including reasonable attorney's fees, disbursed or incurred by Mortgagee in good faith pursuant to this paragraph with interest thereon at the same rate as the Obligations, shall become an Obligation of Mortgagor secured by this Mortgage. Such amounts advanced or disbursed by Mortgagee hereunder shall be immediately due and payable by Mortgagor unless Mortgagor and Mortgagee agree in writing to other terms of repayment. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act hereunder, and Mortgagee shall not be liable to Mortgagor for any damage or claims arising out of action taken by Mortgagee pursuant to this paragraph.

**14. Condemnation.** Mortgagor shall give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Mortgagee the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Mortgagee is hereby authorized to intervene in any such action in the names of Mortgagor, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses, including reasonable attorney's fees, incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

**15. Fixture Filing.** This Mortgage constitutes a Security Agreement under the Uniform Commercial Code with respect to the Mortgaged Property and Mortgagor hereby grants the Mortgagee a security interest in and to the Mortgaged

Property. From the date of its recording, this Mortgage shall be effective as a Financing Statement filed as a fixture filing with respect to the Personal Property and for this purpose the name and address of the debtor is the name and address of Mortgagor as set forth herein and the name and address of the secured part is the name and address of the Mortgagee as set forth herein.

**16. Assignment of Rents and Leases.** Mortgagor irrevocably grants, bargains, warrants, conveys and mortgages to Mortgagee as additional security all right, title and interest in and to any and all existing or future leases, subleases, and any other written or verbal agreements for the use and occupancy of any portion of the Mortgaged Property, including any extension, modifications or substitutions of such agreements and all rents, issues, and profits. Mortgagor agrees that this assignment is effective immediately and will remain in effect while any Obligations remain unpaid, outstanding and unsatisfied. Mortgagor agrees that Mortgagee is entitled to notify Mortgagor or Mortgagor's tenants to make payments directly to Mortgagee, however, Mortgagee agrees not to notify such tenants until an Event of Default has occurred. Mortgagee shall have no responsibility for performing any obligations to any tenant or subtenant; all such obligations shall be the responsibility of the Mortgagor. This paragraph shall be in addition to any right, title or interest given to Mortgagee under any separate instrument assigning rents or leases.

As part of the consideration for the Loan, Mortgagor absolutely and unconditionally assigns and transfers to Lender all Rents and Deposits. It is the intention of Mortgagor to establish a present, absolute and irrevocable transfer and assignments to Lender of all Rents and Deposits and to authorize and empower Lender to collect and receive all Rents and Deposits without the necessity of further action on the part of Mortgagor. Promptly upon request by Lender, Mortgagor agrees to execute and deliver such further assignments as Lender may from time to time require. Mortgagor and Lender intend for this assignment of Rents and Deposits to be immediately effective and constitute an absolute present assignment and not an assignment for additional security only. For the purpose of giving effect to this absolute assignment of Rents and Deposits, and for no other purpose, Rents and Deposits shall not be deemed to be a part of the "Mortgage Property." However, if this present, absolute and unconditional assignment of Rents and Deposits is not enforceable by its terms under the laws of the State of Iowa, then the Rents and Deposits shall be included as part of the Mortgage Property and it is the intention of the Mortgagor in this circumstance that this instrument create and perfect a lien on the Rents and Deposits in favor of Lender, which lien shall be effective as of the date of this instrument. After the occurrence of an Event of Default, Mortgagor authorizes Lender to collect, sue for and compromise Rents and Deposits and directs each tenant to pay all Rents and Deposits to or as directed by Lender and Mortgagor shall, upon Mortgagor's receipt of any Rents or Deposits from any source (including any subsidy payments under any housing assistance program) to pay the total amount of such receipts to the Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Mortgagor a revocable license to collect and receive all Rents and Deposits, to hold all Rents and Deposits in trust for the benefit of Lender and apply the Rents and Deposits to pay the installments of interest and principal due and payable under the Note and all other amounts then due and payable under the Loan Documents, including utilities, taxes and insurance premiums, tenant improvements and capital expenditures. From and after the occurrence of an event of Default, and without the necessity of Lender entering upon or taking control of the Land and Improvements, Mortgagor's license to collect the Rents and Deposits shall automatically terminate and the Lender shall without notice be entitled to all Rents and Deposits, including all Rents and Deposits then due and unpaid. Mortgagor shall then pay to Lender all Rents and Deposits. At any time after an Event of Default, Mortgagor hereby irrevocably authorizes Lender to give notice to all tenants instructing them to pay all Rents and Deposits to Lender and no tenant shall be obligated to inquire further as to the occurrence or continuation of an Event of Default and no tenant shall be obligated to pay to Mortgagor any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender may be delivered to any tenant personally, or by mail or delivering such notice to each rental unit. Mortgagor shall not interfere with and shall cooperate with Lender's collection of such Rents and Deposits.

