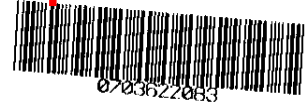


# UNOFFICIAL COPY



Doc#: 0703622083 Fee: \$38.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/05/2007 01:35 PM Pg: 1 of 8

050101300098

THIS INSTRUMENT  
PREPARED BY AND AFTER  
RECORDING RETURN TO:

Charles Brown  
National City Community  
Development Corporation  
One North Franklin, Suite 2550  
Chicago, Illinois 60606

## Mortgage

THIS MORTGAGE is made as of December 2, 2005, by and between **Timber Court, LLC**, an Illinois limited liability company, whose address is 3047 North Lincoln Avenue, Chicago, Illinois 60657, as "Mortgagor," and **National City Community Development Corporation**, an Ohio corporation, whose address is One North Franklin, Suite 2550, Chicago, Illinois 60606, as "Mortgagee."

FOR VALUE RECEIVED, Mortgagor mortgages and warrants to Mortgagee lands located in the County of Cook and State of Illinois, described as follows:

**See Exhibit A attached hereto and made a part hereof**

together with the easements, improvements, hereditaments, and appurtenances now or hereafter belonging thereto and the rents, income, and profits therefrom and all fixtures now or hereafter attached to or used in connection therewith, and all plumbing, heating, air conditioning, and ventilating equipment now or hereafter located thereon, which shall be deemed to be fixtures and a part of the realty, all of the foregoing being collectively referred to herein as the "Premises."

This Mortgage is given to secure the performance, by Mortgagor, of all of its obligations to the Mortgagee under and pursuant to that certain Operating Agreement of Timber Court LLC dated as of February 12, 2004 between Zazove and Cahnman, as amended pursuant

# UNOFFICIAL COPY

to resolution by unanimous written consent of the members of the Company dated as of June 25, 2005, by which Howard Blair ("Blair"), Barron Development, LLC, an Illinois limited liability company ("Barron Development") and Ridgeway Investments, LLC, an Illinois limited liability company ("Ridgeway Investments," and together with Zazove, Cahnman, Blair, Barron Development, the "Controlling Members") were admitted as additional Members of the Company and a s further amended by that certain Second Amendment to Operating Agreement (the "Second Amendment") dated as of December 2, 2005 among the Controlling Members and NCCDC by which NCCDC was admitted as investor member, including but not limited to those which pertain to the distribution of revenues of the Mortgagor to Mortgagee, as investor member, pursuant to, under and in accordance with Article 7 of the Second Amendment to repay the capital contributions to be made by the Mortgagee, as investor member, to the Mortgagor in the amount of **Two Million Dollars (\$2,000,000)**, plus amount of the Preferred Return (as defined in the Operating Agreement), together with all other amounts that may be contributed by Mortgagee from time to time in connection with the development of and construction upon the Premises. Said sums, together with the Preferred Return and all other obligations described in the Operating Agreement are hereinafter referred to as the "Obligations". The Obligations, unless sooner paid, mature **thirty six (36) month(s)** after the date of the Second Amendment, unless extended pursuant to the terms of the Operating Agreement.

Mortgagor further warrants, represents, covenants, and agrees as follows:

1. *Warranties.* Mortgagor warrants and represents to Mortgagee that this Mortgage has been authorized by all appropriate corporate action on behalf of Mortgagor, constitutes the valid and binding obligation of Mortgagor, enforceable in accordance with its terms, and creates a first and prior lien on the Premises.

2. *Taxes; Prior Mortgage.* Mortgagor will pay, or cause to be paid, when due, all taxes, assessments, and other similar charges levied upon or with respect to the Premises before the same become delinquent and, upon request, deliver to Mortgagee satisfactory evidence of such payment.

