

REAL PROPERTY PURCHASE AGREEMENT

THIS REAL PROPERTY PURCHASE AGREEMENT, ("Agreement"), is made and entered into by and between THE CITY OF SOUTH EUCLID, an Ohio municipal corporation, the seller, ("Seller"); and, CEDAR CENTER NORTH, LLC, an Ohio limited liability company, or its nominee(s), the buyer, ("Buyer" in any event).

RECITALS:

1. Seller owns the real property situated at/along Cedar Road, South Euclid, Cuyahoga County, Ohio, consisting of approximately 7.01 acres more or less and described/depicted within Exhibit "A," which is attached hereto and is made part hereof, ("Land").
2. Seller desires to convey/transfer to Buyer the Land and any and all fixtures located at/upon the Land together with any and all appurtenances, easements, rights-of-way and interests thereto (the "Appurtenances" and together with the Land the "Property").
3. Buyer desires to purchase the Property from Seller.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement, ("Terms"), Seller and Buyer agree as follows:

1. Purchase Price and Payment: Seller will sell the Property to Buyer and Buyer will purchase the Property from Seller for a purchase price equal to One Million Three Hundred and Twenty-Five Thousand Dollars (\$1,325,000.00), ("Purchase Price"). Buyer shall pay the Purchase Price to Seller, subject to any and all adjustments thereto as specified herein, as follows:

- (a) Buyer will deposit earnest money in the amount of Fifty Thousand Dollars (\$50,000.00) with Stewart Title Guaranty Company, ("Title Company" or "Escrow Agent"), upon the mutual execution and delivery of this Agreement by Seller and Buyer, ("Deposit"). The Deposit and any additional Deposit as defined herein shall be: (i) applied to the Purchase Price at closing, ("Closing"); and, (ii) refundable to Buyer upon any termination of this Agreement in strict accordance with the conditions set forth herein, unless such termination results from Buyer's default/breach hereunder (whereupon Seller shall receive the Deposit and any Additional Deposit as and for Seller's sole and exclusive remedy as liquidated damages).
- (b) The balance of the Purchase Price shall be paid to Seller in immediately available U.S. funds upon Closing.
- (c) Buyer acknowledges that the City is constructing two-thirds (2/3) of the Westerly access road from Cedar Road towards the Property's North boundary line (the "Westerly Access Road"). The Westerly Access Road is within the boundaries of the Phase I property identified on Exhibit "B"

which is attached hereto and is made part hereof. It is estimated that construction of the Westerly Access Road will be complete on or about [September 30, 2011]. Upon such completion, Seller shall promptly provide to Buyer a detailed accounting of the actual cost of the construction of the Westerly Access Road. At Closing, in addition to the Purchase Price, Buyer shall pay to and reimburse Seller One Hundred Nine Thousand Dollars (\$109,000.00) for a portion of Seller's cost to construct the Westerly Access Road (the "Buyer's Westerly Access Road Cost"). In the event construction of the Westerly Access Road is not completed by Closing, then at Closing, Buyer shall deposit with Escrow Agent an amount equal to Buyer's Westerly Access Road Cost, and upon completion of such construction, Escrow Agent shall release the full \$109,000.00 to Seller. In the event the actual cost to construct the Westerly Access Road exceeds Buyer's Westerly Access Road Cost, then such excess cost shall be paid by Seller.

- (d) In addition to the Purchase Price, on or before the first day of March each year for a five (5) year period following Closing, Buyer shall make an annual payment to Seller in the amount of Five Thousand Dollars (\$5,000), for an aggregate total payment of Twenty-Five Thousand Dollars (\$25,000) (the "Civic Funds"), to be used and applied by Seller to the costs of sponsoring, organizing and carrying out of certain civic events and celebrations; such as sponsoring home days, July 4th celebrations, Memorial Day parades, sponsoring softball teams or the maintaining of Seller's baseball fields (by way of example, and the parties agree that such examples are not intended to be exhaustive) and Seller's use of the Civic Funds shall be in Seller's reasonable discretion. The terms of this Section 1(d) shall survive the Closing and recording of the Deed and may be further memorialized in the Green Space Use Agreement (defined herein below).

2. Inclusions: Included in this Agreement for any and all purposes as part of the "Property" are any and all: (a) rights, easements, licenses and/or rights-of-way benefiting and/or appurtenant to the Property; (b) improvements, structures and/or fixtures located upon or at the Property; and, (c) oil, gas and/or mineral interests, rights and/or entitlements relating to the Property.

3. Title Evidence: Buyer will obtain an Owner's Title Insurance Commitment, (the "Owner's Commitment"), certified to no earlier than the effective date of this Agreement and, after Closing, obtain an Owner's Title Insurance Policy providing for owner's title insurance coverage in the amount of the Purchase Price, ("Title Insurance"). Buyer will pay the premium, title examination and commitment costs of/for the Title Insurance. The Commitment will include legible copies of any and all title encumbrances referenced within Schedule B thereof.

Buyer shall obtain the Title Insurance from the Title Company. Buyer shall obtain and pay for any survey which Buyer may want or require. Seller and Buyer shall at Closing execute any ordinary and/or customary affidavits, agreements, general instructions and/or forms which the Title Company may reasonably require as a condition to the issuance of the Title Insurance.

