

10

2014 048646

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
2014 AUG 13 AM 10:38  
MICHAEL B. BROWN  
RECORDER

**ASSIGNMENT OF RENTS AND LEASES**

479270CM

This Assignment of Rents and Leases ("**Assignment**") is made as of August 6, 2014 by **PRAIRIE SQUARE LLC**, an Indiana limited liability company ("**Borrower**"), whose address is 8087 Randolph Street, Hobart, Indiana 46342, to and for the benefit of **CENTIER BANK**, an Indiana state bank (together with its successors and assigns, "**Bank**"), with offices at 600 East 84<sup>th</sup> Avenue, Merrillville, Indiana 46410.

Borrower states as follows:

A. Borrower holds title to the property in Lake County, Indiana, as described on Exhibit A, which is attached hereto and made a part hereof, together with all buildings, improvements, and tenements now or hereafter erected on the property, and all easements, rights, right-of-ways, driveways, pavement, curb, and street front privileges, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, boilers, incinerators and building materials of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, attached floor coverings, furniture, antennas, signs, trees and plants; all of which, including improvements, replacements and additions thereto, will be deemed to be and remain a part of the real property covered by this Assignment, whether actually physically annexed to said property or not (all of the foregoing, together with said property are collectively herein referred to as the "**Premises**").

B. Borrower wishes to secure to Bank:

(1) the indebtedness in the maximum total principal amount of \$12,125,000.00, which indebtedness is evidenced by the Promissory Note of even date herewith in the maximum principal amount of \$12,125,000.00, with a final payment due on or before the date that is seven (7) years after the date of this Instrument (the "**Note**"), with interest

CHICAGO TITLE INSURANCE COMPANY

30-  
CT  
an

thereon, and all amendments, renewals, extensions, rewrites, refinances, modifications, consolidations and replacements thereof and substitutions therefor;

(2) the payment of all amounts otherwise payable by Borrower under or with respect to that certain Construction and Real Estate Loan Agreement dated as of August 6, 2014, executed by Borrower and Bank (the "**Loan Agreement**") and/or any of the other Loan Documents (as defined in the Loan Agreement), and all amendments, renewals, extensions, rewrites, refinances, modifications, consolidations and replacements thereof and substitutions therefor;

(3) the repayment of any future advances, with interest thereon, made by Bank to Borrower, whether made as an obligation, made at the option of Bank, made after a reduction to a zero (0) or other balance, or made otherwise;

(4) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Assignment;

(5) the performance of the covenants and agreements of Borrower herein contained;

(6) the performance of the covenants and agreements under the Loan Agreement and/or any of the other Loan Documents to be performed by Borrower; and

(7) all other liabilities of the Borrower in favor of the Bank, direct or indirect, absolute or contingent, primary or secondary, matured or unmatured, whether or not related to or of the same class as any specific debt secured hereby, now existing or hereafter arising

(collectively, the "**Obligations**"). Borrower has and hereby promises to pay the said aggregate amounts, together with interest thereon, from the times and at the rates set forth therein, in installments or otherwise as therein provided at the office of Bank, or at such other place as may be designated in writing by the legal holder or holders thereof, the respective entire balances of principal and interest thereunder being due as provided therein.

C. As a condition precedent to Bank extending any financial accommodation to Borrower, whether under the Note, the Loan Agreement, and/or any of the other Loan Documents, Bank has requested that Borrower execute and deliver this Assignment to

Bank, and any financial accommodation made by Bank to Borrower with respect to the Note or the other Loan Documents are and will be in reliance upon this Assignment.

**NOW, THEREFORE**, Borrower grants and agrees as follows:

**Section 1. Grant.** In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Borrower hereby assigns, transfers and sets over to Bank all right, title and interest of Borrower in, under or pursuant to any and all present or future leases or subleases, whether written or oral, or any lettings of possession of, or any agreements for the use or occupancy of, the whole or any part of the Premises, which Borrower may have heretofore received an assignment of, made or agreed to make, or may hereafter receive an assignment of, make or agree to make, or which may be made or agreed to by Bank under the powers hereinafter granted, including all amendments and supplements to and renewals thereof at any time made (collectively, the "**Leases**"), relating to the Premises including, without limiting the generality of the foregoing, all right, title and interest of Borrower in and to all the rents (whether fixed or contingent), earnings, renewal rents and all other sums due or which may hereafter become due under or by virtue of the Leases and all rights under or against guarantors of the obligations of lessees and obligors under the Leases. Any capitalized terms used in this Assignment but not defined herein will have the same meanings ascribed to them as in the Loan Agreement.