3. *Insurance.* Mortgagor will cause all buildings, improvements and other insurable parts of the Premises to be insured, up to the full current value thereof, against loss or damage by fire, windstorm and other such hazards under what is commonly known as an "all risk" policy of casualty insurance, and Mortgagor shall cause all premiums on such insurance to be paid when due. Each such policy shall contain a standard mortgagee loss payable clause naming Mortgagee as an insured and provide that all proceeds shall be payable to Mortgagee as its interests may appear at the time of the loss. Each such policy shall also provide that it may not be amended, modified, cancelled, or terminated for any reason except upon thirty (30) days' written notice to Mortgagee.

4. *Maintenance and Repair.* Mortgagor will maintain the Premises in good condition and repair; will not commit or suffer any waste thereon; will cause to be complied with all laws, ordinances, regulations or requirements of any governmental authority applicable to the Premises; will promptly repair, restore, replace, or rebuild any part of the Premises which is damaged or destroyed by any casualty; and will promptly pay when due all charges for utilities and other services to the Premises.

# UNOFFICIAL COPY

5. *Mortgagee's Right to Perform; Receiver.* If Mortgagor shall default in the payment of the aforesaid taxes, assessments, or other similar charges or in procuring and maintaining the aforesaid insurance or in the performance of any other obligation of Mortgagor hereunder, and its obligation to keep the Premises in good condition and repair, then Mortgagee shall have the right, but shall have no obligation, to pay such taxes, assessments, mortgage payments, or other similar charges, or procure and maintain such insurance, or cause such other obligation to be performed, and all sums expended by Mortgagee in connection therewith shall become part of the Obligations, payable by Mortgagor to Mortgagee upon demand, together with interest at the highest permitted legal rate.

6. *Condemnation.* If all or part of the Premises are taken, whether temporarily or permanently under power of eminent domain or by condemnation, Mortgagee shall have the right to share in the proceeds to the extent of its interest at the time of taking.

7. *Events of Default.* Upon the occurrence of any of the following events of default, all or any part of the Obligations shall, at the option of Mortgagee, become immediately due and payable without notice or demand:

(a) If default shall be made in the payment or performance when due of all or any portion of the Obligations, or if Mortgagor or the Managing Member, respectively shall default in the due performance or observance of any other covenant or obligation of Mortgagor under this Mortgage and shall fail to cure such default within thirty (30) days after receipt of written notice thereof from Mortgagee (or, with respect to any non-monetary default, to commence to cure such default and thereafter proceed diligently to complete such cure, where such cure cannot be reasonably achieved within thirty days), or the Managing Member shall default in the due performance or observance of any covenant or obligation of Managing Member under the Operating Agreement or any other document evidencing or securing the Obligations.

(b) If any warranty or representation made to Mortgagee in this Mortgage or in any other document given in connection with the Obligations shall be false or inaccurate in any material respect.

(c) If a voluntary or involuntary proceeding in receivership or insolvency shall be commenced by or against Mortgagor.

(d) If Mortgagor, without the prior written consent of Mortgagee, shall sell, convey, or transfer, refinance or grant or permit additional liens or mortgages upon the Premises or any interest therein or any rents or profits therefrom or shall cause or suffer any writ of attachment, garnishment, execution, or other legal process to be placed upon the Premises or any interest therein or any rents or profits therefrom, except in favor of Mortgagee, or if any part of the Premises or any interest therein shall be transferred by operation of law. (Notwithstanding the foregoing, if there shall then be no event of default hereunder or in respect of the Obligations secured hereby, Mortgagee shall (and by its acceptance hereof agrees to), promptly after its receipt of Mortgagor's request therefor, execute and deliver a partial release of the lien and operation of this Mortgage with respect to any Unit (as such term is defined in the Operating Agreement)

# UNOFFICIAL COPY

comprised within the Premises to be sold to a third party, provided that Mortgagor shall, concurrently with Mortgagee's execution of each such partial release, cause Mortgagee to be paid the amount to which Mortgagee is entitled under the Operating Agreement by reason of the sale of such Unit.).

(e) The occurrence of a default under the Senior Mortgage (as hereinafter defined) or any of the Junior Mortgages (as hereinafter defined), which remains uncured beyond any applicable notice and cure period

The Obligations will automatically become due and payable in full if a voluntary or involuntary proceeding in bankruptcy shall be commenced by or against Mortgagor.