The Commitment shall show in Seller a good and marketable title to the Property, ("Title"), in fee simple, free and clear of all liens and encumbrances except: (a) those which Buyer creates or expressly assumes; (b) zoning ordinances and building regulations; (c) real estate taxes and assessments, whether general or special, not then due and payable; (d) legal highways; (e) conditions, restrictions, easements, rights of way and all other matters of record to which Buyer shall not pursuant to written notice(s) to Seller make any written objection(s) within ten (10) calendar days after Buyer receives the Commitment, ("Notice"); (f) any matters that would be disclosed by an accurate survey of the Property; (g) the lien and priority of the TIF; (h) the REA (as herein defined); and, (i) public space as shown on the "Site Plan" (as defined herein), (collectively being the "Permitted Encumbrances"). Buyer acknowledges that Seller retains the right to retain and use certain public spaces as shown on the Site Plan and the rights reserved under that certain Green Space Use Agreement attached hereto as **Exhibit "C"** (which Seller and Buyer must each approve and must each sign at Closing) to be made effective as of the "Closing Date" as herein defined, and the retention of these rights shall be set forth in the "Deed" as herein defined.

Within the ten (10) day period following Buyer's receipt of the Title Commitment, Buyer shall have the right to object to any matters set forth in the Commitment, other than those matters set forth in (a), (b), (c), (d), (g) (h) and (i), (the "Unacceptable Title Matter(s)"), by providing written Notice(s) to Seller. Thereafter Seller shall have a reasonable time not to exceed ten (10) days after Buyer's timely Notice(s) to Seller thereof within which to notify Buyer which Unacceptable Title Matters Seller intends to and shall remedy or remove, ("Cure"), prior to or at Closing by giving written notice to Buyer. Seller shall in any event have the unconditional obligation to Cure any and all monetary liens/mortgages of any lenders, governmental bodies, creditor(s) and/or any other person(s)/entity, all of which Seller shall satisfy in full prior to or at Closing and/or for which Seller shall obtain recordable release(s)/satisfaction(s) such that the same shall not encumber title to the Property as owned by Buyer (or Buyer's nominee(s)), including the mortgage lien held by Cuyahoga County in connection with the Brownfield loan to Seller. Within ten (10) days after receipt of such written notice from Seller, Buyer, as Buyer's sole and exclusive remedy, shall elect in writing either to: (i) accept Title to the Property subject to the Unacceptable Title Matters Seller has not otherwise elected to Cure, without an abatement or reduction of the Purchase Price and complete the transaction contemplated hereby, ("Transaction"); or, (ii) terminate this Agreement. If Buyer elects to terminate this Agreement within ten (10) days of Seller's written notice, all funds and documents shall be returned to the party who delivered or deposited the same, including the Deposit (and any Additional Deposit) which shall be returned to Buyer, and thereupon the parties shall be released from any further obligations hereunder each to the other, except that Buyer shall pay all the expenses of the Title Company, if any and the Escrow Agent shall promptly disburse the Deposit (and any Additional Deposit) to Buyer. If Buyer fails to make a written election within the aforesaid ten (10) day period, Buyer shall be deemed to have elected to accept title to the Property subject to all Unacceptable Title Matters Seller has not otherwise elected to Cure and to complete the Transaction.

Marketability shall be determined under the Standards of Title Examination adopted by the Ohio State Bar Association.

4. Closing and Possession: Closing shall occur on or before November 16, 2011, ("Closing Date"), subject to Buyer's right to extend the same for one (1) additional thirty (30) day period upon written notice to Seller; provided, however, that Buyer shall together with any such notice pay into escrow with the Title Company an additional deposit amount of Twenty-Five Thousand Dollars (\$25,000.00), (the "Additional Deposit"), which Additional Deposit will be: (a) applied to the Purchase Price at Closing; (b) refundable to Buyer upon any termination of this Agreement in strict accordance with the conditions set forth in this Agreement, unless such termination results from Buyer's breach/default hereunder (whereupon Seller shall receive the Deposit and Additional Deposit as and for Seller's sole and exclusive remedy as liquidated damages). The Title Company shall serve as escrow agent and effectuate the Closing of the Transaction. Seller shall deliver full possession of the Property to Buyer at Closing in the present condition thereof subject solely to ordinary wear and tear.

5. Deed: At Closing, Seller shall make, execute and deliver to Buyer or to Buyer's nominee(s) (as applicable) a recordable Limited Warranty Deed, ("Deed"), conveying the Property to Buyer or such nominee(s) free and clear of all liens and encumbrances except the Permitted Encumbrances, those matters expressly excepted hereinabove and real estate taxes and assessments which shall be paid and/or prorated as provided hereinbelow.