Notwithstanding any other provisions hereof, if a court of competent jurisdiction construes this Assignment to be a collateral assignment that secures the indebtedness secured hereby rather than an absolute and unconditional assignment, then such assignment will constitute an assignment of rents as set forth in I.C. §32-21-4-2 and thereby creates a security interest in the Leases and all rents or other monies payable thereunder or with respect thereto that will be perfected upon the recording of this Assignment.

**Section 2. Collateral Security.** This Assignment is made and given as collateral security for, and will secure all of the Obligations, including but not limited to the performance of all obligations, covenants, promises and agreements contained herein and in the other Loan Documents, including but not limited to the Loan Agreement, and any and all obligations intended to be secured thereby, and the payment of all expenses and charges, legal or otherwise, paid or incurred by Bank in realizing upon or protecting the indebtedness constituting the Obligations or any security therefor, including but not limited to this Assignment.

**Section 3. Grant of Power of Attorney.** Borrower hereby irrevocably constitutes and appoints Bank the true and lawful attorney of Borrower with full power of substitution for Borrower and in Borrower's name, place and stead to ask, demand, collect, receive, receipt for, sue for, compound, and give acquittance for any and all

sums due or to become due under any Lease, with full power to settle, adjust or compromise any claim thereunder as fully as Borrower could do, and to endorse the name of Borrower on all commercial paper given in payment or in part payment thereof, and in Bank's discretion to file any claim or take any other action or proceeding, either in Bank's name or in the name of Borrower or otherwise, which Bank may deem necessary or appropriate to protect and preserve the right, title and interest of Bank in and to such sums and the security intended to be afforded hereby.

**Section 4. Warranties of Borrower.** Borrower agrees and warrants to Bank that:

(a) Borrower has the right to make this Assignment, and Borrower has not heretofore alienated, assigned, pledged or otherwise disposed of any of the rights, rents and other sums due or which may hereafter become due and which are intended to be assigned hereunder.

(b) All currently-effective Leases (if any) either (i) have been made pursuant to written lease agreements, that are substantially similar to the form of dwelling unit rental agreement Borrower has provided to Bank, or (ii) are month-to-month and may be terminated by Borrower on not more than one month's notice.

**Section 5. Complete Transfer.** This Assignment includes and establishes a present, absolute and primary transfer and assignment of all rents, earnings, income, issues and profits of the Premises, but so long as no Event of Default (subject to any applicable notice requirement or cure period) exists under any of the Loan Documents and no event (subject to any applicable notice requirement or cure period) exists which by lapse of time or service of notice, or both, has or would become an Event of Default, Borrower will have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any Lease as they respectively become due, but not more than thirty (30) days in advance.

**Section 6. Direct Payment to Bank.** Borrower hereby irrevocably consents to and authorizes and directs that the tenant or other obligor under any Lease upon demand and notice from Bank of Bank's right to receive rents and other sums hereunder, will pay such rents and other sums to Bank without any obligation on the part of such tenant or other obligor to determine the actual existence of any default or event claimed by Bank as the basis for Bank's right to receive such rents or other sums and notwithstanding any notice from or claim of Borrower to the contrary. Borrower hereby waives any right or claim against any tenant or other obligor for any such rents and other sums paid by tenant or other obligor to Bank.

**Section 7. Remedies.** Without limiting any legal rights of Bank as the absolute assignee of the rents, issues and profits of the Premises, and in furtherance

thereof, Borrower agrees that upon the occurrence of any Event of Default (subject to any applicable notice requirement or cure period), whether before or after amounts payable under or with respect to the Note are declared due in accordance with its terms or under the terms of any of the other Loan Documents and whether before or after satisfaction of any requirement of the lapse of time or the giving of notice or both on which acceleration after default may be conditioned, Bank may, at its option,