8. *Remedies.* Mortgagee shall have all rights and remedies provided for in this Mortgage and otherwise permitted by law. In addition, upon occurrence of a default by Mortgagor under the terms of this Mortgage or a default by the Managing Member under the Operating Agreement, Mortgagee shall have the right, and is hereby authorized:

- (a) To foreclose this Mortgage by action pursuant to applicable law; and
- (b) To sell, release and convey the Premises at public sale, and to execute and deliver to the purchasers at such sale good and sufficient deeds of conveyance, rendering any surplus funds, after payment of the obligations secured hereby in full and the expenses of such sale, including attorneys' fees as provided by law, to Mortgagor, all in accordance with 735 ILCS 5/15-1512, as the same may be amended from time to time, and any similar statutory provisions which may hereafter be enacted in addition thereto or in substitution thereof.

All rights and remedies of Mortgagee under this Mortgage, whether or not exercisable only on default, shall be cumulative and may be exercised from time to time, and no delay by Mortgagee in the exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy, except to the extent otherwise provided by law.

9. *Expenses.* Mortgagor shall pay to Mortgagee on demand any and all expenses, including attorneys' fees and legal expenses, paid or incurred by Mortgagee in collecting or attempting to collector enforce the Obligations or in protecting and enforcing the rights of and obligations to Mortgagee under any provision of this Mortgage, including, without limitation, taking any action in any insolvency or bankruptcy proceedings concerning Mortgagor, or foreclosing this Mortgage by advertisement or by action, and all such expenses shall be part of the Obligations and shall bear interest from the date paid or incurred by Mortgagee, at the lesser of the highest permitted legal rate or the rate specified in the Note.

10. *Notices.* All notices to Mortgagor and to Mortgagee shall be deemed to be duly given if and when mailed by certified mail return receipt requested, with postage prepaid, to the respective addresses of Mortgagor and Mortgagee appearing on the first page hereof, or if and when delivered personally.

# UNOFFICIAL COPY

11. *Miscellaneous.* The covenants contained herein shall be binding upon and inure to the benefit of Mortgagor and Mortgagor's heirs, executors, administrators and personal representatives and Mortgagee and its successors and assigns. Whenever used herein, unless the context otherwise requires, the singular number shall include the plural, and the use of any gender shall be applicable to all genders. The headings to the various paragraphs hereof have been inserted for convenient references only and shall to no extent have the effect of amending or changing the expressed provisions of this Mortgage.

12. *Severability.* Any provision of this Mortgage prohibited or unenforceable by any applicable law shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

13. *Fixture Filing.* The Mortgage constitutes a security agreement and shall be effective as a financing statement filed as a fixture filing as provided in the Illinois Uniform Commercial Code as to the goods described in this Mortgage by item and type and all goods which are or may become fixtures related to the Premises described in this Mortgage.

14. *Environmental Matters.* The Mortgagor represents and warrants to the Mortgagee that (a) the Mortgagor has not used Hazardous Materials (as defined below), on, from or affecting the Premises in any manner which violates any Governmental Regulation (as defined below) governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and, to the best of the Mortgagor's knowledge, no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates any Governmental Regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; (b) the Mortgagor has never received any notice of any violations (and is not aware of any existing violations) of Governmental Regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Premises and, to the best of the Mortgagor's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Premises; (c) Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with applicable Governmental Regulations and, without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except in compliance with all applicable Governmental Regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property; (d) the Mortgagor shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable Governmental Regulation, to the satisfaction of the Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities. If the Mortgagor fails to conduct an environmental audit required by such governmental authorities, then the Mortgagee may at its option and at the expense of the

# UNOFFICIAL COPY

Mortgagor, conduct such an audit. Any such audit conducted by Mortgagee shall be conducted solely for the benefit of and to protect the interests of Mortgagee and shall not be relied upon by Mortgagor, or any third party for any purpose whatsoever, including, but not limited to Mortgagor or any third party's obligation, if any, to conduct an independent environmental investigation of its own. By conducting any such audit, Mortgagee does not assume any control over the environmental affairs or operations of Mortgagor nor assume any obligation or liability to Mortgagor or any third party.