6. Taxes, Assessments and Other Charges: Prior to or at Closing, Seller shall pay any and all real estate taxes and assessment installment(s) then due and payable and any and all delinquent real estate taxes and/or assessments, together with any applicable penalties and/or interest for any prior tax periods. At Closing, Seller shall pay and/or credit to Buyer all real estate taxes/assessments due or to become due in or for the period prior to Closing pro-rated to the Closing Date utilizing the figures shown on the last available tax duplicate. In any event, Seller shall be wholly obligated to pay and be liable for any and all real estate taxes/assessments (and any applicable penalties/interest) attributable to and/or assessed against the Property for the period prior to the Closing Date and shall hold Buyer and/or Buyer's nominee(s) (as applicable) harmless from and against any and all liabilities for or relating thereto (with this covenant to expressly survive Closing). Seller represents to Buyer that Seller has applied for an exemption from the real estate taxes, (the "Tax Exemption"), for the time period from 2009 to the Closing Date. In the event any Tax Exemption is granted or any adjustments are made to the real estate taxes attributable to periods prior to the Closing Date, the parties shall re-prorate the real estate taxes within ten (10) days of receipt of actual or corrected tax bills. In the event Buyer receives a refund for any adjustments made to real estate taxes, Buyer shall immediately deliver and pay over said refund to Seller. Such covenant to re-prorate taxes and assessments and deliver any refund to Seller shall survive the Closing. Seller will pay any conveyance fee/transfer tax which the Cuyahoga County Auditor assesses to Seller upon Seller's conveyance of the Property to Buyer. Buyer shall pay the recording fee for the Deed and the Title Company charges to close the Transaction and issue the Title Insurance to Buyer.

7. Severability: If any Term(s) of this Agreement is/are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Term(s) of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or otherwise invalidated.

8. Broker(s)/Realtor(s): Seller has not listed the Property with a real estate broker or realtor, and neither Buyer nor Seller has enlisted the services of a broker or realtor in any connection therewith. The parties do not owe any broker's or realtor's commission or fee to any broker/realtor relating in any manner whatsoever to this Agreement, the Property and/or the Transaction. The parties will in any event pay any such commission(s) owed to their respective realtor(s)/broker(s).

9. Notices: Any notice(s) required or permitted to be given pursuant to this Agreement shall be deemed given when either personally delivered or alternatively sent by Federal Express (or any overnight service provider having readily traceable service) to Seller or Buyer as follows:

To Buyer: c/o Patrick A. Sirpilla
3951 Convenience Circle, N.W.
Suite 301
Canton, Ohio 44718

With copy to: John J. Rambacher, Esq.
825 South Main Street
North Canton, Ohio 44720

To Seller: City of South Euclid, Ohio
1349 Green Road
South Euclid, OH 44121
Attention: Mayor

With copy to: City of South Euclid, Ohio
1349 Green Road
South Euclid, OH 44121
Attention: Law Director

Either Seller or Buyer may change their notice address by providing the other with written notice as provided hereinabove setting forth such new address.

10. Successors and Assigns: The Terms shall extend to and be binding upon the respective successor(s) and/or assign(s) of both Seller and Buyer or Buyer's nominee(s) (as applicable).

11. Governing Law: This Agreement shall be governed by and construed in accordance with Ohio law. The Cuyahoga County, Ohio Common Pleas Court shall have the sole jurisdiction and venue over and respecting any claims, causes of action, liabilities and/or disputes which arise among and between Seller and Buyer relating in any manner whatsoever to this Agreement, the Transaction and/or the Property.

12. Effective Date: The effective date of this Agreement, (the "Effective Date"), shall be the latest date upon which Seller or Buyer executes the same.

13. Conditions Precedent to Buyer's Obligations: All of Buyer's duties/obligations and/or liabilities to Seller under this Agreement are wholly contingent upon the following conditions precedent, (collectively the "Buyer's Conditions"):

- (a) That, there exists no liens, conditions, easements, encumbrances, restrictions, rights-of-way and/or any "Unacceptable Title Matters" relative to the Property that would prevent or impair/detriment Buyer's utilization, ownership, possession and/or development of the Property for Buyer's retail/commercial use(s) thereof as Buyer will determine in Buyer's discretion.
- (b) That, any EPA Phase I and/or Phase II Assessments, Wetland Delineations/Studies, Location Survey(s), ALTA Survey(s) and/or Flood Survey(s) which Buyer may obtain relative to the Property, is/are wholly satisfactory to Buyer and do not disclose any materially adverse conditions at the Property as Buyer determines in Buyer's discretion.
- (c) That, any percolation testing, soil reports, storm water management, clean air act and/or drinking water tests/reports and/or any other inspection(s), testing(s), soil boring(s) or investigation(s), (collectively the "Tests/ Reports"), which Buyer may want to obtain/conduct at the Property (at Buyer's sole expense) do not disclose any materially adverse conditions at or relevant to the Property as Buyer determines in Buyer's discretion.
- (d) That, the Property is properly and correctly zoned for retail/commercial purposes and that there otherwise do(es) not exist any Federal, State, County, City and/or Local regulations, restrictions, issue(s), requirement(s) or condition(s) materially adverse to the Property and/or Buyer's development thereof as Buyer determines in Buyer's discretion.
- (e) That, the Property shall consist of approximately 7.01 acres and shall be configured as depicted within **Exhibit "A"** hereto.
- (f) That, Buyer has obtained any and all final approvals/permits (from Seller, Cuyahoga County, the State of Ohio and/or any other governmental agency/body) that Buyer needs to promptly develop the Property and to construct Buyer's contemplated improvements thereon; provided Buyer has timely applied for and promptly proceeded in good faith to satisfy all application requirements associated with the approvals/permits.
- (g) That, Closing shall occur on or before the Closing Date (with time being of the essence).
- (h) That, there shall have been no material adverse change(s) in or to the Property and/or relating thereto prior to Closing as Buyer determines in Buyer's discretion.