(a) take actual possession of the Premises, or of any part thereof, personally or by agent or attorney, as for condition broken, and with or without force and with or without process of law, enter upon, take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts relating thereto, and exclude Borrower, its agents, or servants therefrom and hold, operate, manage and control the Premises, and at the expense of Borrower, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the Premises as may seem judicious, and pay taxes, assessments and prior or proper charges on the Premises, or any part thereof, and insure and reinsure the same, and lease the Premises in such parcels and for such times and on such terms as Bank may deem fit, including leases for terms expiring beyond the maturity of the indebtedness secured by the Loan Agreement, and may cancel any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same and in every such case have the right to manage and operate the said Premises and to carry on the business thereof as Bank may deem proper or

(b) with or without taking possession of the Premises, Bank may proceed to enforce the Leases and collect all sums due or to become due thereunder and by so doing Bank will not be deemed a mortgagee in possession nor to have assumed or become responsible or liable for any obligations of Borrower arising thereunder or in respect thereof.

**Section 8. Application of Amounts Collected.** Any sums received by Bank under or by virtue of this Assignment will be applied to the payment of or on account of the following in such order and manner as Bank may elect:

(a) to the payment of all proper charges and expenses, including the just and reasonable compensation for the services of Bank, its attorneys, agents, clerks, servants and others employed in connection with the operation, management and control of the Premises and the conduct of the business thereof and, if Bank will elect, to the establishment of a reserve which will be sufficient in Bank's sole judgment to indemnify it against any liability, loss or damage on account of any

matter or thing done in good faith and in pursuance of the rights and powers contained herein;

(b) to the payment of any sum secured by a lien or encumbrance upon the Premises;

(c) to the cost of completing any improvements being constructed on or about the Premises; and/or

(d) to the reduction of the Obligations, whether or not the same may then be due or be otherwise adequately secured.

The manner of application of such sums and the items which will be credited or paid out of same will be within the sole discretion of Bank and nothing contained herein will obligate Bank to use any such sums for a purpose other than reducing the Obligations unless Bank elects to do so. Bank will be subrogated to any lien discharged out of the rents, income and profits of the Premises.

**Section 9. Further Actions of Borrower.** Borrower hereby further covenants that it will, upon request of Bank, execute and deliver such further instruments and do and perform such other acts and things as Bank may reasonably deem necessary or appropriate to more effectively vest in and secure to Bank the rights and rents which are intended to be assigned to Bank hereunder. Borrower irrevocably waives any right it now or hereafter may have to offset any claim or liability owing from it to any obligor on a Lease against sums due or to become due from such obligor under a Lease.

Borrower covenants and agrees to observe and perform all of the obligations imposed on it under the Leases and not to do or permit to be done anything to impair the security thereof. Borrower further covenants and agrees that Bank will have the option to require that Borrower not execute any Lease (other than in the ordinary course of business) without the written consent of Bank and that, after Bank gives notice of the exercise of such option to Borrower, Borrower will not thereafter execute any Lease without the written consent of Bank (which consent will not be unreasonably withheld). Borrower further covenants and agrees not to further assign or encumber its rights under the Leases or its rights to the rents or other sums due or to become due thereunder and not suffer or permit any of the Leases to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and void unless done with the written consent of Bank. Borrower further covenants and agrees that it will, at the request of Bank, submit the executed originals of all Leases to Bank.

**Section 10. Construction of Assignment.** The acceptance by Bank of this Assignment, with all of the rights, powers, privileges and authority so created, will not, prior to entry upon and taking of actual physical possession of the Premises by Bank, be deemed or construed to constitute Bank a mortgagee in possession nor impose any

obligation whatsoever upon Bank, it being understood and agreed that Bank does not hereby undertake to perform or discharge any obligation or liability of the landlord under any Leases or under or by reason of this Assignment. Bank will have no liability to Borrower or anyone for any action taken or omitted to be taken by it hereunder, except for its willful misconduct. Should Bank incur any liability, loss or damage under or by reason of this Assignment or for any action taken by Bank hereunder, excepting Bank's willful misconduct, or in defense against any claim or demand whatsoever which may be asserted against Bank arising out of any Lease, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Note at the time of occurrence (or if the Note has been paid in full at the time of occurrence, then at the rate applicable to the Note at the time of such payment in full), will be secured by this Assignment and by the Loan Agreement, and Borrower will reimburse Bank therefore immediately upon demand, Borrower's obligation to so pay will survive payment of the Obligations and the release of this Assignment.