For purposes of this Mortgage, "Hazardous Materials", means any materials or substance: (i) which is or becomes defined as a "hazardous substance", "pollutant", or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.) and amendments thereto and regulations promulgated thereunder; (ii) containing gasoline, oil, diesel fuel or other petroleum products; (iii) which is or becomes defined as a "hazardous waste" pursuant to the federal Resource Conservation and Recovery Act (42 USC 6901 et seq.) and amendments thereto and regulations promulgated thereunder; (iv) containing polychlorinated biphenyls (PCBs); (v) containing asbestos; (vi) which is radioactive; (vii) the presence of which requires investigation or remediation under any Governmental Regulation; or (viii) which is or becomes defined as a "hazardous waste", "hazardous substance", "pollutant", "contaminant", or biologically hazardous material under any Governmental Regulation.

"Government Regulation(s)" means any law, regulation, rule, policy, ordinance or similar requirement of the United States, any State, and any county, city or other agency or subdivision of the United States or any state.

The Mortgagor agrees that in the event this Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagee free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

This Mortgage on the Premises and is subject and subordinate in each and every respect to any and all rights of any kind created by:

That certain mortgage ("Senior Mortgage") dated as of September 23, 2005 from Mortgagor to National City Bank of the Midwest ("Senior Lender") and recorded prior hereto in the Office of the Cook County Recorder of Deeds on October 11, 2005 as Document No.0528419019, securing a note of even date therewith in the principal amount of \$13,800,000 in favor of Senior Lender.

# UNOFFICIAL COPY

The Mortgagor shall cause the following existing mortgages ("Junior Mortgages") to be subordinated in lien and right of payment to this Mortgage and the Obligations secured hereby:

That certain mortgage dated as of February 12, 2004 from Mortgagor to Tandem Realty Corp., an Illinois corporation ("Tandem"), and recorded prior hereto in the Office of the Cook County Recorder of Deeds on February 27, 2004 as Document No. 0405847023, securing a note of even date therewith in the principal amount of \$100,000 in favor of Tandem.

That certain mortgage dated as of February 12, 2004 from Mortgagor to CZ Investors Ltd Partnership, an Illinois limited partnership ("CZ"), and recorded prior hereto in the Office of the Cook County Recorder of Deeds on February 27, 2004 as Document No. 0405847024, securing a note of even date therewith in the principal amount of \$1,400,000 in favor of CZ.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

ATTEST:

**Timber Courts, LLC**

\_\_\_\_\_  
\_\_\_\_\_

By: *[Signature]*

Name: DAVID RAZOVE

Its: Managing Member Partner

County of Cook)

) ss.

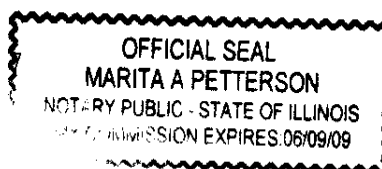
State of Illinois )

The foregoing instrument was acknowledged before me on December 16<sup>th</sup> 2005, by David Razeve of Timber Courts LLC, an Illinois limited liability company, on behalf of said limited liability company.

*[Signature]*

Notary Public, Cook County, Illinois

My Commission Expires: June 6, 2009



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PREMISES

LOTS 10, 11, 12, 13 AND 14 IN FREEDOM SMALL FARMS, A SUBDIVISION OF THE NORTH 485.6 FEET (EXCEPT THE EAST 307.95 FEET THEREOF) TOGETHER WITH THE EAST 433.5 FEET (EXCEPT THE NORTH 485.6 FEET THEREOF) OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.	03-08-100-013
	03-08-100-014
	03-08-100-015
	03-08-100-016
	03-08-100-017

Street Address: 3400 North Arlington Heights Road, Arlington Heights, Illinois

Property of Cook County Clerk's Office