- (i) That, Seller shall at Closing be ready, willing and able to execute and deliver the Deed and any and all Closing documents/instruments that Buyer and/or the Title Company reasonably require.

In the event Buyer's Conditions (a) through (e) are not met, Buyer may, by written notice to Seller not later than 5:00 pm on the 30th day immediately following the Effective Date, ("Inspection Period"), terminate this Agreement, whereupon the Deposit (and any Additional Deposit) shall be returned to Buyer and the parties shall be released from any further obligations hereunder each to the other, except that Buyer shall promptly provide Seller with copies of any Tests, Reports and Inspections, and Buyer shall pay all the expenses of the Escrow Agent and the Title Company. In the event Buyer's Conditions (f) through (i) are not met, Buyer may, by written notice to Seller not later than 5:00 p.m. on the Closing Date, terminate this Agreement, whereupon the Deposit (and any Additional Deposit) shall be returned to Buyer and the parties shall be released from any further obligations hereunder each to the other, except that Buyer shall promptly provide Seller with copies of any Tests, Reports and Inspections, and Buyer shall pay all the expenses of the Escrow Agent and the Title Company. In the event that Buyer fails to deliver to Seller such termination notice prior to the expiration of the Inspection Period or the Closing Date, as applicable, Buyer shall be deemed to have waived Buyer's right to terminate based on Buyer's Conditions, and the parties shall proceed to Closing upon the terms contained herein without reduction in the Purchase Price (and the Deposit and Additional Deposit shall become nonrefundable and shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy if Buyer defaults under or breaches this Agreement).

14. Conditions Precedent to Seller's Obligations: All of Seller's duties/obligations and/or liabilities to Buyer under this Agreement are wholly contingent upon the following conditions precedent, (collectively, the "Seller's Conditions"):

- (a) On or prior to the Closing Date, that Buyer has received, and delivered copies to Seller of a valid and effective assignment and transfer from the Coral SECC, LLC ("Coral") of all leases, letters of intent, licenses, sales agreements applicable to the Property that Coral entered into in connection with the Property.
- (b) Buyer shall deliver to Seller, within ten (10) days of the Effective Date, an Economic Benefits Impact Statement, ("Statement"), reasonably detailing the projected future real estate taxes on the Property, projected number of jobs to be created, the projected income taxes generated on the project, and the projected gross amount of retail sales from the future development. Buyer's Statement will represent Buyer's projections of the foregoing and Seller shall not reject the same for any reason(s) if Buyer's Statement is otherwise complete; including, without limitation, if Seller is dissatisfied with any such projection(s).
- (c) Upon or prior to Closing, Buyer shall have provided the following to Seller, (the "Submittals"): (i) construction drawings and plans that reasonably

evidence that Buyer shall construct buildings, no less than 59,000 sf of retail stores and restaurants, shown on **Exhibit "B"** in Phase I property for delivery to tenants not later than August, 2012, subject to delays caused by or attributable to Acts of God, labor strikes, material shortages, inclement weather and other matters beyond Buyer's reasonable control; and (ii) a list of prospective tenants as known to Buyer disclosing the following information (if and as known to Buyer): (a) status of any letter of intent; (b) status of lease negotiations; (c) status of any final lease; (d) date of submission of construction documents for each building with the designated and corresponding building number consistent with the approved City Site Plan; (e) date of projected groundbreaking for each individual tenant and/or building; (f) anticipated date of delivery of possession of leased space to each tenant; and (g) anticipated date that each tenant will be open for business. Buyer's Submittals shall not in any event be subject to Seller's satisfaction/approval(s), but rather Buyer's provision to Seller of the Submittals shall satisfy the foregoing condition, subject to applicable laws, including but not limited to, building and zoning requirements.

In the event any of Seller's Conditions set forth in this Section are not satisfied, Seller may, by written notice to Buyer not later than 5:00 p.m. on the Closing Date, terminate this Agreement, whereupon the Deposit (and any Additional Deposit) shall be retained by and paid to Seller and the parties shall, thereafter, be released from any further obligations hereunder each to the other, and Buyer shall pay all the expenses of the Escrow Agent and the Title Company. In the event that Seller elects not to terminate this Agreement, Seller shall be deemed to have waived its right to terminate based on Seller's Conditions, and the parties shall proceed to Closing upon the terms contained herein without an adjustment in the Purchase Price.