**Section 11. Cumulative Rights.** The rights and remedies of Bank hereunder are cumulative and are not secondary to or in lieu of, but are in addition to any rights or remedies which Bank will have under the Note, the Loan Agreement or any of the other Loan Documents, or under applicable law, and the exercise by Bank of any rights and remedies herein contained will not be deemed a waiver of any other rights or remedies of Bank, whether arising under the Loan Agreement or otherwise, each and all of which may be exercised whenever Bank deems it in its interest to do so. The rights and remedies of Bank may be exercised from time to time and as often as such exercise is deemed expedient and the failure of Bank to enforce any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, will not be construed or deemed to be a waiver of any rights under the terms hereof.

The right of Bank to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to Bank will, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the Loan Agreement, including any period allowed by law for the redemption of the Premises after any foreclosure sale.

**Section 12. Miscellaneous Provisions.** This Assignment will be assignable by Bank and all of the terms and provisions hereof will be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of each of the parties hereto. All provisions hereof are severable and if any provisions hereof will be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof will in no way be affected thereby.

The captions and headings of the sections of this Assignment are for convenience only and will be disregarded in construing this Assignment. Any reference in this Agreement to an "Exhibit" or a "Section" or an "Article" will, unless otherwise

explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Assignment or to a Section or an Article of this Assignment.

Borrower expressly acknowledges and agrees that this Assignment was negotiated, executed and delivered in Lake County, Indiana, and that the laws of the State of Indiana will govern and control this Assignment and all provisions hereof.

**Section 13. WAIVER OF TRIAL BY JURY.** BORROWER AND BANK EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS ASSIGNMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS ASSIGNOR AND ASSIGNEE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Notices hereunder and/or with respect hereto will be given in the manner provided for notices under the Loan Agreement.

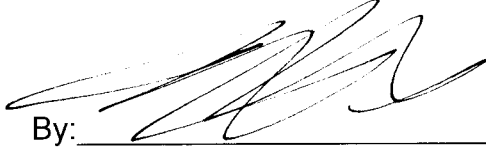




**IN WITNESS WHEREOF**, Borrower has executed this Assignment as of the date first above written.

Borrower:

**PRAIRIE SQUARE LLC**, an Indiana limited liability company

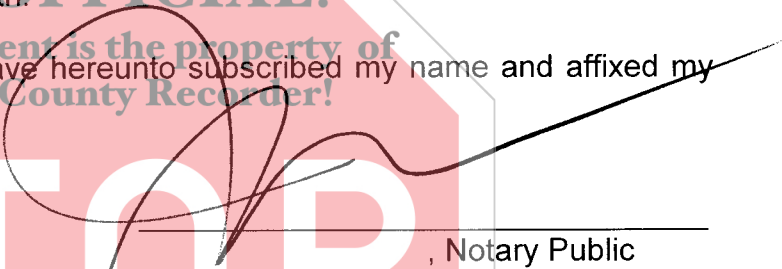


By: \_\_\_\_\_  
Eric T. Gastevich  
Principal Member

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF LAKE     )

**BEFORE ME**, the undersigned, a Notary Public, on August 6, 2014, personally appeared Eric T. Gastevich, personally known to me to be the same person whose name is subscribed to the foregoing Assignment of Rents and Leases as Principal Member of Prairie Square LLC, and being first duly sworn by me upon oath, acknowledged that such person has read and understands the foregoing and that such person has affixed such person's name to and delivered said document as such person's own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed my official seal.



\_\_\_\_\_, Notary Public

Commission Expires: \_\_\_\_\_ County of Residence: \_\_\_\_\_

*This instrument was prepared by:*

Demetri J. Retson  
Genetos Retson & Yoon LLP  
1000 East 80<sup>th</sup> Place, Suite 555 North  
Merrillville, Indiana 46410  
219-755-0400; fax: 219-755-0410

*The foregoing preparer states as follows: I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.*

## EXHIBIT A

### Legal Description of Premises

Lot 1, in Shaver's 45<sup>th</sup> Avenue Commercial Addition, Unit 1, to the Town of Highland, as per plat thereof, recorded in Plat Book 45, page 142, in the Office of the Recorder of Lake County, Indiana, EXCEPTING THEREFROM the West 100 feet and the North 80 feet thereof.