**17. Events of default.** Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

a. Mortgagor shall default in the due observance or performance of or breach its agreement contained in paragraph 4 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage or the Obligations;

b. Mortgagor shall make an assignment for the benefits of its creditors, or a petition shall be filed by or against Mortgagor under the United States Bankruptcy Code;

c. The appointment of any trustee, receiver or liquidator of a material part of Mortgagor's properties or of any part of the Mortgaged Property;

d. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy;

e. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

**18. Due on Sale.** Any transfer of the Mortgaged Property, or any part thereof (or a transfer of the beneficial interest if the Mortgagor is a land trustee), shall give the Mortgagee the right to declare all Obligations secured by this Mortgage immediately due and payable. The failure of Mortgagee to exercise this right of acceleration shall not constitute a waiver of such right in future transfers.

**19. Acceleration; Foreclosure.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, at its option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

a. Mortgagee may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand;

b. Mortgagee shall have and may exercise with respect to the Personal Property, all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code. If notice to Mortgagor of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagor at least ten (10) days prior to the date of intended disposition.

c. Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State where the Mortgaged Property is located, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court shall at the request of Mortgagee, with or without notice to Mortgagee, appoint a receiver, regardless of the solvency or insolvency of Mortgagor, to take immediate possession and control of the Mortgaged Property and to collect the Revenues and Income accruing therefrom, and to rent or cultivate the same as the receiver may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagor only for the net profits, after application of rents, issues and profits to the costs and expenses of the receivership, the operation and management of the property, any foreclosure and to the Obligations.

**20. Redemption.** Mortgagor hereby waives, to the extent permitted by law, all rights of redemption and any other rights to delay the sale of the property or to retain possession of the property before or after the sale thereof in the event of a foreclosure of this mortgage. In the event that the Mortgaged Property is located in the State of Iowa, redemption is waived to the fullest extent permitted by Iowa Code Chapter 628. In the event that the Mortgaged Property is located in the State of Illinois, redemption and reinstatement are waived to the fullest extent permitted under 735 ILCS 5/15-1601, et seq.

**21. Attorneys' Fees.** Mortgagor shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal and other expenses and title and abstracting expenses.

**22. Forbearance not a Waiver, Rights and Remedies Cumulative.** No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Mortgagee of any particular provisions of this Mortgage shall be deemed effective unless in writing signed by Mortgagee. All such rights and remedies provided for herein or which Mortgagee or the holder of the Obligations may have otherwise, at law or in equity, shall be distinct, separate and cumulative and



may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. The acceptance by the Mortgagee of any sum or partial payment of the Obligations after an Event of Default or acceleration of the Obligations or after foreclosure proceedings are filed shall not constitute a waiver of the Event of Default nor shall it effect the Mortgagee's right to collect the balance of the Obligations or complete a foreclosure of the Mortgaged Property.

23. **Notices.** All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, addressed to the parties address shown herein.

24. **Homestead and Dower.** Mortgagor hereby waives all rights of homestead exemption, dower and statutory share to the fullest extent permitted by law.

25. **Governing Law.** This Mortgage shall be governed, interpreted, construed and enforced according to the laws of the state where the Mortgaged Property, or any part thereof, is located.

26. **Headings.** The headings and captions used herein are for convenience and reference only and shall not be construed to limit or define the provisions hereof.

27. **Grammar.** As used herein, the singular shall include plural and plural and singular. Masculine, feminine or neutral pronouns shall be interchangeable.

28. **Successors and Assigns.** This Mortgage shall be binding on the parties' heirs, executors, successors and assigns.

29. **Entire Agreement, Severability.** This Mortgage is complete and fully integrated and may not be amended or modified by any oral agreement. Any section in this Mortgage or any attachments that conflicts with applicable law shall be severed and shall not be effective and shall not affect the enforceability of the remainder of this Mortgage.

30. **Waivers.** Except to the extent prohibited by law, Mortgagor waived any rights relating the reinstatement; and the marshaling of liens and assets.

31. **Other Terms:** If applicable, this mortgage constitutes a purchase money mortgage; the Obligations may include a revolving line of credit provision and although the Obligations may be reduced to a zero balance from time to time, this Mortgage shall remain in effect until released; this Mortgage secures an obligation incurred for the construction of an improvement to real property within the meaning of Article 9 of the Uniform Commercial Code. By signing below the undersigned acknowledge receiving a copy of this Mortgage.

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

Dated April 16, 2014.

Mortgagor:  
TOWN CENTER CEDAR PROPERTIES, LLC

By:   
Michael D. Frantz, Managing Member

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK         )

On April 16, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Michael D. Frantz, to me personally known, who, being by me duly sworn, did say that he is the Member and/or Manager of said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its managers and the said Michael D. Frantz acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company and by it voluntarily executed.

Amanda M Miller  
Notary Public in and for said County and State  
Cook County, Illinois