15. Inspection and Right of Access: During the Inspection Period, upon notice to and coordination with Seller, Buyer (and Buyer's consultant(s) or agent(s)) shall at Buyer's sole expense have the right to assess, analyze, inspect, test and/or evaluate the Property from and after the effective date of this Agreement; provided Buyer does not violate any covenants and restrictions imposed on the Property as reflected in documents on public record. Upon notice to and in coordination with Seller, Buyer and Buyer's consultant(s) or agent(s) shall have the right to enter upon the Property (at Buyer's sole expense) to inspect and examine the same and to conduct any and all studies/testing, boring(s), survey(s), examinations and/or sampling and obtain all such Tests/Reports as Buyer and/or Buyer's lender (as applicable) deem either necessary or desirable (the "Inspections"). Buyer shall, at Buyer's expense, reasonably restore the Property to the pre-existing condition thereof (if and as applicable). Buyer hereby agrees to indemnify, defend and hold harmless Seller from and against any losses, liabilities, damages, costs or expenses incurred by Seller as a result of Buyer's inspection activities at the Property; provided, however, notwithstanding any other provisions of this Agreement, Seller shall have no liability for Buyer's discovery of negative facts regarding the Property and any resulting diminution in the value of the Property. Buyer acknowledges and agrees that any such Inspections conducted by Buyer or Buyer's agents and representatives shall be solely at the risk of Buyer. Buyer shall carry commercial general liability insurance covering all activities conducted by Buyer, its agents, contractors and engineers on the Property. Such insurance shall have limits of not less than One Million Dollars

(\$1,000,000.00) for personal injury to or death of any one person, Two Million Dollars (\$2,000,000.00) for personal injury to or death of any number of persons in any one accident and One Million Dollars (\$1,000,000.00) for property damage, and shall name Seller as an additional insured. All of the obligations of Buyer under this Section shall survive Closing or the termination of this Agreement.

Buyer agrees that it shall treat all Inspections, Tests and Reports as confidential materials and shall not disclose any portion thereof except: (i) to the extent necessary in connection with its evaluation of the Property; (ii) to the extent required by law; or (iii) with the express written consent of Seller. Notwithstanding any provision in this Agreement to the contrary, and except as may be required by applicable law, neither Buyer nor Buyer's agents shall contact any governmental authority regarding Buyer's discovery of any Hazardous Substances (as hereinafter defined) on, or any environmental conditions at, the Property without Seller's prior written consent thereto. In addition, if Seller's consent is obtained by Buyer, Seller shall be entitled to receive at least two (2) business days prior written notice of the intended contact and to have a representative present when Buyer has any such contact with any governmental official or representative. For the purposes of this Agreement, the term "Hazardous Substances" shall have the same definition as is set forth in CERCLA (the "Superfund Act"); provided, however, that the definition of the term "Hazardous Substances" shall also include (if not included within the definition contained in the Superfund Act) petroleum and related byproducts, hydrocarbons, radon, asbestos, urea formaldehyde and polychlorinated biphenyl compounds.

16. Seller's Representations and Warranties: Seller covenants, represents and warrants to Buyer, ("Seller's Covenants"), that both as of the Effective Date and as of the Closing Date:

- (a) Seller owns fee simple and insurable Title to the Property and that Buyer will acquire the Property from Seller free and clear of all liens, encumbrances, claims, demands, easements, covenants, conditions, proffers, restrictions and encroachments of any kind or nature, subject to the Permitted Encumbrances, and other exceptions relating to the Property as set forth in Schedule B of the Commitment (as acceptable to and/or accepted by Buyer).
- (b) Other than that certain Project Development Agreement and Contract for Sale of Land, dated October 23, 2007, as amended by that certain Amended and Restated Project Development Agreement and Contract for Sale of Land, dated September 30, 2009 and that certain Side Letter Agreement dated October 14, 2009 (collectively, the "Development Agreements"), Seller has not entered into any other agreement(s) to sell, mortgage, lease, encumber or dispose of any interest in the Property or any portion thereof or any agreement which imposes restrictions on the ability or right of Seller to sell and/or transfer the Property or any interest therein as required under this Agreement; including, without limitation, any lease(s), option(s) or right(s) of first refusal in favor of any person(s) and/or entity.
- (c) Relative to the Property, Seller has not received any formal notification(s) of any violation(s) of any applicable federal, state or local ordinances, statutes,

codes, rules or regulations relevant or relating thereto except as Seller has otherwise disclosed herein.

- (d) To actual knowledge of Seller, there are no hidden or undisclosed underground storage tanks at/upon the Property.
- (e) Seller's execution of and performance under this Agreement and Seller's completion of the Transaction will not result in any breach of, constitute a default under or result in the creation of any lien, charge or encumbrance upon the Property under or pursuant to any indenture, mortgage, security agreement, credit agreement or internal governance provisions of Seller or any other agreement or instrument to which Seller is a party or by which Seller or any of the Property may or is/are bound; including, without limitation, any options, rights of first refusal and/or transfer restrictions of any type or nature.
- (f) As of the Closing Date, no consent/approval of any person, entity, governmental agency/body is or will be required for Seller to fully perform under this Agreement and/or to complete the Transaction in accordance with the Terms.
- (g) There are no actions, suits, claims, demands or any other proceedings or investigations, either administrative or judicial, pending or, to the best of Seller's knowledge, threatened against Seller and/or the Property.
- (h) Seller has complied with all applicable laws, regulations, ordinances and/or rules pertaining to the Property.
- (i) Seller is current and at Closing shall be current with/upon all of Seller's obligations/liabilities to pay for any and all utilities servicing the Property.
- (j) Seller's Covenants as contained within this Agreement do not and will not contain or furnish any untrue statement(s) of material fact(s) or omit any material information necessary to render Seller's Covenants to not be misleading.
- (k) Contemporaneous with or immediately following the Closing, Seller shall obtain/procure the termination (in writing) of any and all of the Development Agreements relating to the Property.
- (l) Seller agrees to perform and abide by any and all obligations, rights, duties, covenants, restrictions, access/egress, property boundaries, utility easements, rows, and expenses as stipulated in the REA.
- (m) To the actual knowledge of Seller, other than this Agreement and the Development Agreements, there are no agreements, contracts, licenses,

invoices, bills, leases, undertakings or understandings affecting all or any of the Property except as Seller has disclosed in writing to Buyer within this Agreement.

All of Seller's Covenants shall survive Closing and the execution, delivery and/or recordation of the Deed.

17. Buyer's Representations and Warranties: Buyer covenants, represents and warrants to Seller, ("Buyer's Covenants"), that both as of the Effective Date and as of the Closing Date:

- (a) there is no pending litigation, and to the best of Buyer's knowledge, there is no threatened litigation or claims against Buyer which would impair Buyer's ability to perform its obligations under the terms of this Agreement and to close the transaction as contemplated herein on the Closing Date.
- (b) No consent/approval of any person, entity, governmental agency/body is or will be required for Buyer to fully perform under this Agreement and/or to complete the Transaction in accordance with the Terms.
- (c) Buyer is authorized to sign this Agreement, Close the Transaction and perform pursuant to and/or under the Terms.
- (d) Buyer acknowledges that a Reciprocal Easement and Access Agreement dated February 11, 2011, (the "REA"), has been entered into by and among Seller, Ohio Retail Stores, LLC ("ORS") and Coral relating to the relationship between real property, comprising approximately 1.4 acres located immediately west of the Property, owned by ORS (the "ORS Property"), and the Property. The REA sets forth the framework by which the Property will be operated and its relationship with the ORS Property, including provisions to create easements for ingress, egress, signage, parking and utilities, any required party walls and the restrictions required by this Agreement. Buyer agrees to perform and abide by any and all obligations, rights, duties, covenants, restrictions, access/egress, property boundaries, utility easements, rows, and expenses as stipulated in the REA.
- (e) Buyer's Covenants as contained within this Agreement do not and will not contain or furnish any untrue statement(s) of material fact(s) or omit any material information necessary to render Buyer's Covenants to not be misleading.
- (f) Buyer will begin construction activities/efforts at the Property, ("Construction"), within ten (10) days after Closing and Buyer shall construct all buildings, no less than 59,000 sf of retail stores and restaurants, shown on Exhibit "B" in Phase I property, and Buyer shall deliver possession to all tenants currently under signed leases between May of 2012 and August of 2012; provided, however, if Buyer shall be delayed or

prevented from the performance of the covenant provided in this paragraph 17(f) by reason of Acts of God, labor strike, lockout, inability to procure materials, failure of power, riot, insurrection, war or warlike act, terrorist act, utility blackout or brownout, legal requirement or other reason not within the control of Buyer, then performance of such covenant or obligation by Buyer shall be excused for a period equivalent to the period of such delay.

All of Buyer's Covenants shall survive Closing and the execution, delivery and/or recordation of the Deed.

18. Exchange Assignment: Buyer may assign Buyer's rights/entitlements under this Agreement and delegate Buyer's duties/obligations hereunder to a Qualified Exchange Accommodator prior to or at Closing for purposes of enabling Buyer to accomplish or attempt to accomplish one (1) or more "reverse" exchange(s) under Internal Revenue Code Section 1031, ("Exchange(s)); provided, however, that Buyer's assignment/delegation shall not relieve Buyer from Buyer's liabilities and/or full and timely performance of Buyer's duties/obligations to Seller hereunder. Seller shall at all times before and after Closing (but without any cost or expense to Seller) wholly assist and cooperate with Buyer in all material respects pertaining to Buyer's Exchange(s) (if and as applicable). Notwithstanding anything contained herein to the contrary, Seller shall have no obligation to acquire title to any real property nor to enter into any contract and Seller shall not assume any responsibility for the tax consequences to Buyer arising out of any exchange effected pursuant to this Section. Further, Buyer shall reimburse Seller for all additional costs and expenses (including reasonable attorney's fees) reasonably incurred by Seller in connection with any such exchange; and Buyer shall indemnify and hold Seller harmless from and against any and all loss, cost, damage, expense or other liability (including reasonable attorneys' fees) that Seller may incur or suffer in the performance of its obligations under this Section.

19. Status of Seller: Seller covenants, represents and/or warrants to Buyer that as of the effective date of this Agreement and as of the Closing Date:

- (a) Seller is an Ohio municipal corporation;
- (b) Seller is authorized to sign this Agreement, close the Transaction and perform pursuant to and/or under the Terms.

20. Waiver/Modification: None of the Terms can be waived, modified and/or amended unless and until Seller and Buyer prepare and sign a written waiver and/or modification, which such waiver and/or modification must incorporate this Agreement by reference therein and must otherwise ratify and reaffirm the same (subject to the waiver/modification).

21. Special Conditions: The following shall constitute special Terms of this Agreement:

- (a) Existing Survey(s)/Report(s) and/or Title Evidence: Seller will promptly provide to Buyer the original and/or copy of any and all survey(s), title evidence, soil test reports, environmental site assessment(s) and/or any other

inspection(s) and/or testing reports/studies which Seller possesses relative to the Property.

- (b) Signs: Buyer shall, at its sole cost and expense, be responsible for obtaining all necessary approvals, permits, consents and agreements necessary to enable Buyer or Buyer's nominee(s) to construct, erect, maintain, repair and/or replace a sign monument/signage and Buyer shall comply with all applicable laws, regulations, rules and ordinances.
- (c) Local Participation: Buyer shall in good faith encourage Buyer's contractors, subcontractors, licensees, concessionaires and tenants to use/hire qualified South Euclid businesses and citizens in the development and construction of the Property and for their business operations at the Property (if and as applicable).
- (d) Prohibited Uses: Buyer acknowledges that Seller and Bob Evans Farms, Inc. ("Bob Evans"), have entered into a real estate purchase agreement (the "Bob Evans Agreement") whereby Bob Evans contracts to acquire from Seller certain real property located adjacent to the Property and containing approximately .70 acres of land (the "Bob Evans Property"). Buyer, or its successors, agree that no portion of the Property will be operated as a family style or breakfast restaurant of a local or regional nature, similar in use to the restricted restaurants listed, below, for a period of twenty (20) years from the date Bob Evans acquires fee simple ownership of the Bob Evans Property or such shorter time if Bob Evans or its successor is no longer operating a Bob Evans restaurant on the Bob Evans Property. Buyer further agrees that no portion of the Property will be leased, used or occupied for any of the following: Cracker Barrel, Big Boy, Eat N Park, Waffle House, IHOP, First Watch, Scrambler Marie's, Yours Truly Restaurants, Original Pancake House, Denny's, Perkins, Friendly's and Sunny Street Café. This deed restriction shall not include a general restriction against a fast food type restaurant (similar to McDonald's, Arby's, Quizno's or Starbucks) or a restaurant similar to Friday's, Applebee's, Outback Steakhouse, Bennigan's or Chili's. The term "operation" shall include not only the restaurant building but also the parking areas, drives, entries or any other improvements used in connection with or to support such a restaurant or to support a shopping center of which such a restaurant is a part. Such agreements will run with the land, benefiting the Bob Evans Property and burdening the Property, and be set forth in a recordable Declaration of Restrictions (the "Declaration of Restrictions"). The Declaration of Restrictions shall provide that such prohibitions shall continue for a period of twenty (20) years from the date Bob Evans acquires fee simple ownership of the Bob Evans Property or for so long as the Bob Evans restaurant (or any successor restaurant) continues to operate at the Bob Evans Property (continuous operation shall mean that the restaurant shall not be closed for operation more than ninety (90) continuous days, excluding closure due to remodeling,

casualty, force majeure or condemnation). The Declaration of Restrictions and foregoing prohibitions/restrictions shall not in any event apply and shall be null and void unless Bob Evans acquires fee simple ownership of the Bob Evans Property.

22. Covenant Not to Sue (Ohio EPA): Seller represents, warrants and covenants to Buyer (and Buyer's nominee(s)) (as applicable) both as of the effective date of this Agreement and as of the Closing Date that:

- (a) Seller has received a Covenant Not to Sue from the Ohio Environmental Protection Agency and/or other Ohio agency, ("Ohio EPA"), relating to the Property and/or Seller's real property adjacent thereto ("Covenant"), a true copy of which Covenant is attached hereto as Exhibit "D" and is made part hereof.
- (b) The Covenant is and shall continue to be valid and subsisting and in full force and effect.
- (c) Seller is not aware of any obligations required under the Covenant that it has failed to perform.
- (d) Seller shall remain responsible for performing any and all obligations/requirements under the Covenant prior to Closing.

This paragraph and Seller's representations, warranties and covenants as provided herein shall expressly survive Closing and Seller's execution/delivery of the Deed (and the recordation thereof).

23. Right of First Refusal: At Closing, Seller and Buyer (or Buyer's nominee(s)) will execute a recordable Right of First Refusal, ("RFR"), in form and substance reasonably acceptable to Seller and Buyer (or Buyer's nominee(s)) pursuant to which Seller shall grant to Buyer (or permitted Buyer's nominee(s)) a right of first refusal to "match" any bona fide purchase agreement(s), proposal(s) and/or offer(s), ("Offer(s)"), that Seller may obtain/sign providing for or relating to Seller's sale(s) of any real estate depicted/identified within Exhibit "B" which is attached hereto and is made part hereof, (the "RFR Property"). Buyer may elect to exercise the RFR and purchase any RFR Property on the same terms and conditions as those set forth in the Offer(s), and Buyer shall: (i) notify Seller of its election in writing within fifteen (15) calendar days of receiving written notice of the Offer(s); and (ii) deliver an earnest money deposit of immediately available funds to Escrow Agent in an amount equal to ten percent (10%) of the purchase price contained in the Offer. If Seller shall sell all or a portion of the RFR Property after a failure of Buyer to exercise the RFR as to the same, the RFR shall terminate and have no further force and effect relative thereto, and Buyer agrees to execute and deliver to Seller a commercially reasonable and recordable termination of RFR (to be partial if and as applicable). Buyer will submit the RFR to Seller prior to Closing for Seller's approval thereof which such approval Seller will not unreasonably withhold or delay. The RFR shall be recorded at Closing with Buyer to pay the recordation cost.

24. Condition of Property: BUYER ACKNOWLEDGES THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT: (A) PRIOR TO THE CLOSING, BUYER SHALL HAVE HAD AN OPPORTUNITY TO MAKE ALL INSPECTIONS OF THE PROPERTY AS DESIRED BY BUYER, AND BUYER SHALL HAVE INSPECTED THE PROPERTY AND ACCEPTS IT "AS IS" IN ITS CURRENT CONDITION WITHOUT WARRANTY NOT OTHERWISE SET FORTH HEREIN; (B) BUYER IS AWARE OF THE PRESENT PHYSICAL CONDITION OF THE PROPERTY; AND (C) BUYER FURTHER ACKNOWLEDGES THAT (EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT) THE PROPERTY IS BEING PURCHASED IN ITS PRESENT PHYSICAL CONDITION AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES OR STATEMENTS MADE CONCERNING THE CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION, WARRANTY OR STATEMENT CONCERNING THE ENVIRONMENTAL CONDITION OF THE PROPERTY) OTHER THAN THOSE CONTAINED HEREIN, AND THAT BUYER HAS NOT RELIED ON ANY OTHER REPRESENTATIONS, WARRANTIES OR STATEMENTS. ANY REPRESENTATIONS, WARRANTIES, PROMISES OR STATEMENTS BY ANY BROKER, AGENT OR EMPLOYEE OF SELLER OR ANY OTHER PERSON THAT DIFFERS IN ANY RESPECT FROM THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL BE GIVEN NO FORCE AND EFFECT. SUBJECT TO AND EXCEPTING FOR SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, BUYER WAIVES AND RELEASES SELLER FROM ALL CLAIMS AGAINST SELLER ARISING OUT OF THE CONDITION OF THE PROPERTY. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PROPERTY IS BEING SOLD AS IS, WHERE IS AND WITH ALL FAULTS. THIS SECTION SHALL SURVIVE CLOSING AND THE RECORDING OF THE DEED FOR RECORD.

Buyer acknowledges that the Site Plan depicted on **Exhibit "B"** (the "Site Plan"), depicts access and egress onto and through the Property. Buyer agrees that it shall, at its sole cost and expense, build, construct and erect all roadways, sidewalks, access drives, traffic signals, signs and infrastructure necessary to comply with the Site Plan as to/upon the Property, including but not limited to, landscaping, civic green space and grading, construction of the Northerly service drive within and/or forming part of the Property, the access drive running from the front of the in-line stores on the Property to Warrensville Center Road, the Easterly access road from Cedar Road to the access/service road in front of the in-line stores, the Westerly Access Road from Cedar Road to its Northerly termination as depicted on **Exhibit "B"**, and including all necessary right-of-way equipment, signalization phasing, as required and necessary. Buyer shall not be responsible for constructing the in-line stores service drive as depicted in Phase II of the Site Plan. The City shall be responsible for completing the necessary construction work on the Northerly service drive from the east property line of the Phase I parcel to Warrensville Center Road. Upon completion of the construction for the Northerly Service drive from the Phase I parcel to Warrensville Center road, the cost of maintaining and the performance of maintenance of the Northerly Service drive from the Phase I parcel to Warrensville Center road shall be in accordance with the common area requirements of the REA. All cross walks, hard scape, and landscaping as shown on the Site Plan upon/within the Property, and as heretofore stipulated by the Planning Commission and the ARB, shall also be constructed by the Buyer, at its sole cost and expense. Buyer acknowledges that all

access and egress throughout and onto the site is governed by the REA. Buyer acknowledges that Seller shall have no responsibility or liability for construction of any of the improvements enumerated in this Section or in the Site Plan except as otherwise specifically provided in this Agreement.

25. Subdivision of Property: Seller will at Seller's expense promptly create the Property of record as a separate parcel duly subdivided from Seller's real property of which the Property presently forms a part.

26. Entire Agreement/Survival: There are no covenants, representations, warranties, agreements or conditions, either express or implied, which in any way affect, form a part of, or relate to this Agreement except for the Terms hereof. This Agreement constitutes the entire understanding and agreement between Seller and Buyer. All of the Terms of this Agreement; including, without limitation, Seller's Covenants and/or Seller's other representations/warranties, shall survive Closing and the execution, delivery and/or recordation of the Deed.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement in duplicate original counterparts on the date(s) set forth hereinbelow.

THE CITY OF SOUTH EUCLID, an
Ohio municipal corporation, ("Seller"),

CEDAR CENTER NORTH, LLC, an Ohio
limited liability company, ("Buyer"),

By: Gergene Welo
Its: Mayor
Dated: November 3, 2011

By: [Signature]
Its: Manager
Dated: 11/3/11

EXHIBITS

Exhibit A - Land (need)

Exhibit B - Phase I Property / Site Plan (need)

Exhibit C Green Space Use Agreement

Exhibit D Covenant (EPA) (need)